

Appendix

Tribal, U.S. Territories and Insular Areas Administrative and Financial Guidance for Assistance Agreements

U.S. Environmental Protection
Agency (EPA)



Updated September 2013

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Acronyms

ACH – Automated Clearing House
AFC – Audit Follow-Up Coordinator
AI/NA – American Indians and Alaskan Natives
AIAC – American Indian Advisory Council
AIEO – American Indian Environmental Office
AO – Award Official
ASAP – Automated Standard Application for Payment
BIA – Bureau of Indian Affairs
BLM – Bureau of Land Management
CCR – Central Contractor Registration
CFDA – Catalog of Federal Domestic Assistance
CFR – Code of Federal Regulations
D&B – Dun and Bradstreet
DBE – Disadvantaged Business Enterprise
DD – Direct Deposit
DD/EFT – Direct Deposit / Electronic Funds Transfer
DDO – Disputes Decision Official
DIGA – Divisional Office of the Assistant Inspector General of Audits
DOD – Department of Defense
DOI – Department of the Interior
DOJ – Department of Justice
DOT – Department of Transportation
DUNS – Data Universal Numbering System
EA – Environmental Assessment
EFT – Electronic Funds Transfer
EIS – Environmental Impact Statement
EPA – Environmental Protection Agency
EPA – United States Environmental Protection Agency
FFATA – Federal Funding Accountability and Transparency Act
FOSTTA – Forum on State and Tribal Toxics Action
FSR – Financial Status Report
GAAP – Generally Accepted Accounting Principles
GAO – United States General Accounting Office
GAP – General Assistance Program
GASB – Government Accounting Standards Board
GMO – Grants Management Office
GMS – Grants Management Specialist
GS – Grants Specialist
GSA – General Services Administration
HBCU – Historically Black Colleges and Universities
HHS – Department of Health and Human Services
HIS – Indian Health Service
HQ – EPA’s Headquarters Office in Washington, DC
HUD – United States Department of Housing and Urban Development
IG – Interagency/Intergovernmental Agreement/International Agreement
IBC – Interior Business Center

IFMS – Integrated Financial Management System
IHS – Indian Health Service
IPPC – Indian Program Policy Council
LVFC – Las Vegas Finance Center
MBDA – Minority Business Development Agency
MBE – Minority Business Enterprises
MBE/WBE – Minority Business Enterprise / Women Business Enterprise
NAFOA – National American Finance Officers Association
NBC – National Business Center (now known as the Interior Business Center)
NCAIED – National Center for American Indian Enterprise Development
NEJAC – National Environmental Justice Advisory Council
NGMA – National Grants Management Association
NIWG – National Indian Workgroup
NILWG – National Indian Law Workgroup
NTOC – National Transportation Operations Coalition
OIBA – Office of the Assistant Inspector General for Audits
OIG – EPA’s Office of the Inspector General
OIGA – Office of the Assistance Inspector General for Audits
OMB – Office of Management Budget
OSBP – Office of Small Business Programs
OSDBU – Office of Small and Disadvantaged Business Utilization
PO – Project Officer
PPG – Performance Partnership Grants
RTOC – Regional Tribal Operations Committee (Region 9)
SAM – System for Award Management
SBA – Small Business Association
SBE – Small Business Enterprise
SF – Standard Form
SRF – State Revolving Fund
TERO – Tribal Employment Rights Office
TOC – Tribal Operations Committee
TPPC – Tribal Pesticide Program Council
TSC – Tribal Science Council
USDA – United States Department of Agriculture
WBE – Women’s Business Enterprises

Application Package Forms

Application Checklist

Required:

1. Standard Form 424 Application for Federal Assistance

2. Standard Form 424A Budget Information – Non-Construction Programs

3. EPA Form 4700-4 Preaward Compliance Review Report

4. Detailed Itemized Budget

5. Narrative Statement or Work Plan

Highly recommended:

- Key Contacts List

Items only required under certain circumstances:

- Anti-Lobbying Form

- Environmental Assess (EA)

- Environmental Impact Statement (EIS)

- Negotiated Indirect Cost Rate Agreement

- Quality Assurance Narrative Statement

Applicants must have an EPA Electronic Funds Transfer (EFT) account.

SF 424 Application for Federal Assistance

<http://www.epa.gov/ogd/AppKit/application.htm>

OMB Number: 4040-0004
Expiration Date: 04/31/2012

Application for Federal Assistance SF-424		Version 02
*1. Type of Submission <input type="checkbox"/> Preapplication <input type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application	*2. Type of Application <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision	*If revision, select appropriate letter(s): _____ *Other (Specify) _____
*3. Date Received: _____	4. Applicant Identifier: _____	
5a. Federal Entity Identifier: _____	*5b. Federal Award Identifier: _____	
State Use Only:		
6. Date Received by State: _____	7. State Application Identifier: _____	
8. APPLICANT INFORMATION:		
*a. Legal Name: _____		
*b. Employer/ Taxpayer Identification Number (EIN/TIN): _____	*c. Organizational DUNS: _____	
d. Address:		
* Street 1: _____		
Street 2: _____		
*City: _____		
County: _____		
*State: _____		
Province: _____		
Country: _____		
*Zip/Postal Code: _____		
e. Organizational Unit:		
Department Name: _____	Division Name: _____	
f. Name and contact information of person to be contacted on matters involving this application:		
Prefix: _____	First Name: _____	
Middle Name: _____		
*Last Name: _____		
Suffix: _____		
Title: _____		
Organizational Affiliation: _____		
*Telephone Number: _____	Fax Number: _____	
*Email: _____		

Application for Federal Assistance SF-424	Version 02
9. Type of Applicant 1: Select Applicant Type: <input type="text"/> Type of Applicant 2: Select Applicant Type: <input type="text"/> Type of Applicant 3: Select Applicant Type: <input type="text"/> *Other (specify): <input type="text"/>	
*10. Name of Federal Agency: <input type="text"/>	
11. Catalog of Federal Domestic Assistance Number: <input type="text"/> CFDA Title: <input type="text"/>	
*12. Funding Opportunity Number: <input type="text"/> *Title: <input type="text"/>	
13. Competition Identification Number: <input type="text"/> Title: <input type="text"/>	
14. Areas affected by Project (Cities, Countries, States, etc.) <input type="text"/>	
*15. Descriptive Title of Applicant's Project: <input type="text"/>	
Attach Supporting documents as specified in agency instructions. <input type="button" value="Add Attachments"/> <input type="button" value="Delete Attachments"/> <input type="button" value="View Attachments"/>	

Application for Federal Assistance SF-424		Version 02
16. Congressional Districts Of:		
*a. Applicant	<input type="text"/>	*b. Program/Project <input type="text"/>
Attach an additional list of Program/ Project Congressional Districts if needed.		
<input type="text"/>	<input type="button" value="Add Attachment"/>	<input type="button" value="Delete Attachments"/> <input type="button" value="View Attachment"/>
17. Proposed Project:		
*a. Start Date:	<input type="text"/>	*b. End Date: <input type="text"/>
18. Estimated Funding (\$):		
*a. Federal	<input type="text"/>	
*b. Applicant	<input type="text"/>	
*c. State	<input type="text"/>	
*d. Local	<input type="text"/>	
*e. Other	<input type="text"/>	
*f. Program Income	<input type="text"/>	
*g. TOTAL	<input type="text"/>	
*19. Is Application Subject to Review By State Under Executive Order 12372 Process?		
<input type="checkbox"/> a. This application was made available to the State under the Executive Order 12372 Process for review on <input type="text"/> .		
<input type="checkbox"/> b. Program is subject to E.O. 12372 but has not been selected by the State for review.		
<input type="checkbox"/> c. Program is not covered by E.O 12372		
*20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text" value="Explanation"/>
21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)		
<input type="checkbox"/> **I AGREE		
**The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.		
Authorized Representative:		
Prefix:	<input type="text"/>	*First Name: <input type="text"/>
Middle Name:	<input type="text"/>	
*Last Name:	<input type="text"/>	
Suffix:	<input type="text"/>	
*Title:	<input type="text"/>	
*Telephone Number:	<input type="text"/>	Fax Number: <input type="text"/>
*Email:	<input type="text"/>	
*Signature of Authorized Representative:	*Date Signed:	

Application for Federal Assistance SF-424

Version 02

***Applicant Federal Debt Delinquency Explanation**

The following field should contain an explanation if the Applicant organization is delinquent on any Federal Debt maximum number of characters that can be entered is 4,000. Try and avoid extra spaces and carriage returns to maximize the availability of space.

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 60 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 (including the continuation sheet) required for use as a cover sheet for submission of preapplications and applications and related information under discretionary programs. Some of the items are required and some are optional at the discretion of the applicant or the Federal agency (agency). Required items are identified with an asterisk on the form and are specified in the instructions below. In addition to the instructions provided below, applicants must consult agency instructions to determine specific requirements.

Item	Entry:	Item	Entry:
1.	Type of Submission: (Required): Select one type of submission in accordance with agency instructions. <ul style="list-style-type: none"> • Preapplication • Application • Changed/Corrected Application – If requested by the agency, check if this submission is to change or correct a previously submitted application. Unless requested by the agency, applicants may not use this to submit changes after the closing date. 	10.	Name Of Federal Agency: (Required) Enter the name of the Federal agency from which assistance is being requested with this application.
		11.	Catalog Of Federal Domestic Assistance Number/Title: Enter the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested, as found in the program announcement, if applicable.
2.	Type of Application: (Required) Select one type of application in accordance with agency instructions. <ul style="list-style-type: none"> • New – An application that is being submitted to an agency for the first time. • Continuation - An extension for an additional funding/budget period for a project with a projected completion date. This can include renewals. • Revision - Any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision, enter the appropriate letter(s). More than one may be selected. If "Other" is selected, please specify in text box provided. <ul style="list-style-type: none"> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration E. Other (specify) 	12.	Funding Opportunity Number/Title: (Required) Enter the Funding Opportunity Number and title of the opportunity under which assistance is requested, as found in the program announcement.
		13.	Competition Identification Number/Title: Enter the Competition Identification Number and title of the competition under which assistance is requested, if applicable.
		14.	Areas Affected By Project: List the areas or entities using the categories (e.g., cities, counties, states, etc.) specified in agency instructions. Use the continuation sheet to enter additional areas, if needed.
3.	Date Received: Leave this field blank. This date will be assigned by the Federal agency.	15.	Descriptive Title of Applicant's Project: (Required) Enter a brief descriptive title of the project. If appropriate, attach a map showing project location (e.g., construction or real property projects). For preapplications, attach a summary description of the project.
4.	Applicant Identifier: Enter the entity identifier assigned by the Federal agency, if any, or applicant's control number, if applicable.		
5a.	Federal Entity Identifier: Enter the number assigned to your organization by the Federal Agency, if any.	16.	Congressional Districts Of: (Required) 16a. Enter the applicant's Congressional District, and 16b. Enter all District(s) affected by the program or project. Enter in the format: 2 characters State Abbreviation – 3 characters District Number, e.g., CA-005 for California 5 th district, CA-012 for California 12 th district, NC-103 for North Carolina's 103 rd district. <ul style="list-style-type: none"> • If all congressional districts in a state are affected, enter "all" for the district number, e.g., MD-all for all congressional districts in Maryland. • If nationwide, i.e. all districts within all states are affected, enter US-all. • If the program/project is outside the US, enter 00-000.
5b.	Federal Award Identifier: For new applications leave blank. For a continuation or revision to an existing award, enter the previously assigned Federal award identifier number. If a changed/corrected application, enter the Federal Identifier in accordance with agency instructions.		
6.	Date Received by State: Leave this field blank. This date will be assigned by the State, if applicable.		
7.	State Application Identifier: Leave this field blank. This identifier will be assigned by the State, if applicable.		
8.	Applicant Information: Enter the following in accordance with agency instructions:		
	a. Legal Name: (Required): Enter the legal name of applicant that will undertake the assistance activity. This is the name that the organization has registered with the Central Contractor Registry. Information on registering with CCR may be obtained by visiting the Grants.gov website.	17.	Proposed Project Start and End Dates: (Required) Enter the proposed start date and end date of the project.
	b. Employer/Taxpayer Number (EIN/TIN): (Required): Enter the Employer or Taxpayer Identification Number (EIN or TIN) as assigned by the Internal Revenue Service. If your organization is not in the US, enter 44-4444444.	18.	Estimated Funding: (Required) Enter the 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.
	c. Organizational DUNS: (Required) Enter the organization's DUNS or DUNS+4 number received from Dun and Bradstreet. Information on obtaining a DUNS number may be obtained by visiting the Grants.gov website.		
	d. Address: Enter the complete address as follows: Street address (Line 1 required), City (Required), County, State (Required, if country is US), Province, Country (Required), Zip/Postal Code (Required, if country is US).	19.	Is Application Subject to Review by State Under Executive Order 12372 Process? Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the
	e. Organizational Unit: Enter the name of the primary organizational unit (and department or division, if applicable) that will undertake the		

	assistance activity, if applicable.		State intergovernmental review process. Select the appropriate box. If "a." is selected, enter the date the application was submitted to the State																								
	f. Name and contact information of person to be contacted on matters involving this application: Enter the name (First and last name required), organizational affiliation (if affiliated with an organization other than the applicant organization), telephone number (Required), fax number, and email address (Required) of the person to contact on matters related to this application.	20.	Is the Applicant Delinquent on any Federal Debt? (Required) Select the appropriate box. 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. If yes, include an explanation on the continuation sheet.																								
9.	Type of Applicant: (Required) Select up to three applicant type(s) in accordance with agency instructions.	21.	Authorized Representative: (Required) To be signed and dated by the authorized representative of the applicant organization. Enter the name (First and last name required) title (Required), telephone number (Required), fax number, and email address (Required) of the person authorized to sign for the applicant. A copy of the governing body's authorization for you to sign this application as the 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.)																								
	<table border="0"> <tr> <td>A. State Government</td> <td>M. Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education)</td> </tr> <tr> <td>B. County Government</td> <td>N. Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education)</td> </tr> <tr> <td>C. City or Township Government</td> <td>O. Private Institution of Higher Education</td> </tr> <tr> <td>D. Special District Government</td> <td>P. Individual</td> </tr> <tr> <td>E. Regional Organization</td> <td>Q. For-Profit Organization (Other than Small Business)</td> </tr> <tr> <td>F. U.S. Territory or Possession</td> <td>R. Small Business</td> </tr> <tr> <td>G. Independent School District</td> <td>S. Hispanic-serving Institution</td> </tr> <tr> <td>H. Public/State Controlled Institution of Higher Education</td> <td>T. Historically Black Colleges and Universities (HBCUs)</td> </tr> <tr> <td>I. Indian/Native American Tribal Government (Federally Recognized)</td> <td>U. Tribally Controlled Colleges and Universities (TCCUs)</td> </tr> <tr> <td>J. Indian/Native American Tribal Government (Other than Federally Recognized)</td> <td>V. Alaska Native and Native Hawaiian Serving Institutions</td> </tr> <tr> <td>K. Indian/Native American Tribally Designated Organization</td> <td>W. Non-domestic (non-US) Entity</td> </tr> <tr> <td>L. Public/Indian Housing Authority</td> <td>X. Other (specify)</td> </tr> </table>	A. State Government	M. Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education)	B. County Government	N. Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education)	C. City or Township Government	O. Private Institution of Higher Education	D. Special District Government	P. Individual	E. Regional Organization	Q. For-Profit Organization (Other than Small Business)	F. U.S. Territory or Possession	R. Small Business	G. Independent School District	S. Hispanic-serving Institution	H. Public/State Controlled Institution of Higher Education	T. Historically Black Colleges and Universities (HBCUs)	I. Indian/Native American Tribal Government (Federally Recognized)	U. Tribally Controlled Colleges and Universities (TCCUs)	J. Indian/Native American Tribal Government (Other than Federally Recognized)	V. Alaska Native and Native Hawaiian Serving Institutions	K. Indian/Native American Tribally Designated Organization	W. Non-domestic (non-US) Entity	L. Public/Indian Housing Authority	X. Other (specify)		
A. State Government	M. Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education)																										
B. County Government	N. Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education)																										
C. City or Township Government	O. Private Institution of Higher Education																										
D. Special District Government	P. Individual																										
E. Regional Organization	Q. For-Profit Organization (Other than Small Business)																										
F. U.S. Territory or Possession	R. Small Business																										
G. Independent School District	S. Hispanic-serving Institution																										
H. Public/State Controlled Institution of Higher Education	T. Historically Black Colleges and Universities (HBCUs)																										
I. Indian/Native American Tribal Government (Federally Recognized)	U. Tribally Controlled Colleges and Universities (TCCUs)																										
J. Indian/Native American Tribal Government (Other than Federally Recognized)	V. Alaska Native and Native Hawaiian Serving Institutions																										
K. Indian/Native American Tribally Designated Organization	W. Non-domestic (non-US) Entity																										
L. Public/Indian Housing Authority	X. Other (specify)																										

SF 424A Budget Information—Non-Construction Programs

<http://www.epa.gov/ogd/AppKit/application.htm>

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

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Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.				\$	
9.				\$	
10.				\$	
11.				\$	
12. Total (SUM OF LINES 8-11)				\$	
SECTION D - FORECASTED CASH NEEDS					
13. Federal	Total for 1 st Year	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
	\$	\$	\$	\$	\$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
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)	\$	\$	\$	\$	
SECTION F - OTHER BUDGET INFORMATION					
21. Direct Charges:		22. Indirect Charges:			
23. Remarks:					

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Standard Form 424A (Rev 4-2012) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 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 (0348-0044), 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.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

SF 424B Assurances—Non-Construction Programs

<http://www.epa.gov/ogd/AppKit/application.htm>

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 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 (0348-0040), 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.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

<ol style="list-style-type: none"> 1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application. 2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives. 3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. 4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency. 5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F). 6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the 	<ol style="list-style-type: none"> basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application. 7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. 8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
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Standard Form 424B (Rev 4-2012)

SF 424C Budget Information – Construction Programs

<http://www.epa.gov/ogd/forms/forms.htm>

BUDGET INFORMATION - Construction Programs			
OMB Approval No. 0348-0041			
NOTE: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case, you will be notified.			
COST CLASSIFICATION	a. Total Cost	b. Costs Not Allowable for Participation	c. Total Allowable Costs (Columns a-b)
1. Administrative and legal expenses	\$	\$	\$
2. Land, structures, rights-of-way, appraisals, etc.	\$	\$	\$
3. Relocation expenses and payment	\$	\$	\$
4. Architectural and engineering fees	\$	\$	\$
5. Other architectural and engineering fees	\$	\$	\$
6. Project inspection fees	\$	\$	\$
7. Site work	\$	\$	\$
8. Demolition and removal	\$	\$	\$
9. Construction	\$	\$	\$
10. Equipment	\$	\$	\$
11. Miscellaneous	\$	\$	\$
12. SUBTOTAL (sum of lines 1-11)	\$	\$	\$
13. Contingencies	\$	\$	\$
14. SUBTOTAL	\$	\$	\$
15. Project (program) income	\$	\$	\$
16. TOTAL PROJECT COSTS (subtract #15 from #14)	\$	\$	\$
FEDERAL FUNDING			
17. Federal assistance requested, calculate as follows: (Consult Federal agency for Federal percentage share.)		Enter eligible costs from line 16c Multiply	\$
X _____% Enter the resulting Federal share.			

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INSTRUCTIONS FOR THE SF-424C

Public reporting burden for this collection of information is estimated to average 180 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 (0348-0041), 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 sheet is to be used for the following types of applications: (1) "New" (means a new [previously unfunded] assistance award); (2) "Continuation" (means funding in a succeeding budget period which stemmed from a prior agreement to fund); and (3) "Revised" (means any changes in the Federal Government's financial obligations or contingent liability from an existing obligation). If there is no change in the award amount, there is no need to complete this form. Certain Federal agencies may require only an explanatory letter to effect minor (no cost) changes. If you have questions, please contact the Federal agency.

<p>Column a - If this is an application for a "New" project, enter the total estimated cost of each of the items listed on lines 1 through 16 (as applicable) under "COST CLASSIFICATION."</p> <p>If this application entails a change to an existing award, enter the eligible amounts approved under the previous award for the items under "COST CLASSIFICATION."</p> <p>Column b - If this is an application for a "New" project, enter that portion of the cost of each item in Column a. which is not allowable for Federal assistance. Contact the Federal agency for assistance in determining the allowability of specific costs.</p> <p>If this application entails a change to an existing award, enter the adjustment [+ or (-)] to the previously approved costs (from column a.) Reflected in this application.</p> <p>Column - This is the net of lines 1 through 16 in columns "a." and "b."</p> <hr/> <p>Line 1 - Enter estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government. Allowable legal costs are generally only those associated with the purchases of land which is allowable for Federal participation and certain services in support of construction of the project.</p> <p>Line 2 - Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).</p> <p>Line 3 - Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.</p>	<p>Line 4 - Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).</p> <p>Line 5 - Enter estimated engineering costs, such as surveys, tests, soil borings, etc.</p> <p>Line 6 - Enter estimated engineering inspection costs.</p> <p>Line 7 - Enter estimated costs of site preparation and restoration which are not included in the basic construction contract.</p> <p>Line 9 - Enter estimated cost of the construction contract.</p> <p>Line 10 - Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility. If such costs are not included in the construction contract.</p> <p>Line 11 - Enter estimated miscellaneous costs.</p> <p>Line 12 - Total of items 1 through 11.</p> <p>Line 13 - Enter estimated contingency costs. (Consult the Federal agency for the percentage of the estimated construction costs to use.)</p> <p>Line 14 - Enter the total of lines 12 and 13.</p> <p>Line 15 - Enter estimated program income to be earned during the grant period, e.g., salvaged materials, etc.</p> <p>Line 16 - Subtract line 15 from line 14.</p> <p>Line 17 - This block is for the computation of the Federal share. Multiply the total allowable project costs from line 16, column "c." by the Federal percentage share (this may be up to 100 percent: consult Federal agency for Federal percentage share) and enter the product on line 17.</p>
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SF 424D Assurances—Construction Programs

<http://www.epa.gov/ogd/forms/forms.htm>

OMB Approval No. 0348-0042

ASSURANCES - CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 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 (0348-0042), 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.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

<p>1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.</p> <p>2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.</p> <p>3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.</p> <p>4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.</p> <p>5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and</p>	<p>8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).</p> <p>9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.</p> <p>10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of</p>
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<p>specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.</p> <p>6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.</p> <p>7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.</p>	<p>1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.</p>
<p>11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.</p> <p>12. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.</p> <p>13. Will comply, as applicable, with the provision of the Davis-Bacon Act (40 U.S.C. 276a to 276a-7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C.874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) regarding labor standards of federally assisted construction sub-agreements.</p> <p>14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.</p> <p>15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the</p>	<p>National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).</p> <p>16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.</p> <p>17. Will assist the awarding agency in assuring</p>

	<p>compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).</p> <p>18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."</p> <p>19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.</p>
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SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

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Standard Form 424D (Rev 4-2012)
Prescribed by OMB Circular A-102

EPA Form 4700-4 Preaward Compliance Review Report

<http://www.epa.gov/ogd/AppKit/application.htm>

FORM

Approved By OMB: No. 2030-0020 Expires 04-30-2012

Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance <small>Note: Read instructions on other side before completing form.</small>		
I.	Applicant/Recipient (Name, Address, State, Zip Code).	DUNS No.
II.	Is the applicant currently receiving EPA assistance?	
III.	List all civil rights lawsuits and administrative complaints pending against the applicant/recipient that allege discrimination based on race, color, national origin, sex, age, or disability. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)	
IV.	List all civil rights lawsuits and administrative complaints decided against the applicant/recipient within the last year that allege discrimination based on race, color, national origin, sex, age, or disability and enclose a copy of all decisions. Please describe all corrective action taken. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)	
V.	List all civil rights compliance reviews of the applicant/recipient conducted by any agency within the last two years and enclose a copy of the review and any decisions, orders, or agreements based on the review. Please describe any corrective action taken. (40 C.F.R. § 7.80(c)(3))	
VI.	Is the applicant requesting EPA assistance for new construction? If no, proceed to VII; if yes, answer (a) and/or (b) below. Yes No a. If the grant is for new construction, will all new facilities or alterations to existing facilities be designed and constructed to be readily accessible to and usable by persons with disabilities? If yes, proceed to VII; if no, proceed to VI(b). Yes No b. If the grant is for new construction and the new facilities or alterations to existing facilities will not be readily accessible to and usable by persons with disabilities, explain how a regulatory exception (40 C.F.R. § 7.70) applies. Yes No	
VII.*	Does the applicant/recipient provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its programs or activities? (40 C.F.R. § 5.140 and § 7.95) Yes No a. Do the methods of notice accommodate those with impaired vision or hearing? Yes No b. Is the notice posted in a prominent place in the applicant's offices or facilities or, for education programs and activities, in appropriate periodicals and other written communications? Yes No c. Does the notice identify a designated civil rights coordinator? Yes No	
VIII.*	Does the applicant/recipient maintain demographic data on the race, color, national origin, sex, age, or handicap of the population it serves? (40 C.F.R. § 7.85(a))	
IX.*	Does the applicant/recipient have a policy/procedure for providing access to services for persons with limited English proficiency? (40 C.F.R. Part 7, E.O. 13166)	
X.*	If the applicant/recipient is an education program or activity, or has 15 or more employees, has it designated an employee to coordinate its compliance with 40 C.F.R. Parts 5 and 7? Provide the name, title, position, mailing address, e-mail address, fax number, and telephone number of the designated coordinator.	
XI*	If the applicant/recipient is an education program or activity, or has 15 or more employees, has it adopted grievance procedures that assure the prompt and fair resolution of complaints that allege a violation of 40 C.F.R. Parts 5 and 7? Provide a legal citation or Internet address for, or a copy of, the procedures.	
For the Applicant/Recipient		
I certify that the statements I have made on this form and all attachments thereto are true, accurate and complete. I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law. I assure that I will fully comply with all applicable civil rights statutes and EPA regulations.		
A. Signature of Authorized Official	B. Title of Authorized Official	C. Date
For the U.S. Environmental Protection Agency		
I have reviewed the information provided by the applicant/recipient and hereby certify that the applicant/recipient has submitted all preaward compliance information required by 40 C.F.R. Parts 5 and 7; that based on the information submitted, this application satisfies the preaward provisions of 40 C.F.R. Parts 5 and 7; and that the applicant has given assurance that it will fully comply with all applicable civil rights statutes and EPA regulations.		
A. Signature of Authorized EPA Official	B. Title of Authorized EPA Official	C. Date
See **note on reverse side		

EPA Form 4700-4 (Rev. 04/2009). Previous editions are obsolete.

Instructions for EPA FORM 4700-4 (Rev. 04/2009)

General

Recipients of Federal financial assistance from the U.S. Environmental Protection Agency must comply with the following statutes and regulations.

Title VI of the Civil Rights Acts of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Act goes on to explain that the statute shall not be construed to authorize action with respect to any employment practice of any employer, employment agency, or labor organization (except where the primary objective of the Federal financial assistance is to provide employment).

Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act provides that no person in the United States shall on the ground of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under the Federal Water Pollution Control Act, as amended. Employment discrimination on the basis of sex is prohibited in all such programs or activities.

Section 504 of the Rehabilitation Act of 1973 provides that no otherwise qualified individual with a disability in the United States shall solely by reason of disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Employment discrimination on the basis of disability is prohibited in all such programs or activities.

The Age Discrimination Act of 1975 provides that no person on the basis of age shall be excluded from participation under any program or activity receiving Federal financial assistance. Employment discrimination is not covered. Age discrimination in employment is prohibited by the Age Discrimination in Employment Act administered by the Equal Employment Opportunity Commission.

Title IX of the Education Amendments of 1972 provides that no person in the United States on the basis of sex shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Employment discrimination on the basis of sex is prohibited in all such education programs or activities. Note: an education program or activity is not limited to only those conducted by a formal institution.

40 C.F.R. Part 5 implements Title IX of the Education Amendments of 1972.

40 C.F.R. Part 7 implements Title VI of the Civil Rights Act of 1964, Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act, and Section 504 of The Rehabilitation Act of 1973.

The Executive Order 13166 (E.O. 13166) entitled, "Improving Access to Services for Persons with Limited English Proficiency" requires Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

Items

"Applicant" means any entity that files an application or unsolicited proposal or otherwise requests EPA assistance. 40 C.F.R. §§ 5.105, 7.25.

"Recipient" means any entity, other than applicant, which will actually receive EPA assistance. 40 C.F.R. §§ 5.105, 7.25.

"Civil rights lawsuits and administrative complaints" means any lawsuit or administrative complaint alleging discrimination on the basis of race, color, national origin, sex, age, or disability pending or decided against the applicant and/or entity which actually benefits from the grant, but excluding employment complaints not covered by 40 C.F.R. Parts 5 and 7. For example, if a city is the named applicant but the grant will actually benefit the Department of Sewage, civil rights lawsuits involving both the city and the Department of Sewage should be listed.

"Civil rights compliance review" means any review assessing the applicant's and/or recipient's compliance with laws prohibiting discrimination on the basis of race, color, national origin, sex, age, or disability.

Submit this form with the original and required copies of applications, requests for extensions, requests for increase of funds, etc. Updates of information are all that are required after the initial application submission.

If any item is not relevant to the project for which assistance is requested, write "NA" for "Not Applicable."

In the event applicant is uncertain about how to answer any questions, EPA program officials should be contacted for clarification.

* Questions VII – XI are for informational use only and will not affect an applicant's grant status. However, applicants should answer all questions on this form. (40 C.F.R. Parts 5 and 7).

** Note: Signature appears in the Approval Section of the EPA Comprehensive Administrative Review For Grants/Cooperative Agreements & Continuation/Supplemental Awards form.

Approval indicates, in the reviewer's opinion, questions I – VI of Form 4700-4 comply with the preaward administrative requirements for EPA assistance.

"Burden Disclosure Statement"

EPA estimates public reporting burden for the preparation of this form to average 30 minutes per response. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to U.S. EPA, Attn: Collection Strategies Division (MC 2822T), Office of Information Collection, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

The information on this form is required to enable the U.S. Environmental Protection Agency to determine whether applicants and prospective recipients are developing projects, programs and activities on a nondiscriminatory basis as required by the above statutes and regulations.

Anti-Lobbying Form (if applicable)

<http://www.epa.gov/ogd/AppKit/application.htm>

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance		2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award		3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____	
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known:			5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known:		
6. Federal Department/Agency:			7. Federal Program Name/Description: CFDA Number, if applicable: _____		
8. Federal Action Number, if known:			9. Award Amount, if known: \$ _____		
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>			b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>		
11. <small>ation requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</small>			Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
Federal Use Only:				Authorized for Local Reproduction Standard Form LLL (Rev. 4/2012)	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 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 (0348-0046), Washington, DC 20503.

Detailed Itemized Budget

See the Samples and Examples section of the Appendix for an example.

National Environmental Policy Act (NEPA)

<http://www.epa.gov/compliance/nepa/epacompliance/saaptraining/index.html>

EPA has prepared a handbook, Environmental Review Guide for Special Appropriation Grants (April, 2008) (pdf), which presents an overview to EPA's environmental review process and the levels of analysis associated with that review. This handbook and related appendices are designed for grant applicants who are applying for project funds that were authorized by Congress and for which the grant authority is the Agency's annual appropriations acts. The handbook contains background information, guidelines, checklists, other tools, and references that will assist grant applicants in understanding requirements under NEPA. The handbook should help applicants understand the environmental review process required under NEPA, as well as how to assist EPA during this review.

EPA has also developed an online training course (see link above) regarding the handbook.

Please contact EPA if you would like a CD version of the handbook or the training program mailed to you.

Fact Sheet for Applicants Intergovernmental Review Process

When submitting your application for Federal assistance, please observe the following steps pertaining to the intergovernmental review process.

1. Identify whether or not the respective program is eligible for intergovernmental review under Executive Order (E.O. 12372). A listing of EPA programs which are eligible for intergovernmental review can be found in the April 29, 2004 Federal Register (69 FR 23500). The Catalog of Federal Domestic Assistance (CFDA) also lists programs eligible for intergovernmental review under E.O. 12372. The CFDA listing can be found at <http://www.cfda.gov>, under "Search for Assistance Programs," then "By Programs Requiring Executive Order 12372 Review."
2. After confirming the program's intergovernmental review eligibility, indicate where your application is subject to the process by responding to the E.O. 12372 question on the SF-424, Application for Federal Assistance.
3. If a program is eligible for the intergovernmental review process, you must respond accordingly on the application, and forward a copy of your completed application to your State Single-Point-of-Contact (SPOC). The official SPOC listing is located at: <http://www.whitehouse.gov/omb/grants/spoc.html>. By clicking on the state name, you may be linked to the SPOC website. Before forwarding a copy of your application, you may call the SPOC directly to determine if that office has chosen to review the program.
4. If the SPOC has chosen not to review the program, or if your State does not have a SPOC, you must forward a copy of your completed application to the area-wide/regional/local planning agency (or agencies), so that they may have the opportunity to review your application for comment. You may consult your local EPA office to obtain contact information for the planning agency in your area.
5. Keep in mind that once you sign the SF-424, you are certifying that the SPOC or area-wide/regional/local planning agency has received or will receive a copy of your application. Your application might be considered deficient if a copy of your application is not forwarded to one of those agencies.
6. The application must be sent to the SPOC or area-wide/regional/local planning agency in a timely manner, in order for it to be reviewed before the end of the respective comment period. Under E.O. 12372, the comment period is 60 days for new and competitive awards, and 30 days for non-competing continuation awards.
7. If you subsequently receive comments about your application from the SPOC or area-wide/regional/local planning agency, you should forward them immediately to the EPA office (generally the awarding office) where you mailed your application package. Before making a funding decision, EPA is required to consider comments made by the SPOC or planning agency. Therefore, the awarding office may contact you to discuss concerns that may have been raised by the SPOC or planning agency.

Narrative Statement or Work Plan

Work Plan Guidance and Description is a subpart of Applicable EPA Regulations and Description.

See the Samples and Examples section of the Appendix for an example.

Negotiated Indirect Cost Rate Agreement (if applicable) Indirect Cost Rates for EPA Grants

Interior Business Center Indirect Cost Services (formerly the National Business Center)

The National Business Center Indirect Cost Rate Information URL has changed. It can now be found at http://www.doi.gov/ibc/services/indirect_cost_services/indian_tribes.cfm.

May 2012

New Interim Indirect Cost Rate Policy for Tribes

EPA's Office of Grants and Debarment has issued an Interim Grants Policy Issuance (GPI) that provides a more flexible approach to Tribal indirect cost rate funding. To ensure Tribes are provided adequate indirect cost funding as soon as possible, EPA is implementing the options under the interim policy until a final version is issued after consultation with the tribes. The current version of the GPI identifies four options for Tribes to claim indirect costs, including using:

- 1) Current negotiated rate with federal cognizant agency;
- 2) Rate proposal submitted to federal cognizant agency within 90 days of award date but not yet approved;
- 3) Flat rate of 10% of salaries and wages; or
- 4) Subsequent Negotiation of an IDC Rate.

To request a copy of the interim policy to review, please contact Liz January at (617) 918-8655 or January.elizabeth@epa.gov.

Be sure to check with your EPA Regional Office

Indirect Cost Services



The Indirect Cost Services (ICS) negotiates and issues indirect cost rates on behalf of the federal government. Indirect costs include expenses (such as advertising, computing, maintenance, security, supervision, etc.) incurred in joint usage and difficult to assign to or identify with a direct function or program. ICS services help ensure that indirect costs paid by the U.S. Government are legally sound, fair, and equitable.

To learn more about our indirect cost rate negotiation services, visit the links below:

- [Indirect cost rate negotiation services overview](#)
- [Guidance for preparing and submitting indirect cost proposals or cost allocation plans:](#)
 - [For nonprofit organizations](#)
 - [For Indian tribal governments](#)
 - [For insular areas, state, and local governments](#)
- [Indirect Cost Services FAQs](#)

http://www.doi.gov/ibc/services/indirect_cost_services/index.cfm

Quality Assurance Narrative Statement (if applicable)

See the Samples and Examples section of the Appendix for an example.

Assistance Administration Manual 5700

Part 2 Pre-Award, Section 01 Subawards Under EPA Assistance Agreements

<http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>

A. Purpose of the Directive.

The purpose of this Directive is to strengthen the management of subawards made by recipients under Environmental Protection Agency (EPA) assistance agreements, i.e., grants and cooperative agreements. Areas addressed include the establishment of an administrative national term and condition, eligibility, special considerations for specific types of subawards, subaward competition, and distinctions between procurement contracts and subawards.

B. Authority.

EPA's statutory grant authorities and 40 CFR Parts 30 and 31

C. Scope/Applicability.

This Directive applies to subaward work under awards and supplemental amendments issued after March 30, 2007. This Directive does not apply to collaborative relationships, including those documented in a written agreement between a recipient and a third party, which does not involve the transfer of assistance funds or property purchased with assistance funds.

D. Definitions.

1. The term "subaward" means an award of financial assistance (money or property) made under an EPA grant or cooperative agreement 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 written legal agreement, but does not include procurement purchases, nor does it 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 is excluded from the definition of "award" under EPA's grant regulations (see 40 CFR 30.2 (ff) and 40 CFR 31.3).

2. The term "subrecipient" means the legal entity/individual which receives a subaward and is accountable to the recipient for the use of the funds provided (see 40 CFR 30.2(gg) and 31.3).

3. The term "eligible subrecipient" means a legal entity/individual that is not debarred or suspended or otherwise

excluded from participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension," and whose eligibility for a subaward is consistent with applicable authorizing statutes and regulations.

E. General Principles.

It is EPA policy that subawards under EPA assistance agreements be properly awarded and managed. Directive requirements include:

1. Subawards may be made to eligible individuals and entities;
2. Recipients may not use subawards to transfer or delegate their responsibility for successful completion of their EPA assistance agreement;
3. Recipients must monitor the performance of their subrecipients and ensure that they comply with applicable Federal assistance agreement requirements;
4. Subawards may not be used to circumvent procurement requirements or EPA competition policies; and
5. Recipients are responsible for the selection of subrecipients and the management of any subaward competitions.

F. Administrative National Term and Condition.

EPA will implement this Directive primarily by attaching an administrative National Term and Condition for Subawards to all assistance agreements subject to this Directive. The administrative National Term and Condition for Subawards can be found in Appendix A.

G. Eligibility.

1. Generally, unless prohibited by statute, an entity/individual is eligible to receive a subaward even if it is not eligible to receive an assistance agreement from EPA directly as long as the subaward is consistent with applicable EPA regulations, EPA policies, EPA guidance, and OMB Circulars. Subawards may be made to individuals and to the following entities, provided they are not debarred or suspended or otherwise ineligible to participate in Federal assistance programs:

- a. governmental entities subject to 40 CFR Part 31;
- b. foreign or international organizations;

- c. non-profit organizations, educational institutions and hospitals subject to 40 CFR Part 30;
- d. non-profit organizations deemed similar to commercial concerns under Attachment C of OMB Circular A-122; and
- e. for-profit organizations only where consistent with Section 210(a)-(d) of OMB Circular A-133 (see Appendix B).

Unless authorized by statute (e.g., the National Oceanic and Atmospheric Administration self-certifying that it has the statutory authority to receive subgrants under Clean Water Act 319) federal entities, including, but not limited to EPA laboratories, are not eligible for subawards.

- 2. In some cases, EPA statutes may impose eligibility restrictions on subawards. Recipients must comply with these restrictions.

H. Special Considerations for Specific Types of Subawards.

- 1. Proposed Subaward Work to 501(c)(4) Organizations - EPA award officials must disapprove the costs of proposed subaward work to 501(c)(4) organizations identified in an application, or work plan changes requiring prior approval, if the work involves lobbying activities, or would otherwise violate the principles in paragraph E, 2 to 5.
- 2. Proposed Subaward Work to For-Profit Organizations - EPA generally does not allow recipients to make subawards to for-profit organizations. Transactions between recipients and for-profit organizations including individual consultants are, in almost all cases, subject to the competitive procurement requirements of EPA's grant regulations.
- 3. EPA Order 4540.1 - EPA, through the Office of International Affairs (OIA), must consent to proposed grants or cooperative agreements, prior to award, where work will be performed by any recipient in whole or in part in a foreign country, or where work will be performed in the United States by a foreign recipient and its subrecipient or an international organization recipient and its subrecipient. If the original award was not approved by OIA and the subrecipient proposes work in a foreign country, OIA must consent to the work prior to award of the subaward.

I. Subaward Competitions.

- 1. EPA Required Subaward Competitions.

a. General - Under both competitive and non-competitive EPA assistance agreement awards, Program Offices may require the recipient to conduct a competition for subawards if the office determines that the subaward competition is necessary for the effective and efficient implementation of the assistance program (e.g., the National Center for Environmental Research determined that research centers that receive funds via “earmarks” must compete subawards in order to facilitate and accelerate the translation of basic science knowledge into practical applications). This determination must be in writing and placed in the official program office assistance agreement file. In addition, in some cases Program Offices may be legally required to conduct subaward competitions and must do so consistent with any applicable legal requirements and provisions of this Directive.

b. Non-Competitive EPA Assistance Agreements - When the Program Office requires the recipient to conduct a subaward competition under a non-competitive EPA assistance agreement, the award must include a programmatic term and condition requiring the recipient to conduct the subaward competition consistent with the negotiated work plan.

c. Competitive EPA Assistance Agreements - When the Program Office requires the recipient to conduct a subaward competition under a competitive EPA assistance agreement, the Agency’s competitive funding announcement must include ranking factors for evaluating the applicants’ proposed procedure for conducting the subaward competition. In addition, the award must include a programmatic term and condition requiring the recipient to conduct the subaward competition consistent with the subaward competitive process described in the approved work plan.

2. EPA Participation in Subaward Competitions.

a. General - Grant and cooperative agreement recipients are responsible for selecting their subrecipients and conducting their subaward competitions. In addition, EPA personnel may not direct recipients to make subawards to particular organizations, suggest the use of specific subrecipients, interfere with the recipient’s subaward selection decisions, or use subawards to circumvent EPA policies for competition of assistance agreements. For example, a Program Office may want to award a non-competitive grant to Organization A but is not authorized to do so because of restrictions under EPA’s Assistance Agreement Competition Policy. EPA may not circumvent these restrictions by awarding an authorized non-competitive grant to Organization B with the understanding that Organization B will then subaward all of the work to Organization A.

b. Participation as Technical Advisors - EPA personnel may serve as technical

advisors to a recipient's subaward evaluation panel provided that they do not unduly influence the panel or selection decisions and are free of any conflicts of interest, or appearances that they may be violating ethical standards (e.g., Office of Government Ethics (OGE) Standards of Ethical Conduct for Employees of the Executive Branch), with respect to any competing subrecipients.

c. Participation on Evaluation Panels - For subaward competitions conducted by recipients under assistance agreements, EPA personnel may serve as members of the recipient's subaward evaluation panel provided that they do not unduly influence the panel or selection decisions (e.g., EPA personnel must comprise substantially less than a majority of the panel) and are free of any conflicts of interest, or appearances that they may be violating ethical standards (e.g., OGE Standards of Ethical Conduct for Employees of the Executive Branch), with respect to any competing subrecipients.

J. Applicant Budget Information.

EPA personnel must ensure that the applicant's budget estimate for any proposed subaward work is included in the "Other" category of Standard Form 424A.

Future grant streamlining efforts might require that proposed subaward work costs be reported as a separate line item.

K. Anticipated Outcomes/Results.

This Directive will provide the Agency with a consistent approach to the award and administration of subawards.

L. Performance Measures.

To implement this Directive, EPA will require that the administrative National Term and Condition for Subawards be added to all assistance agreements subject to this Directive. EPA will assess recipient compliance with the administrative National Term and Condition for Subawards during on-site reviews and desk reviews. The Office of Grants and Debarment (OGD) will measure Agency compliance with this Directive by conducting periodic compliance reviews.

M. Roles and Responsibilities.

1. Program Offices are responsible for:

a. Reviewing proposed subaward work specified in an assistance agreement application work plan, or work plan changes requiring prior approval, to ensure compliance with

this Directive and in accordance with cost review guidance provided/approved by OGD;

b. Program Offices as part of their cost reviews of applications, or work plan changes requiring prior approval, must ensure that proposed subaward work is for an authorized assistance purpose and not to acquire goods and services for use by the recipient. (See Section 210(a)-(d) of OMB Circular A-133 and Appendix B for examples for distinguishing between subawards and contracts);

c. Obtaining necessary OIA consent for work to be performed in a foreign country or any work by a foreign recipient or international organization;

d. Informing the recipient of any program-specific restrictions or statutory restrictions on subawards;

e. Performing the responsibilities outlined in paragraph I, as applicable;

f. Assessing compliance with this Directive during programmatic on-site reviews and desk reviews, particularly with respect to subawards to 501 (c)(4) organizations; and

g. Assessing compliance with this Directive as part of Grants Management Self-Assessments.

2. Grants Management Offices (GMOs) are responsible for:

a. Including the administrative National Term and Condition for Subawards in all assistance agreements subject to this Directive (see Appendix A);

b. Assessing compliance with this Directive during administrative on-site reviews and desk reviews, particularly with respect to subawards to 501 (c)(4) organizations;

c. Assessing compliance with this Directive as part of Grants Management Self-Assessments; and

d. Working with Program Offices to resolve issues identified during the review of proposed subaward work.

3. Office of Grants and Debarment.

a. OGD is responsible for evaluating compliance with this Directive by conducting periodic compliance reviews.

b. The Director, OGD, is responsible for issuing such guidance as may be necessary to respond to statutory or OMB requirements regarding tracking of subaward information.

c. In response to a written request from an approval official, the Director, OGD, may issue a waiver from the requirements of this Directive if the waiver is justified because of national security concerns or circumstances of unusual or compelling urgency, or because the waiver would be in the public interest.

4. Office of International Affairs.

EPA's Office of International Affairs is responsible for acting on requests for EPA consent for subawards involving any work to be performed in a foreign country or any work to be performed in the United States by a foreign recipient or international organization.

N. References.

40 CFR Parts 30 and 31; OMB Circular A-133, subparts B and C; and OMB Circular A-122, Attachment C

O. Sunset/Review Date.

The Office of Grants and Debarment will periodically evaluate the effectiveness of this Directive.

P. Supersedes/Cancel.

Not applicable.

Best Practices Guide for Conferences

This Guide was written November 20, 1998. The most current version is available online at <http://www.epa.gov/ogd/recipient/bestpractice.htm>.

HOW TO USE THIS GUIDE

This guide is structured to help you first identify the purpose of your conference and whose conference it is, since this should drive your choice of funding instruments and many of your subsequent conference decisions. You should use the indicators in Chapter 1 as a starting point to determine whose conference it is. Once you have decided whose conference it is, you will be guided to Chapters 2, 3, or 4, which will describe the appropriate funding instruments for the conference and the conference-related funding issues you should consider. Chapter 5 addresses proper documentation of conferences. Lastly, a list of references by subject matter is attached to assist you if you need to consult additional references.

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INTRODUCTION

Conferences, large and small, play an important role in fulfilling EPA's mission. They can be an effective way to bring together various groups of people to share information, educate the public, work with state and local government partners, train employees, and learn from non-governmental stakeholders. Conferences are also a useful way for nonfederal entities, such as universities, state and local governmental environmental agencies, and intergovernmental groups to carry out environmentally related work for which they receive funding from the Agency. For purposes of this guide, the term "conference" encompasses workshops, seminars, symposia, conventions, or similar designations for business related gatherings that involve topics related to EPA's mission of environmental protection.

The range of stakeholders playing integral roles in agency-related activity has grown, as has the use of conferences to convene various groups for a variety of purposes. As the Agency and others have expanded the use of conferences, issues have arisen in connection with conference planning, particularly with funding. The Office of Inspector General (OIG) audited several conferences and identified a number of recurring problems. As a result, an intra-Agency workgroup was established to develop a guide for Agency personnel to use in funding, and assisting others with, conferences of all kinds. The Best Practices Guide for Conferences is the result of the workgroup's efforts.

The guide begins by asking "Whose conference is it?" By defining the purpose of the conference, the planner can determine whether it is: (1) "ours," an EPA conference or one that EPA sponsors with other federal agencies, or (2) "theirs," one held by a nonfederal sponsor that EPA supports with financial assistance, or (3) a "jointly sponsored" conference, benefiting both the Agency and a nonfederal entity. Sometimes, the answer to this question will be obvious and sometimes you will

have choices as to how to answer the question, depending on the topics for the conference and EPA's role in the conference.

Once the question "Whose conference is it?" has been answered, the guide describes appropriate acquisition and assistance funding mechanisms available for various types of conferences. The guide also outlines major funding issues associated with conference support, such as invitational travel, non-invitational participant travel, meals, conference materials, and other expenses. It also includes information on when and how registration fees can be collected, honoraria, and ethical considerations.

The guide is not the last word on conferences. It is not meant to be used as a "how to" guide for planning conferences. The emphasis of the guide is addressing funding concerns. For most areas that are addressed, it is just the starting point. There are references to statutes, regulations, other agency guidance documents, and EPA Ethics Advisories that should be consulted. Agency personnel in the Office of Acquisition Management (OAM), the Grants Administration Division (GAD), the Office of the Chief Financial Officer, and the Office of General Counsel's (OGC) Finance and Operations Law Office or Regional Counsel should also be consulted as needed.

CHAPTER 1: WHOSE CONFERENCE IS IT?

Any conference that EPA supports or holds must be related to its environmental mission. Before you begin the planning process, you should be able to justify the need and identify the statutory authority for the conference, and confirm that funds and, if appropriate, EPA staff resources are available. The planning process begins with determining the answer to the question, "Whose conference is it?" A conference that is intended primarily to help the Agency carry out its governmental functions is "ours" and is discussed in Chapter 2. A conference intended primarily for the benefit of a nonfederal entity is "theirs" and is discussed in Chapter 3. Finally, when the Agency and a nonfederal entity share control of the conference, it is "jointly sponsored" and is discussed in Chapter 4. The two key issues to consider are: (1) purpose of the conference, and (2) control of the planning and the agenda.

(1) Purpose of the Conference. The purpose of a conference is a decisive factor. The more the conference is needed by EPA, the more likely it is ours. For example, if the principal purpose of the conference is to provide EPA with a report, data, recommendations, or other information that we will use to develop or directly incorporate into EPA regulations or guidance documents, it is ours. Meetings and conferences conducted under the Federal Advisory Committee Act (FACA) are ours.

On the other hand, if the primary purpose is to help a nonfederal entity achieve its objectives, the conference is theirs. For example, a conference to facilitate nonfederal research is theirs, even if EPA provides the meeting space. When nonfederal entities meet to share information on environmental or scientific issues, the conference is also theirs, even if EPA provides financial assistance. Conferences sponsored by associations of state or tribal officials to discuss EPA programs implemented by these entities as co-regulators or as partners in a coordinated national effort are theirs as well in certain situations. However, if EPA is in fact a convener and a motivator for the conference, then the conference may be jointly sponsored rather than theirs.

Finally, if the conference assists the Agency and a nonfederal entity to accomplish mutual objectives, it may be jointly sponsored. For instance, if the Agency and nonfederal entities share an interest in

promoting environmental awareness, such as recycling initiatives, a jointly sponsored conference may be appropriate. It may also be appropriate when EPA, state, and local government officials meet to share information about environmental problems.

(2) Control of the Planning and Agenda. The more control EPA or other federal agencies exercise over the agenda and selection of speakers, the more likely the conference is ours. For example, if conference scheduling is driven by the need to meet a regulation production deadline, the conference is ours. Similarly, if the Agency has control over speakers, attendees, and logistics, the conference is ours. However, if a nonfederal entity controls planning and agenda decisions, even with input from EPA, the conference is theirs. Finally, if the Agency shares control of these types of decisions, the conference may be jointly sponsored.

The following factors will provide you with more information to help you make the proper determination of whose conference it is.

DECISION INDICATORS: OURS

The purpose of the conference is to:

- *discuss, evaluate, or plan a specific EPA activity or program*
- *advise EPA on its operations (e.g., FACA)*
- *solicit public or stakeholder input to official EPA actions or policy*
- *develop official EPA positions on science or other policies*
- *train EPA staff or other direct implementers of EPA regulations*
- *generate information to be incorporated directly into official EPA positions, such as policy, regulations, or guidance*
- *propose, announce, or explain EPA actions*
- *disseminate mandated information*

EPA expects to control:

- *the agenda*
- *the selection of speakers, panelists, and/or attendees*
- *the duration, date, and location of the meeting*

DECISION INDICATORS: THEIRS

The purpose of the conference is to:

- *discuss, evaluate, or plan non-EPA or public/private initiatives to improve the environment*
- *share information on environmental or scientific issues*
- *support or stimulate public awareness of general environmental issues*
- *facilitate informed public dialogue on environmental and policy questions*
- *enhance management of non-EPA environmental programs*
- *hold discussions by states and tribal associations of delegated environmental programs*

The nonfederal entity expects to control:

- the agenda
- the selection of speakers, panelists, and/or attendees
- the duration, dates, and location of the meeting

DECISION INDICATORS: JOINTLY SPONSORED

The purpose of the conference is for federal and nonfederal entities to:

- advance a mutual interest
- develop products for common goal(s)

The co-sponsors include both federal and nonfederal entities and conference costs are shared

Decisions are shared among the parties to the conference, including control of:

- agenda planning
- speaker selection
- location selection
- conference logistics

On the following page, a summary chart provides a side-by-side overview of the indicators of purpose and control to assist you in answering the question "Whose Conference is it?"

WHOSE CONFERENCE IS IT: OVERVIEW OF INDICATORS OURS (Chapter 2) THEIRS (Chapter 3) JOINT (Chapter 4)

PURPOSE

- Discuss, evaluate, or plan a specific EPA activity or program
- Advise EPA on its operations (e.g., FACA)
- Receive public or stakeholder input to official actions or policy
- Develop EPA science and other policies
- Training for EPA staff or other implementers of EPA regulations
- Generate information to be used in official EPA products, e.g., guidance, regulations, or policies
- Propose, announce, or explain EPA actions to other government agencies, the public, or stakeholders
- Disseminate mandated information < Discuss, evaluate, or plan a non-EPA initiative to improve the environment
- Share information on environmental or related scientific issues
- Support or stimulate public awareness of general environmental issues
- Facilitate informed public dialogue on environmental and policy issues
- Enhance management of non-EPA/nonfederal environmental programs
- Hold discussions by states and tribal associations of delegated environmental programs.

- Advance a mutual interest by serving both EPA's mission and the substantive interests of the nonfederal co-sponsor(s)
- Develop products for common goals

CONTROL

- EPA control of the agenda
- EPA control over selection of speakers, panelists, and/or attendees
- EPA control over logistics, such as duration, dates, and location
- Non-EPA control of the agenda
- Non-EPA control over selection of speakers, panelists, and/or attendees
- Non-EPA control over logistics, such as duration, dates, and location
- Shared control of the agenda
- Shared selection of speakers, panelists, and/or attendees
- Shared responsibility for logistical planning and decisions

If you have determined that your conference is EPA-sponsored, proceed to Chapter 2. If you have determined that it is theirs, proceed to Chapter 3. If the conference is going to be jointly sponsored, proceed to Chapter 4. If you are still unsure after reviewing these factors, you should contact OGC's Finance and Operations Law Office or Regional Counsel for guidance.

A. EPA Conference -- Overview. Once you have reviewed Chapter 1 and decide that the conference is ours, there are three main ways that you can financially support it: (1) award a contract or issue a work assignment under an existing contract, if tasks are covered within the statement of work; (2) enter into an Interagency Agreement (IAG) to obtain services from another federal agency; or (3) conduct the conference using Agency personnel. All of these methods are appropriate ways to acquire services for our direct benefit and use. You cannot properly use a grant or cooperative agreement to support "our" conference. You also need to be aware of limitations relating to travel payments for conferences. This chapter lists and briefly describes instruments that can be used to support an EPA-sponsored conference.

B. Funding Instruments.

1. Contracts may be used to fund "components" of the conference, such as space and supplies, or they may be used to fund the whole conference, hiring a contractor to make most or all of the arrangements. There are at least four commonly used contracting methods. OAM can provide you with a helpful guide for conference contracting entitled, "Your Preparation Guide for Conferences/Meetings/Training." It focuses on small purchases, but is also useful for other types of contracts. It includes copies of key policies and instructions on preparing a purchase request. Since the guide was written in May 1995, the small purchase limit has changed. It is currently \$100,000.

(a) Small items and services less than \$2,500, sometimes called micro-purchases, may often be purchased with a government credit card. Micro-purchases might include, for example, meeting room rental, supplies, and equipment rental. Consult a warranted bankcard holder for details on the use of such cards.

(b) More extensive services, up to a total of \$100,000, may be acquired through simplified acquisition procedures, formerly known as “small purchases.” You must be careful to specify exactly what you need, as well as the basis on which bids will be reviewed. For additional guidance on simplified acquisitions, consult the Contract Management Manual, Chapter 2, and OAM’s guidance, “Simplified Acquisitions Made Easy,” dated April 1998.

(c) Some types of support can be obtained using a conference support contract. A conference support contractor has little direct substantive interest in the conference and is simply in the business of providing logistical support services. Conference support contracts are often written to provide recurring logistical support for an Office. Individual conferences also can be supported by issuing Work Assignments or Delivery Orders under a broader support contract, provided such support is within the scope of the contract.

(d) Some conferences are funded under contracts with a contractor who has a direct interest in the conference as an incidental task under a larger, broader contract’s scope of work. For example, a contractor tasked to determine the current state of the art and recommend improvements in an area of chemical analytical techniques may need to convene a conference to assist in that determination, as an incidental part of doing the job. The Agency is the ultimate beneficiary, but the contractor is directly responsible for managing the conference.

Caution: *In planning an EPA-sponsored conference, there may be situations where you need to exercise care in determining what, if any, contractor support may be appropriate. Some Agency conferences include candid discussions of sensitive budget, acquisition, and other planning information that should be safeguarded. Special controls should always be in place to ensure that contractors do not have inappropriate access to privileged and sensitive information (e.g., Confidential Business Information or procurement sensitive information). You should avoid situations where contractors may have access to information that would give them an unfair competitive advantage, or create an appearance of a conflict of interest. At any Agency conference, you should always identify contractors who are present and ensure that contractor support staff wear badges and identify themselves.*

2. Interagency Agreements (IAGs). *There are two types of IAGs: Economy Act IAGs and Cooperation Authority IAGs authorized by EPA program statutes. (Note: If EPA provides funds to another agency under an IAG, the IAG is subject to that agency’s requirements, unless a specific term and condition imposes EPA’s requirements.)*

(a) You may want to use another federal agency to help with putting on your conference. For instance, a General Services Administration contract providing meeting logistics support could be used. The proper way to do this is through an Economy Act IAG. Economy Act IAGs are always intended to “acquire” services or property from another federal agency for the direct use of EPA. Therefore, it is improper for the other agency to award a grant or cooperative agreement to fulfill EPA’s requirements. To use the Economy Act, both federal agencies must be responsible for conducting the proposed activities and authorized to use their appropriations for the work. The Economy Act specifies that the servicing agency must recover its expenses and it cannot cost share. As of 1996, EPA’s Grants Administration Division (GAD) is required to prepare a “Determination and Finding” in support of an Economy Act IAG, which states that the IAG is not being used to avoid competitive contracting. You may be asked to provide information to help prepare this. Final approval of the Determination and Finding rests with OAM. For additional guidance, see

memorandum from GAD Director to IAG Project Officers, "Interagency Agreement Decision Memorandum Guidance, Pre-award IAG Activities, and Subcontractor Selection," dated Sept. 30, 1996.

b) Cooperation Authority IAGs authorized by EPA Program Statutes involve mutual cooperation and investment of resources between the cooperating federal agencies with an overlapping mission and interest in the project. For example, both agencies could contribute resources to a conference, whether in the form of salaries, equipment, travel, or contract services. GAD maintains a list of program statutes authorizing such cooperation. A list of the statutory and related authorities which authorize the Agency to enter into IAGs is provided as Attachment 4 to the previously referenced Sept. 30, 1996, memorandum from GAD Director to IAG Project Officers.

3. Supporting Conferences with In-House Resources. EPA can also organize and conduct conferences using only its own staff. In addition to planning the substance of the conference, staff may carry out logistical arrangements such as identifying hotels and meeting space, taking minutes, and registering attendees.

C. Allowability of Costs -- Overview. Only a contracting officer has the authority to obligate government funds under a contract. In planning a conference, you must not make financial commitments to hotels or other vendors unless you have the authority to do so. Anyone who undertakes to commit the government without authority risks being held personally liable by the vendor for payment and may be subject to EPA disciplinary action. In working with a hotel to reserve space, you must make it clear that you do not have the authority to sign a contract, but are merely reserving space. Any short-term conference meeting space you obtain in the District of Columbia must be procured under 41 CFR 101-17.101. In addition, direct procurement or purchase of lodging facilities in the District of Columbia, without specific authorization and appropriation by Congress, is prohibited. See 40 U.S.C. 34.

Both EPA employees and contractors are responsible for assuring that costs for conference activities are allowable and reasonable. Agency staff responsibilities include performing a careful review of the proposed conference activities, the IAG or contract that funds the conference, work assignments/amendments, and invoices. These reviews are conducted to identify costs that are unreasonable and unallowable, or need further explanation or documentation. All reviews should be documented. Federal laws and regulations provide the basis for authorizing and paying for costs. Necessary and reasonable costs are for work that benefits the project and are within the project's scope. For further guidance, we recommend you consult the FAR Part 31, "Contract Cost Principles and Procedures."

1. Meals, Snacks, and Refreshments. For additional guidance in this area, we recommend you consult OAM Procurement Policy Notice 94-10, "Contracting for Meals and Refreshments for Government Employees" and the EPA Travel Manual, Chapter 5.

(a) Meals. Appropriated funds may not be used to pay subsistence or provide food to government employees at their official duty stations or when not on official travel status. See the EPA Travel Manual, Chapter 5.1.b.(3).

(b) Snacks and Refreshments. Refreshments, such as snacks, alcoholic beverages and coffee, are not considered necessary expenses and may not be included as part of the conference room fee, nor can mandatory registration fees be used to pay these expenses. However, conference participants can “pass the hat” for voluntary contributions for coffee and snack expenses.

(c) Exceptions Under Government Employee Training Act, 5 U.S.C. 4101. Under this Act, EPA can provide meals, snacks, and refreshments to its employees if necessary to achieve the objectives of the training program, and may furnish meals to non-government speakers as an expense of conducting the training. For additional guidance, consult OC Policy Notice 92-07, page 3, “Procuring Subsistence for Training/Conferences/Meetings” and the EPA Travel Manual, Chapter 5.5.a. and b.

2. Honoraria. Generally, Agency appropriated funds may not be used to procure personal gifts to be given to nonfederal speakers.

(a) Contractual speaker fees, whether or not called “honoraria,” are permissible.

(b) If the speaker is a federal employee, the speaker is prohibited from receiving compensation for speaking related to his or her official duties. However, federal speakers may receive a modest nonmonetary award (e.g., plaques or mugs) to recognize an achievement, under the Government Employee Incentive Award Act. For more information and exceptions see the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635.201-205), August, 1992, and Office of Personnel Management Regulations (5 CFR Part 451.)

3. Procurement of Items for Distribution at EPA-Sponsored Conferences. Agency policy precludes the purchase of certain items, such as tote bags, drinking containers, and wearing apparel, for distribution to the general public and EPA employees who merely attend an Agency-sponsored conference. Other items with low cost and limited utility (e.g., bumper stickers, buttons, pens and pencils) may be distributed widely at Agency-sponsored conferences, provided the items convey an appropriate environmental message. See OAM Procurement Policy Notice 95-01, “Procurement of Items for EPA Sponsored Commemorations and Events.”

4. Registration Fees for EPA-Sponsored Conferences. Registration fees are payments collected by EPA or its contractor from private and other public participants who are attending an EPA-sponsored conference, and must be deposited in the Treasury of the United States, unless the Agency has specific statutory authority to treat such fees differently. See 31 U.S.C. 3302(b). EPA appropriation laws do not include general authority to accept donations. Agency policy states that organizations planning conferences and meetings should program and budget for the administrative costs of these conferences and meetings and avoid establishing registration fees, if at all possible.

Where it is necessary to establish registration fees, only expenses such as the costs of necessary supplies and materials, printing, rental of facilities and equipment, and other items will be included. Additionally, you can only charge a fee that will equal the actual costs of these materials. Mandatory registration fees should not include the cost of meals and unallowable items, such as entertainment, coffee, snacks, cocktails and other similar items of a refreshment nature. However, any fees collected must be deposited in the Treasury. See the EPA Travel Manual.

5. *Travel*. There are strict rules governing travel expenses incurred for EPA-sponsored conferences. (Note: The rules governing travel for conferences and meetings that the Agency conducts, and those carried out by recipients under grants and cooperative agreements, are significantly different. In addition, travel rules differ for federal and nonfederal participants and attendees.)

(a) Travel for Federal Employees. The Agency's appropriation allocates specific amounts to finance necessary personnel expenses, including travel. These accounts are separate from other accounts that fund contracts, grants, and other "extramural" operations of the Agency. Therefore, a federal employee's travel expenses cannot be funded by an organization using EPA extramural funds for that conference. Travel costs for EPA staff to participate in a conference are covered as personnel expenses and may include registration fees as appropriate. Staff participation is authorized for conferences relating to matters that would improve the conduct, supervision, or management of Agency functions or activities. Agency policy requires management to ensure that attendance at conferences "be authorized only to the extent that it will provide direct benefit in achieving objectives related to EPA's mission." Cost effectiveness in achieving our mission should be our basic guide. See the EPA Travel Manual, Chapter 3.16.(a), (b) and (c). In some cases, EPA may choose to cover travel and subsistence expenses for other federal employees to participate in an EPA conference, assuming the other federal employee's need to travel is directly attributable to activities associated with the conference. This is not invitational travel, under 5 U.S.C. 5703. The Agency can either issue an EPA travel order directly to the employee or can reimburse the employee's agency through an IAG. For additional guidance, see memorandum from GAD Director to EPA IAG Project Officers, dated Sept. 30, 1996.

When the conference is within 50 miles of the employee's duty station, the general rule is that only such out of pocket expenses as POV mileage, parking fees, taxi, or subway fares can be reimbursed. Waivers may be granted for EPA national conferences within the 50-mile radius in certain limited circumstances. See the EPA Travel Manual, Chapter 5.5.

(b) Travel for Nonfederal Participants and Attendees. EPA may pay for travel and subsistence expenses for nonfederal conference participants under invitational travel orders when the individual performs a direct service for the Agency (e.g., facilitator, speaker, panelist, or FACA member). Agency travel funds used for invitational travel orders are charged against the inviting office's travel ceiling budget. Individuals receiving invitational travel orders must follow federal travel regulations, except they cannot receive travel advances. See 5 U.S.C. 5703 and the EPA Travel Manual, Chapter 3. The Agency cannot use invitational travel authority to enable nonfederal personnel to merely attend conferences that the Agency sponsors. Generally, appropriated funds cannot be used to pay for travel, transportation, and subsistence expenses for nonfederal attendees unless such payments are specifically authorized by law. See 31 U.S.C.1345.

If the Agency pays travel for FACA members, it must be through invitational travel orders because FACA members are providing a service to the Agency with their advice and consultation. See 5 U.S.C. App. 2, Section 7 (d)(1)(B) and the EPA Travel Manual, Chapter 3.3.

(c) Contractors. A contract, including a purchase order, can include travel costs for an individual performing services within the scope of the contract, such as providing logistical services, training, peer review, or presentations. However, you must not violate the Agency's policies prohibiting "directed subcontracting" by specifying to the contractor whom to hire. See OAM Procurement Policy Notice 97-01, "Required Practices Concerning Subcontracts." A contract cannot be used to

procure travel for nonfederal individuals who merely attend the conference. See OGC Memorandum, dated Sept. 22, 1993, "Payment of Travel Expenses of Non-Federal Participants at EPA Meetings."

(d) Authorization for Conference Travel. Travel to EPA sponsored, co-sponsored, or non-EPA sponsored conferences by 30 or more EPA employees must be authorized by the Assistant Administrators/Regional Administrators. This includes invitational travelers whose travel expenses are being paid by EPA. See the EPA Travel Manual, Chapter 3.16.(a), (b) and (c).

6. Printing of Conference Material. EPA will, as a matter of Agency policy, follow Government Printing Office (GPO) procedures. EPA's Printing Officer acts as the Agency's central management office and has responsibility for controlling EPA printing. Any questions regarding whether a particular printing need falls within an exception to obtaining printing services through GPO should be directed to the EPA Printing Officer. Circumvention of EPA policy prohibiting the use of commercial printing services to print government documents, without authorization from GPO, is a serious matter.

D. Location. Government-owned or government provided conference facilities should be used to the maximum extent possible. If there is no space available in the Agency, managers should contact the Facilities Office, which will contact GSA to determine if suitable government-owned facilities are available in the desired area. The use of government-owned facilities versus commercial facilities will be based on Agency need and overall cost of the conference. All Assistant Administrators/Regional Administrators and senior managers are responsible for ensuring that meeting sites are, to the extent feasible, held in or near EPA regional cities or major laboratory facilities. However, there may be occasions where it is advantageous to select a site outside the local area in order to focus on issues without local distractions. All EPA-sponsored conferences, meetings, or training seminars being held in hotels or motels must comply with the Hotel and Motel Fire Safety Act of 1990. A list of hotels and motels that comply with the Act can be found in the monthly publication of the Federal Travel Directory issued by GSA. See the EPA Travel Manual, Chapter 4.2.(d) and for additional information, see Federal Travel Regulations, 41CFR Parts 301-16 and 301-17. When EPA holds a conference involving travel by 30 or more EPA employees or other travelers whose expenses are being paid by EPA, a cost comparison justifying the conference location must be prepared. See the EPA Travel Manual, Chapter 3.16.(a), (b) and (c).

CHAPTER 3: THEIR CONFERENCE

A. Supporting a Conference Sponsored by a Nonfederal Entity -- Overview. If you have reviewed Chapter 1 and decided that the conference is "theirs," EPA can provide financial support in the form of grants, cooperative agreements, and Cooperation Authority Interagency Agreements authorized by EPA program statute, provided EPA has the statutory authority. For general guidance, see EPA Order 5700.1, "Policy for Distinguishing Between Assistance and Acquisition." The Agency encourages fair and open competition in the award of discretionary assistance agreements in accordance with the Federal Grant and Cooperative Agreement Act of 1977. For additional guidance, see Grants Management Fact Sheet No. 9, "Competition for Assistance Agreements."

B. Funding and Other Support Instruments.

1. Assistance Agreements

(a) Grants may be used to support the conference if all of the following tests are met and documented:

- (i) it is to accomplish a public purpose of support or stimulation, not for our direct use or benefit (see Chapter 1 of this guide);
- (ii) it is for an eligible nonfederal entity (most statutes exclude profit making companies);
- (iii) the principal purpose is to transfer money or other things of value;
- (iv) it is authorized by law (you must cite a statutory authority for using an assistance agreement to support the conference); and finally
- (v) EPA is not substantially involved in the work and we do little more than watch for progress and problems.

(b) Cooperative Agreements are essentially the same as grants and may be used if the conference meets tests (i)-(iv) above. The difference is that cooperative agreements must be used when EPA anticipates “substantial involvement” in the assistance relationship. Cooperative agreements, like grants, may not be used when the purpose of the agreement is to acquire services, information, or “stakeholder input” for the direct use and benefit of the government. See EPA Order 5700.1.

(c) Assistance Agreements (grants and cooperative agreements) may also be used to support a conference of state or tribal officials implementing a federal effort under a formal delegation or as partners with EPA in a coordinated, national effort. Although the states or tribes provide information or recommendations to EPA, the principal purpose of the assistance is to support the participation of states or tribes in the development of environmental policies and programs that they implement. For detailed guidance, see EPA Order 5700.1, pages 8-9. (These kind of conferences may also be Jointly Sponsored. See Chapter 4.)

2. Cooperation Authority Interagency Agreements Authorized by EPA Program Statute involve mutual cooperation and investment of resources between the cooperating federal agencies with an overlapping mission and interest in the project. For example, both agencies could contribute resources and fund the conference arrangements through a grant, cooperative agreement, or contract awarded by one of the agencies. GAD maintains a list of program statutes that authorize such cooperation. EPA cannot use an IAG to provide funds to another agency to award a grant that EPA cannot award itself. For additional guidance, consult memorandum from GAD Director to IAG Project Officers, “ IAG Decision Memorandum Guidance, Pre-award Activities, and Subcontractor Selection,” dated Sept. 30, 1996. (Note: If EPA provides funds to another agency under an IAG, the IAG is subject to that agency’s requirements, unless a specific term and condition imposes EPA’s requirements.)

3. In-Kind Assistance. The Agency may provide support other than direct monetary assistance. For example, we could devote EPA staff time, space, copying equipment and supplies. We could also agree to prepare papers for submission to a conference, provide EPA speakers, or make facilities available. In addition, the services of an EPA contractor, such as a logistics contractor or a meeting support contractor, can be provided as a form of in-kind assistance. A determination must be made that providing contractual services instead of funds is more economical. The cost of the contractual

services must be charged to the grants object class and should be documented in the assistance agreement if possible.

C. Allowability of Costs -- Overview. Many of the constraints associated with funding an EPA-sponsored conference do not apply to funding nonfederal entities' conferences through federal assistance agreements. However, grant costs must comply with applicable assistance regulations. See 40 CFR Parts 30 and 31.

Both EPA employees and assistance recipients are responsible for assuring that costs for conference activities are allowable, reasonable, and allocable to the grant. Agency staff responsibilities include performing a careful review of proposed conference activities and the assistance agreement that funds the conference. Reviews are conducted to identify costs that are unreasonable and unallowable or need further explanation or documentation. All reviews should be documented. Also, assistance recipients must comply with OMB Circular A-122, "Cost Principles for Non-Profit Organizations," OMB Circular A-21, "Cost Principles for Educational Institutions," or OMB Circular A-87, "Cost Principles for State and Local Governments." See also Part 31 of the FAR, which provides cost principles for assistance recipients that are profit organizations.

1. Entertainment vs. Education. As a general rule, assistance funds may not be used for entertainment costs. Entertainment, as defined in the General Accounting Office's Principles of Federal Appropriations Law, Volume I, Chapter 4, includes "a source of amusement, a diverting performance, especially a public performance, such as a concert, drama, or the like." Providing technical policy, or program information to educate the public at a conference is allowable. The distinction between unallowable entertainment and allowable education costs is not always clear. What the recipient sees as an interesting and informative presentation, the general public or auditors may see as entertainment. The recipient should adequately document the purpose of expenses that may be perceived as entertainment. See OMB Circulars A-21, A-87, and A-122 for unallowable costs.

2. Meals and Refreshments. The costs of meals and refreshments may be charged to assistance agreements only to the extent that they are allowable under the OMB Circulars A-21, A-87, and A-122. Generally, the cost of meals that are essential to the business of a conference because they are accompanied by presentations or panel discussions are not likely to be questioned. Also, refreshments at breaks are generally allowable, provided the costs are reasonable.

3. Travel. The rules governing travel for conferences and meetings that the Agency conducts, and those carried out by recipients under grants and cooperative agreements, are significantly different.

(a) Nonfederal Attendees. Assistance funds can be used to defray transportation and subsistence expenses for nonfederal attendees in conferences that the recipient carries out. The decision as to who receives transportation and subsistence expenses is the recipient's, not EPA's, and EPA should avoid even the appearance of directing the recipient to provide travel to specific individuals.

(b) Federal Employee Travel. Agency employees may attend recipient conferences as part of their official duties. However, assistance funds cannot be used to fund travel for federal employees because this would circumvent limits on government travel ceiling. See Ethics Advisory 92-26, "Revised Rule on Acceptance of Travel Expenses," dated Dec. 24, 1992. EPA may use its own travel

funds to enable a federal employee to attend a conference relating to matters that would improve the conduct, supervision, or management of Agency functions or activities. A nonfederal organization can use its own funds (not part of a match for a grant or cooperative agreement) to pay for EPA employee travel provided the appropriate Ethics Advisories are followed. You should consult an Agency Ethics Advisor for guidance. See also Ethics Advisory 92-26, Ethics Advisory 97-05, "Addendum to EPA Ethics Advisory 92-26, Accepting Travel Expenses," dated March 13, 1997, and Ethics Advisory 94-17, "Providing Speakers at Conferences, Seminars, and Similar Events," dated April 13, 1995, and Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635).

(c) 30 or More Federal Attendees. Travel to any conference, including conferences sponsored by recipients, involving travel by 30 or more EPA employees must be authorized by the Assistant Administrators/ Regional Administrators. See the EPA Travel Manual, Chapter 3.16.(a), (b) and (c). The number of employees attending the conference (whether they pay registration fees or not) must not create the appearance that the conference is being conducted for EPA's direct use and benefit.

4. Registration Fees. Registration fees are payments collected by the assistance recipient from attendees to a conference. Project officers managing assistance agreements that support conferences should always find out in advance whether registration fees will be collected, and if so, how those fees will be used. Project officers should address the definition and disposition of program income in a term and condition of the assistance agreement. See 40 CFR Parts 30.24 and 31.25. Registration fees are considered program income, under the grant regulations, if the activity generating the fee is within the scope of work and is funded by the assistance agreement. In such cases, registration fees, as program income, must be accounted for and used to defray allowable costs under the agreement. Fees for events conducted independently of the assistance agreements, which are not financed under the assistance agreement, are not subject to program income rules.

D. Use of EPA Logo. 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, "EPA Seal and Agency Identifier." 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.

E. Lobbying. Federally funded conference activities cannot include lobbying. See OMB Circulars A-21, A-87, and A-122.

F. Printing of Conference Material. An assistance recipient conducting a conference may use its grant funds for printing conference material (e.g., brochures/proceedings/reports). EPA may also print conference materials as a form of in-kind assistance provided the Agency follows GPO printing procedures.

G. EPA's Use of Assistance Recipients' Conference Proceedings and Reports. The Agency has the irrevocable and non-exclusive right to reproduce and publish, use, or authorize others to use conference proceedings and reports for federal government purposes. However, EPA's use of a

conference proceeding or report must be incidental to the principal purpose of the assistance agreement. See EPA Order 5700.1 and 40 CFR Parts 30.36 and 31.34.

H. Free Attendance by EPA Employees. Agency employees may attend recipient conferences as part of their official duties. However, the number of employees attending the conference without paying registration fees must not create the appearance that the conference is being conducted for EPA's direct use and benefit.

I. Location. All conferences, meetings or training seminars EPA sponsors or funds, in whole or in part, which are held in hotels or motels must comply with the Hotel and Motel Fire Safety Act of 1990. This applies to the government of the District of Columbia only when it expends federal funds for a conference and to non-federal entities when government funds are provided for the conference. A list of hotels and motels that comply with the Act can be found in the monthly publication of the Federal Travel Directory issued by GSA. See the EPA Travel Manual, Chapter 4.2.(d) and Federal Travel Regulations, 41CFR Parts 301-16 and 301-17.

CHAPTER 4: JOINTLY SPONSORED CONFERENCES

A. Supporting a Jointly Sponsored Conference -- Overview. "Co-sponsorship" occurs when EPA and a nonfederal entity share a mutual interest in the subject matter and jointly develop a conference related to EPA's mission. The co-sponsors must have a substantial interest in the subject matter of the conference although their individual goals may be different. After you have reviewed Chapter 1 and decide that the conference may be "jointly sponsored," you should also consult EPA Ethics Advisory 96-15, "Guidance on Co-sponsoring Conferences," which covers restrictions on jointly sponsored conferences. In order to avoid any misunderstandings when you hold a jointly sponsored conference, it is important that EPA have an advance written agreement with its co-sponsor(s) describing the intended roles and responsibilities of each co-sponsor.

B. Areas of Concern.

1. Appearance. EPA may actively seek out prospective co-sponsors. Whether EPA is actively seeking or has been approached with a co-sponsorship proposal, it is important to avoid:

(a) Appearance of coercion, that is, creating the reasonable impression that EPA is coercing or being coerced by an outside entity to become a co-sponsor.

(b) Appearance of favoritism. To avoid creating the appearance that EPA is favoring certain entities, we should, where practicable, inform all similarly situated nonfederal entities of the opportunity for co-sponsorship. We should be able to explain why we chose a particular co-sponsor over another.

(c) Appearance of EPA endorsement of the policies, activities, or products of the co-sponsor. Co-sponsorship does not imply the Agency's endorsement of the co-sponsor's general policies, activities or products, and event-related materials. Nonfederal sponsors must agree to clear all promotional materials for the event with the Agency.

(d) Appearance of improper influence on EPA decisions. When seeking to co-sponsor a conference with an entity that seeks some official action by EPA, is regulated by EPA, or seeks EPA funding, you should consult your Ethics Advisor.

2. Augmentation of Appropriated Funds.

(a) No "funds only" Co-sponsorships. Co-sponsorships improperly augment EPA appropriations when the nonfederal entity contributes only funds, logistical services, or other material support, but does not actively participate in developing the program. In that case, it is not really a jointly sponsored conference, but "our" conference for which we have received outside funds. For the same reason, co-sponsors must have a demonstrable substantive interest in the subject matter of the event.

(b) Events Solely for Government Employees. To avoid improper augmentation of appropriations, EPA should not co-sponsor events which will be attended only by federal employees.

(c) Registration Fees. Generally, registration fees collected by EPA, or its contractors, must be deposited in the Treasury as miscellaneous receipts, as required by 31 U.S.C. 3302. If authorized by EPA, an assistance recipient may retain and use conference fees as "program income." (See Chapter 3.) A co-sponsor, who does not receive assistance, may also collect fees to cover its share of expenses (e.g., expenses a co-sponsor, rather than EPA, is obligated to pay if there is a shortfall in fees). To avoid misunderstandings, you should have an advanced written agreement on who collects fees and their use. For additional guidance, consult Ethics Advisory 96-15.

3. Lobbying. Since appropriated funds are being used to support EPA co-sponsored conferences, the Anti-Lobbying Act of 1919 and any government-wide lobbying restriction contained in an Appropriation Act is applicable. Although information regarding the substance of pending legislation can be a part of a conference agenda, the conference cannot be a forum for encouraging a "grassroots" lobbying campaign to influence Congress. For additional guidance, see memorandum from OGC, "Appropriation Act Lobbying Restrictions," dated July 9, 1997.

C. Instruments -- Overview. For jointly sponsored conferences, acquisition instruments, as discussed in Chapter 2, or cooperative agreements, as discussed in Chapter 3, may be used. Choice of instruments, or use of more than one instrument, should be carefully considered in order to ensure that EPA's costs, as well as an assistance recipient/co-sponsor's costs, are allowable under the chosen instrument. See Section D of this chapter for an example of a jointly sponsored conference involving both acquisition and assistance instruments, and Section E regarding allowability of costs.

1. Acquisition. EPA may undertake its responsibilities as a co-sponsor of a conference with contractual and other support discussed in Chapter 2 of this guide. See also OAM's guide, "Your Preparation Guide for Conferences/Meetings/Training."

2. Assistance Agreements may be used to support the co-sponsor's efforts in connection with the conference as long as the financial assistance is used to support a public purpose rather than for EPA's direct use or benefit (examples of direct use or benefit are to assist in development of Agency regulations or guidance, evaluate EPA programs, or discuss the Agency's positions with stakeholders). Jointly sponsored conferences require the involvement of the Agency. Therefore, cooperative agreements rather than grants should be used to fund these conferences, and the

program's substantial involvement would be included under the "terms and conditions" of the assistance agreement.

Even under a cooperative agreement, the Agency's substantial involvement must avoid the appearance of circumventing the invitational travel restrictions. See the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635) and also Chapters 2 and 3 of this guide for details. If assistance funds are used to pay nonfederal travel expenses, the decision as to who receives transportation and subsistence expenses is the recipient's, not EPA's. The Agency should avoid even the appearance of directing the recipient to provide travel to specific individuals. See Chapter 3 of this guide for details.

D. Funding Instruments: Hypothetical Example of a Jointly Sponsored Conference Using Multiple Instruments. EPA, an association of state governmental agencies, a tribal organization, and a civil rights non-governmental organization (NGO) decide to co-sponsor a conference on environmental justice (EJ). EPA chairs an Interagency Working Group on EJ under the EJ Executive Order and has taken a leading role in addressing EJ concerns. The conference provides a wide range of interested parties with information on various perspectives on EJ and governmental implementation. Speakers include federal and state officials, tribal representatives, academics, minority community activists, and representatives of environmental and civil rights NGOs. The conference is open to attendance by federal, state, tribal, and local government staff, members of tribes, interested citizens, university faculty and students, and industry and business representatives from throughout the United States. The co-sponsors work together to develop the substantive agenda, identify speakers and panelists, and promote attendance. Approximately 70% of the attendees are nonfederal.

The following are examples of funding instruments, and an explanation of why they are -- or are not -- appropriate for funding certain conference costs:

1. Contract.

- EPA provides logistical support for the conference through a contractor. Because EPA is a co-sponsor of the conference, this is appropriate.
- One of the non-EPA co-sponsors asks the contractor to make travel arrangements for some students to attend the conference. This is not appropriate. First, the contractor may only take direction from the authorized EPA project officer or contracting officer. Second, because simply attending the conference does not meet the criteria for invitational travel under 5 U.S.C. 5703, the students' travel is not an allowable cost under an EPA contract.

2. Cooperative Agreements.

(a) Existing cooperative agreement between EPA and the co-sponsoring association of state governmental agencies:

- The purpose of the association's cooperative agreement is to carry out activities related to implementation of EJ requirements, including collecting and analyzing economic and social science data on siting hazardous waste facilities and disseminating this information to local governments and communities. The association pays the travel costs of some local officials and community leaders to attend the conference. The costs are allowable because they

further a purpose of the cooperative agreement, and the association, rather than EPA or its contractor, decided who would receive the travel assistance and made all travel arrangements. The association's participation in the conference was intended principally to further the interests of the association and its membership rather than to provide logistical or other services to EPA.

(b) New Cooperative Agreement between EPA and the tribal organization co-sponsor:

- The purpose of the cooperative agreement is to assist tribes in developing the capacity to understand environmental issues affecting their communities and to participate in solving their environmental problems. One of the activities under the cooperative agreement is co-sponsorship of the conference. Costs associated with this activity are for publicizing the conference, developing printed material for the conference about tribal EJ concerns, paying travel expenses for tribal speakers and attendees, and producing an EJ information source book for tribes and tribal community groups to use after the conference. A cooperative agreement is appropriate because EPA is substantially involved in the tribal association's capacity building activities, including joint sponsorship of the conference.
- The tribal organization also decides to sponsor a social reception at the conference, including alcoholic beverages, food, and Native American music. The costs of the reception are not allowable under the cooperative agreement because they are for entertainment. This is an independent event and not part of the co-sponsored conference, therefore EPA (and its contractor) is not involved in the planning or organizing of the reception. However, information materials for the conference can include a reference to the event. See Ethics Advisory 96-15.

E. Allowability of Costs Overview. Only a contracting officer or a grants award official has the authority to obligate the federal government to expend funds. If you are not a contracting officer, you cannot make any financial commitments to hotels or other vendors. Anyone who undertakes to commit the government to expend funds without authority risks being held personally liable by the vendor for payment and subject to EPA disciplinary action.

The cost principles and regulations applicable to the selected funding instruments remain in effect. Joint sponsorship does not affect the rules regarding allowability of costs under contracts or assistance agreements (cooperative agreements). See Chapter 3, Section C of this guide for allowability of costs under assistance agreements.

F. Issues Relating to Jointly Sponsored Conferences.

1. Free Attendance for EPA Employees. If EPA and the nonfederal co-sponsor agree that Agency employees will be allowed to attend the event for free, they may do so at the discretion of their supervisor. Free attendance includes the waiver of all or part of any registration fee, and the provision of food, refreshments, entertainment, instruction, and materials furnished to all attendees as part of the event at the co-sponsor's expense. It does not include travel expenses, lodging, or meals taken other than in a group setting with all attendees. If EPA employees are to receive a waiver of registration fees, this information should be documented in an advance written agreement with the co-sponsor. See Ethics Advisory 96-15, "Guidance on Co-Sponsoring Conferences."

2. EPA Property and Services. EPA supplies and property can be used by the nonfederal co-sponsor only to directly support the jointly sponsored event. For example, you should not provide the co-sponsor with franked envelopes without careful monitoring of their use. See the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635, Subpart G, "Misuse of Position" Aug. 1992).

3. Social Events. EPA may not be a co-sponsor of an event that is primarily social in nature. However, EPA may jointly sponsor an event that has a social component (such as a modest reception), so long as the event has a primarily educational or informational purpose that is related to EPA's mission. Agency assistance funds cannot be used for entertainment. See paragraphs F. 6 and 7 of this Chapter regarding Food and Refreshments.

4. Co-sponsors' Independent Events. If a co-sponsor independently funds (not using federal funds or its match) a discrete portion of the conference (e.g., a reception), Agency staff should not assist the co-sponsor in planning or organizing this event except to the extent necessary to coordinate the overall program. In addition, Agency property or facilities should not be used for this purpose. However, informational materials about the overall conference may include information about the co-sponsor's independent activity. See the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635 Subpart G, "Misuse of Position" Aug. 1992). We recommend you consult OGC's Finance and Operations Law Office or your Regional Counsel for further guidance.

5. Fundraising. EPA shall not assist in fundraising for the co-sponsor's share of the event. Where a co-sponsor intends to solicit funds from other sources for its share of costs, EPA should receive assurance that: (1) the solicitation will make clear that the requester is the co-sponsor, not EPA; (2) the co-sponsor will not imply that EPA endorses any fundraising activities; and (3) any gifts will be used solely for co-sponsor's share of expenses, not EPA's.

6. Food and Refreshments for EPA Employees. EPA may not use appropriated funds for food and refreshments for EPA employees attending co-sponsored events at their official duty stations except as authorized by the Government Employees' Training Act at 5 U.S.C. 4101.

If a nonfederal co-sponsor imposes a charge for conference related meals that it furnishes, the Agency can pay for the meals provided: (1) the meals are incidental to the meeting (in other words, the participants are getting together to do more than eat); (2) the employee's attendance at the meals is necessary to full participation in the business of the conference; and (3) the employee is not free to take the meals elsewhere without being absent from essential formal discussions, lectures or speeches concerning the purpose of the conference. See GAO's Principles of Federal Appropriations Law, Volume I, Chapter 4, pages 4-88 and 4-89. Agency employees who are in travel status can include the meal cost on the travel voucher, and must also adjust their per diem claim downward by a formula which takes into account the fact that meal costs were reimbursed as part of the meeting expenses.

If EPA employees are attending a co-sponsored event where food and refreshments are provided by the nonfederal co-sponsor, without charge, they may participate if authorized under the Ethics Regulations. Otherwise, the rules cited in Chapter 2 of this guide apply. See also Ethics Advisory 96-15.

7. Food and Refreshments for Nonfederal Attendees. EPA may not use appropriated funds for food and refreshments for nonfederal attendees unless: (1) the recipient is participating as a speaker in a training event (see the Government Employees Training Act, 5 U.S.C. 4101); (2) the recipient is providing a direct service to the Agency and has received "invitational travel orders" under 5 U.S.C. 5703, in which case other travel expenses may also be paid; or (3) the Administrator's "reception and representation" fund is used. Also, conference attendees may voluntarily "pass the hat" to pay for food and refreshments.

8. Use of EPA Logo. The official logo may be used on promotional and conference materials for conferences EPA jointly sponsors with outside groups. The co-sponsor's logo should also be used on promotional and conference materials and should be displayed at least as prominently as EPA's. See EPA Order 1015.2A "EPA Seal and Agency Identifier."

9. Printing of Conference Material. EPA must comply with GPO printing requirements if it prints conference material (e.g., brochures or conference proceedings and reports). See Chapter 2 for additional guidance. An assistance recipient (the co-sponsor) may use its grant funds to print conference material, as discussed in Chapter 3.

10. Location. If EPA is responsible for selecting the conference site and paying for the facility and the conference involves travel by 30 or more EPA employees, or other travelers whose expenses are being paid by EPA, a cost comparison justifying the location must be prepared. See the EPA Travel Manual, Chapter 3.16. (a), (b) and (c).

All conferences, meetings or training seminars EPA sponsors or funds, in whole or in part, which are held in hotels or motels, must comply with the Hotel and Motel Fire Safety Act of 1990. This applies to the government of the District of Columbia only when it expends federal funds for a conference and to non-federal entities when government funds are provided for the conference. A list of hotels and motels that comply with the Act can be found in the monthly publication of the Federal Travel Directory issued by GSA. See the EPA Travel Manual, Chapter 4.2. (d) and for additional information, see Federal Travel Regulations, 41CFR Parts 301-16 and 301-17.

CHAPTER 5: MAINTAINING PROPER DOCUMENTATION

Clear and complete documentation is crucial for effective management of assistance and acquisition instruments. Fully documenting the who, what, where, when, and why of your conference will be very helpful in the event of an audit, when you will be asked to provide up-to-date and complete records.

Depending on the funding instrument used to support a conference, the documentation required will differ. For required documentation on contract files, you should consult the Contract Management Manual and the Contract Administration Training Manual, Chapter 6, which provides a helpful file plan. For required documentation for assistance agreements, you should consult the Managing Your Assistance Agreement Training Manual, Appendix Q, Official EPA Project File, and Grants Management Fact Sheet No. 10, "Assistance Agreement File Documentation."

One of the most critical documents for assistance agreements is the decision memorandum, justifying the use of an assistance agreement versus a contract to support conference activities. If

the objective of the project is to conduct a conference, GAD's "Guidance for Preparing an Assistance Funding Package," dated April 28, 1997, requires that you address the following in the memorandum:

- Who is initiating the conference?
- How will it be advertised?
- Whose logo will be used for materials?
- What is the percentage of participants (i.e., feds, public, state/local)?
- Will the recipient prepare the proceedings and disseminate the information back to the targeted community?

When you hold a jointly sponsored conference, in order to avoid any misunderstandings, it is important that EPA have an advance written agreement with co-sponsor(s) describing the intended roles and responsibilities of each co-sponsor. The following is a checklist of some important documents that should be retained in the official project file for an assistance agreement or a contract:

- Application for assistance agreement
- Assistance agreement (agreement joint application)/award documents or Contract
- Co-Sponsorship agreement for conferences
- Decision memo for assistance agreements
- AA/RA justification for conferences with more than 30 EPA travelers
- Amendments and modifications to the original document(s)
- Financial information/reports, copies of progress reports
- Memoranda/correspondence/agendas/proceedings/papers including programmatic reviews
- Documentation of telephone conversations and meeting reports
- Reviews and audits conducted on the project
- Final reports and closeout information

REFERENCE LIST BY SUBJECT MATTER

A. Introduction.

This is a list, grouped by subject matter (travel, food, etc.), of commonly referenced documents containing information relating to EPA's and its employees' involvement in conferences. Many of the documents cited in this reference list and the Best Practices Guide for Conferences are available electronically. Office of the Comptroller Policy Announcements and Transmittals (all OC Policy Announcements and Transmittals issued before May 1995 have been incorporated into the EPA Travel Manual) and the EPA Travel Manual can be accessed at <http://intranet.epa.gov/ocfo/policies/direct/2550b.pdf>. The Contracts Management Manual and Procurement Policy Notices can be accessed at <http://intranet.epa.gov/oamintra>. Many OIG reports can be found on EPA's Home Page under Offices and Labs/Office of the Inspector General, also check <http://www.epa.gov/oigearth/>.

You can also access GAO Comptroller General Decisions (since October 1995) and the Principles of Federal Appropriations Law (the Red Book) through GAO's home page at www.gao.gov. The Code of Federal Regulations and the United States Code are accessible through EPA's home page under

Regulations. Executive Orders and OMB Bulletins and Circulars can be accessed through www.whitehouse.gov.

B. General Acquisition and Assistance Requirements.

Contracts Management Manual: Covers issues related to the EPA acquisition process. Procurement Policy Notice No. 97-01 - Required Practices Concerning Subcontracts, Jan. 8, 1997: Includes prohibition against “directed subcontracting.”

Simplified Acquisitions Made Easy, April 1998: Provides accessible policies, procedures and guidelines for simplified acquisitions. This Q&A guidance is provided on the OAM intranet site (<http://intranet.epa.gov/oamintra>)

Procurement Policy Notice No. 95-01- Procurement of Items for EPA Sponsored Commemorations and Events, April 10, 1995: Provides guidance regarding the purchase of items to be distributed to the general public and EPA employees. EPA Order 5700.1, Policy for Distinguishing Between Acquisition and Assistance, March 22, 1994: Clarifies the criteria for and to achieve consistency in selection and use of contracts, cooperative agreements and grants by all EPA offices and laboratories. Memorandum from GAD Director to IAG Project Officers, Sept. 30, 1996: Provides IAG decision memorandum guidance, pre-award activities, and subcontractor selection.

Managing Your Financial Assistance Agreement Training Manual -- Project Officer Responsibilities, EPA 202-B-94-001, Oct. 1996: Identifies administrative responsibilities of project officers, grants management offices (GMO), financial management offices (FMO), and other players involved in the management of assistance agreements.

Participant Reference Manual - Office of Research and Development Project Officer’s Course for Assistance Management (Grants and Cooperative Agreements) Sept. 1995: Identifies administrative responsibilities of project officers, grants management offices (GMO), financial management offices (FMO), and other players involved in the management of assistance agreements.

Grants Management Fact Sheet No. 9 - Competition for Assistance Agreements: Addresses the need to encourage competition in the award of assistance agreements.

Grants Management Fact Sheet No. 10 - Assistance Agreement File Documentation: Addresses the need to adequately document assistance agreement files, particularly with regard to relevant communication.

Guidance for Preparing an Assistance Funding Package, April 28, 1997: Addresses the need for justification in Decision Memoranda when using assistance for conferences.

C. Conference Planning and Site Selection

The EPA Travel Manual (Chapter 2550B of the Resources Management Directives System) of 1995: Incorporates all travel-related Policy Announcements and Transmittals issued by the Office of the Comptroller after May 1988 through May 1995. See Chapter 5.

Your Preparation Guide for Conferences/Meetings/Training, May 1995: Explains how to provide logistic support for conferences through small purchase procurement.

EPA Ethics Advisory 96-15, Guidance on Co-Sponsoring Conferences, Oct. 17, 1996: Addresses legal and ethical issues that arise in connection with co-sponsored conferences.

EPA Order 1015.2A - EPA Seal and Agency Identifier, Dec. 27, 1978: Updates requirements for use of official EPA seal and provides directions for use of Agency Identifier.

EPA Ethics Advisory 94-17-- Providing Speakers at Conferences, Seminars, and Similar Events, April 13, 1995: Suggests things to consider when EPA employees are asked to actively participate in non-government conferences.

Committee on Integrity and Management Improvement Bulletin 95-4, Conferences and Meetings, May 1995: Highlights EPA's policy on scheduling conferences and meetings.

D. Travel

The EPA Travel Manual (Chapter 2550B of the Resources Management Directives System) of 1995: Incorporates all travel-related Policy Announcements and Transmittals issued by the Office of the Comptroller after May 1988 through May 1995.

On The Way With EPA, A Reference Guide for Travel: Answers commonly asked questions regarding official temporary duty (TDY) travel for EPA employees and EPA funded travel for non-EPA employees (invitational travelers).

EPA Ethics Advisory 92-26, Revised Rule on Acceptance of Travel Expenses, Dec. 24, 1992: Advises that assistance funds cannot be used to fund travel for federal employees because this would circumvent limits on government travel ceiling. See also EPA Ethics Advisory 96-19, New One-Page Travel Acceptance Form, Dec. 17, 1996, which provides a revised attachment to Ethics Advisory 92-26; and EPA Ethics Advisory 97-05 Addendum to EPA Ethics Advisory 92-26, Accepting Travel Expenses, March 13, 1997.)

EPA Ethics Advisory 94-17, Providing Speakers at Conferences, Seminars, and Similar Events, April 13, 1995: Provides additional guidance on related travel issues.

Related OGC Memoranda

Travel Expenses of Non-Government Employees, June 1982: Discusses the rules governing EPA's payment of travel expenses of non-government employees who attend meetings sponsored by EPA.

Compensation and Reimbursement of FACA Committee Members and Consultants, June 1, 1993: Explains when EPA can use contract funds to pay for travel, and when it must use Agency travel funds.

Reimbursement of Travel and Per Diem Expenses of Federal Advisory Committee Members, June 22, 1993: Advises that travel and per diem expenses of advisory committee members may only be paid through the issuance of invitational travel orders and charged to an appropriate EPA travel account.

Reimbursement of Travel Expenses of Members of Federal Advisory Committees Through an Interagency Agreement, Sept. 7, 1993: Discusses whether a contract issued under an IAG can be used to pay travel expenses of FACA members.

Payment of Travel Expenses of Non-Federal Participants at EPA Meetings, Sept. 22, 1993: Discusses whether it is appropriate to pay for the travel expenses of individuals, such as peer reviewers, by contract.

E. Food

The EPA Travel Manual (Chapter 2550B of the Resources Management Directives System) of 1995: Incorporates all travel-related Policy Announcements and Transmittals issued by the Office of the Comptroller after May 1988 through May 1995. See Chapter 5.5.

Procurement Policy Notice (PPN) 94-10 - Contracting for Meals and Refreshments for Government Employees, Aug. 17, 1994: Sets forth the restrictions for direct acquisition of EPA employees' meals and refreshments, i.e., meals at conferences/meetings as part of authorized training, or meals or food and beverages at an official Agency ceremony.

F. Federal Advisory Committee Act Meetings (FACA)

The EPA Travel Manual (Chapter 2550B of the Resources Management Directives System) of 1995: Incorporates all travel-related Policy Announcements and Transmittals issued by the Office of the Comptroller after May 1988 through May 1995. See Chapter 3.3 and 3.6.

Related OGC Memoranda

Compensation and Reimbursement of FACA Committee Members and Consultants, June 1, 1993: Explains when EPA can use contract funds to pay for travel, and when it must use Agency travel funds.

Reimbursement of Travel and Per Diem Expenses of Federal Advisory Committee Members, June 22, 1993: Advises that travel and per diem expenses of advisory committee members may only be paid through the issuance of invitational travel orders and charged to an appropriate EPA travel account. It is not appropriate to reimburse travel or per diem expenses of advisory committee members through a contract.

Reimbursement of Travel Expenses of Members of Federal Advisory Committees Through an Interagency Agreement, Sept. 7, 1993: Discusses whether a contract issued under an IAG can be used to pay travel expenses of FACA members.

G. Lobbying

Related OGC Memorandum

Appropriation Act Lobbying Restrictions, July 9, 1997: Provides guidance on lobbying restrictions.

Subject: Appendix I - Best Practices Guide for Conferences

Category: Grants Policy Issuance, Project Officers Manual

Signer: Elizabeth Craig

Signed Date: 11/20/1998

Document ID: GPI-98-11

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202-564-5315

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U. S. EPA Region 1

5 Post Office Square – Suite 100

Boston, MA 02109-3912

1-888-372-7341/617-918-1111

General <http://www.epa.gov/region01/>

Application <http://www.epa.gov/region1/grants>

States: Connecticut, Maine, Rhode Island, Massachusetts, New Hampshire, Vermont

U. S. EPA Region 2

290 Broadway

New York, New York 10007-1866

212-637-3000

General <http://www.epa.gov/region02/>

Application <http://www.epa.gov/region02/grants/kit.htm>

States: New Jersey, New York, Puerto Rico, Virgin Islands

U. S. EPA Region 3

1650 Arch Street

Philadelphia, PA 19103-2029

215-814-5000

General <http://www.epa.gov/region03/>

Application <http://www.epa.gov/region03/grants/index.htm>

States: Delaware, Virginia, Maryland, Pennsylvania, District of Columbia, West Virginia

U. S. EPA Region 4

61 Forsyth Street, SW

Atlanta, GA 30303-3104

404-562-9900

General <http://www.epa.gov/region04/>

Application <http://www.epa.gov/region4/grants/>

States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

U. S. EPA Region 5

77 West Jackson Boulevard

Chicago, IL 60604-3507

312-353-2000

General <http://www2.epa.gov/aboutepa/epa-region-5>
Application <http://www.epa.gov/region5/business/index.htm#financial>
States: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

U. S. EPA Region 6

Fountain Place 12th Floor, Suite 1200
1445 Ross Avenue
Dallas, TX 75202-2733
214-665-6444

General <http://www.epa.gov/region06/>
Application <http://www.epa.gov/earth1r6/6md/grants.htm>
States: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

U. S. EPA Region 7

901 North 5th Street
Kansas City, KS 66101
913-551-7003

General <http://www.epa.gov/region07/>
Application <http://www.epa.gov/region07/economics/index.htm>
States: Missouri, Nebraska, Iowa, Kansas

U. S. EPA Region 8

1595 Wynkoop St.
Denver, CO 80202-1129
303-312-6312

General <http://www.epa.gov/region08/>
Application <http://www.epa.gov/region8/grants/>
States: Colorado, Montana, Wyoming, South Dakota, North Dakota, Utah

U. S. EPA Region 9

75 Hawthorne Street
San Francisco, CA 94105
415-947-8000/866-EPA-WEST

General <http://www.epa.gov/region09/>
Application <http://www.epa.gov/Region9/funding/applying.html>
States: Arizona, Hawaii, California, Nevada

U. S. EPA Region 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101
206-553-1200/800-424-4372

General <http://www.epa.gov/region10/>
The Region 10 Grants Administration Unit offers an online guide to applying for grants at
Application <http://yosemite.epa.gov/r10/omp.nsf/grants/administration>
States: Alaska, Idaho, Oregon, Washington

Professional Organizations

American Subcontractors Association <http://www.asaonline.com>

Asian Women in Business <http://www.awib.org/>

Minority Business Enterprise Legal Defense and Education Fund
<http://mbeldef.homestead.com/about.html>

National Association of Women Business Owners <http://www.nawbo.org>

National Black Business Council, Inc. <http://www.nbbc.org/>

National Center for American Indian Enterprise Development <http://www.ncaied.org/>

National Minority Business Council <http://www.nmbc.org/>

National Urban League <http://www.nul.org/>

Publications

CD Publications <http://www.cdpublications.com> *Federal and Foundation Assistance Monitor and Native American Report*

GovCon <http://www.govcon.com> *Commerce Business Daily*

Management Concepts <http://www.managementconcepts.com> publications on how to manage complex and federally-funded projects

Resources

Advisory Council on Historic Preservation, Native American Program <http://www.achp.gov/nap.html>

American Indian Tribal Portal <http://www.epa.gov/tribalportal/index.htm>

U.S. Small Business Administration, Office of Native American Affairs
<http://www.sba.gov/aboutsba/sbaprograms/naa/index.html>

USA.gov resources for Tribal Governments and Native Americans
<http://www.usa.gov/Government/Tribal.shtml>

U.S. Geological Survey, Activities Related to American Indians and Alaska Natives
<http://www.usgs.gov/indian/>

U.S. Department of Agriculture Forest Service, Office of Tribal Relations
<http://www.fs.fed.us/spf/tribalrelations/>

U.S. Department of Energy, Program Areas, Tribal Energy
<http://apps1.eere.energy.gov/tribalenergy/>

U.S. Department of Energy, Office of Congressional and Intergovernmental Affairs
<http://energy.gov/congressional/about-us/contact-us/contacts-tribal-affairs>

U.S. Department of Health and Human Services, Office of Intergovernmental Affairs, Office of Tribal Affairs
<http://www.hhs.gov/intergovernmental/>

U.S. Department of Health and Human Services, Substance Abuse & Mental Health Services Administration
<http://www.ncsacw.samhsa.gov/resources/resources-tribal.aspx>

U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA), Tribal Information
<http://www.fema.gov/government/tribal/index.shtm>

U.S. Department of Housing and Urban Development, Indian Housing—HUD's Office of Native American Programs (ONAP)
http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih

U.S. Department of the Interior <http://www.doi.gov/bureaus/index.cfm>

- Bureau of Indian Affairs <http://www.bia.gov/>
- U.S. Department of the Interior, Bureau of Reclamation <http://www.usbr.gov/native/>
- U.S. Department of the Interior, National Park Service
<http://www.nps.gov/history/hps/hpg/tribal/index.htm>

U.S. Department of Veterans Affairs, Center for Minority Veterans
<http://www1.va.gov/centerforminorityveterans/>

National Indian Gaming Commission <http://www.nigc.gov/>

Service Providers

American Indian Environmental Office (AIEO) <http://epa.gov/indian/index.htm>

Environmental Federal Register Documents <http://www.epa.gov/fedrgstr/>

Catalog of Federal Domestic Assistance <http://cfda.gov>

System for Award Management database <http://www.sam.gov> (replaced **Central Contractor Registration** database in 2012)

Chief Financial Officers Council <https://cfo.gov/>

The website maintained by the Chief Financial Officers Council contains important public financial management and accounting information.

Department of Transportation's **Office of Small Business Programs** <http://osdbu.dot.gov/>

EPA Disadvantaged Business Enterprise (DBE) program http://www.epa.gov/osbp/dbe_team.htm

Excluded Parties List System <https://www.sam.gov/>

Federal Audit Clearinghouse <http://harvester.census.gov/fac>
Searchable Database of Single Audit SF-SAC Data

Government Accounting Standards Board <http://www.gasb.org/>

Inspector General <http://www.ignet.gov>

The Iagnet website is maintained by the Inspector General. It includes a single audit library with hypertext links to several of the source materials used in the above text.

Interior Business Center

Indirect Cost Services

U.S. Department of the Interior

2180 Harvard Street, Suite 430

Sacramento, CA 95815

Phone: 916.566.7111

http://www.doi.gov/ibc/services/indirect_cost_services/ICS_Services.cfm

Email: ics@nbc.gov

Interior Business Center Indian Tribal Governments Indirect Cost Rate Information

http://www.doi.gov/ibc/services/indirect_cost_services/indian_tribes.cfm

Las Vegas Finance Center

U. S. Environmental Protection Agency

Las Vegas Finance Center

P.O Box 98515

Las Vegas, N.V. 89193-8515

UPS, Federal Express, or Overnight Mail

Las Vegas Finance Center

4220 S. Maryland Parkway, Bldg C

Las Vegas, NV 89119

Phone: (702) 798-2485 **Fax:** (702) 798-2423

List of Debarred Contractors <http://www.sam.gov>

Mid-American Intergovernmental Audit Forum www.auditforum.org *Guide on Selecting an External Auditor*

Minority Business Development Agency <http://www.mbda.gov/> and Phoenix-Opportunity database

Minority Business Enterprise/Women Business Enterprise (MBE/WBE) instructions

http://www.epa.gov/osbp/dbe_team.htm

Native American Finance Officers Association <http://www.nafoa.org/>

Office of the Inspector General 1.888.546.8740 for all non-government locations outside the Washington, D.C. metropolitan local calling area 202.260.4977 for those inside the Washington, D.C. metropolitan local calling area

Office of Management and Budget <http://www.whitehouse.gov/omb/>

Office of Small Business Programs <http://www.epa.gov/osbp/>

- Business Opportunities with EPA <http://www.epa.gov/osbp/contracts.htm> award notices and announcements
- Disadvantaged Business Programs http://www.epa.gov/osbp/dbe_team.htm
- Newsletters <http://www.epa.gov/osbp/newsletters.htm>
- OSBP Small Business Vendor Profile system (SBVPS) <http://cfpub.epa.gov/sbvps/> database registry for small and disadvantaged business concerns
- Regional Contacts <http://www.epa.gov/sadqfzsu/contactpage.htm>
- Regions, states, and agencies <http://www.epa.gov/sadqfzsu/states.htm>
- Service-Disabled Veterans <http://www.epa.gov/osbp/disabledvets.htm>
- Small Business Ombudsman <http://www.epa.gov/sbo/> strategic guides to small business and environmental management

OMB Circular A-87

http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreg/2005/083105_a87.pdf

OMB Circular A-133

http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf

Subcontracting with DOT directory of DBEs

http://osdbuweb.dot.gov/Procurement/subcontracting_directory.cfm

U.S. EPA Office of Grants and Debarment

Mail Code: 3901

1200 Pennsylvania Avenue, N.W.,

Washington, D.C. 20460

Phone: (202) 564-5315

General <http://www.epa.gov/ogd>

Application <http://www.epa.gov/ogd/AppKit/index.htm>

This web site links to:

- | | |
|--|--|
| 1 How to apply | 5 Catalog of Federal Domestic Assistance |
| 2 Application kit for Federal Assistance | 6 Grant Award Data |
| 3 Funding opportunities | 7 Quality Assurance |
| 4 Regulations | 8 Suspension and Debarment Division |

U.S. Small Business Administration <http://www.sba.gov>

- Dynamic Small Business Search http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm

Contact Information with Tracking Document

Replace text with information on key contacts for your award. Keep in a handy yet confidential location.

<i>Surname</i>	<i>First Name</i>		<i>Responsibility</i>	<i>Questions</i>	<i>Dates</i>	<i>Comments</i>
<i>Title</i>						
<i>Organization</i>						
<i>Address</i>						
<i>City</i>	<i>State</i>	<i>Zip Code</i>				
<i>Phone</i>	<i>Fax</i>	<i>Email</i>	<i>Website</i>			
<i>Surname</i>	<i>First Name</i>		<i>Responsibility</i>	<i>Questions</i>	<i>Dates</i>	<i>Comments</i>
<i>Title</i>						
<i>Organization</i>						
<i>Address</i>						
<i>City</i>	<i>State</i>	<i>Zip Code</i>				
<i>Phone</i>	<i>Fax</i>	<i>Email</i>	<i>Website</i>			
<i>Surname</i>	<i>First Name</i>		<i>Responsibility</i>	<i>Questions</i>	<i>Dates</i>	<i>Comments</i>
<i>Title</i>						
<i>Organization</i>						
<i>Address</i>						
<i>City</i>	<i>State</i>	<i>Zip Code</i>				
<i>Phone</i>	<i>Fax</i>	<i>Email</i>	<i>Website</i>			
<i>Surname</i>	<i>First Name</i>		<i>Responsibility</i>	<i>Questions</i>	<i>Dates</i>	<i>Comments</i>
<i>Title</i>						
<i>Organization</i>						
<i>Address</i>						
<i>City</i>	<i>State</i>	<i>Zip Code</i>				
<i>Phone</i>	<i>Fax</i>	<i>Email</i>	<i>Website</i>			

Data Universal Numbering System (DUNS) Application Form

The D&B D-U-N-S Request Service
for US Federal Government Contractors and Grantees

Dun & Bradstreet (D&B) provides a D-U-N-S Number, a unique nine digit identification number, for each physical location of your business. D-U-N-S Number assignment is FREE for all businesses required to register with the US Federal government for contracts or grants. Online registration is available at <http://fedgov.dnb.com/webform>. Or, the telephone number is **1-866-705-5711**.

For technical difficulties, contact govt@dnb.com

CONTACT US | MANAGE SUBSCRIPTIONS | REGISTER | LOGIN

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GRANTS.GOV > Applicants > Organization Registration

ORGANIZATION REGISTRATION

APPLICANT ACTIONS

- » Apply for Grants
- » Track My Application

APPLICANT RESOURCES

- » Grant Eligibility
- » Individual Registration
- » **Organization Registration**
 - » STEP 1: Obtain DUNS Number
 - » STEP 2: Register with SAM
 - » STEP 3: Username & Password
 - » STEP 4: AOR Authorization
 - » STEP 5: Track AOR Status
- » Grant Application Process
- » Applicant FAQs
- » Applicant Resources
- » Applicant Tips

Registering as an Organization

This is where the process of registering your organization for access to Grants.gov begins. Your organization must be registered to apply for grants.

Brief Overview of Registration Process

NOTE: Registration takes, approximately, 3-5 business days; but, allow 4 weeks to complete all steps.

Foreign Registrants: Anyone residing and doing business outside of the United States is still required to complete the five steps of the Grants.gov registration process, in addition to fulfilling supplementary requirements for doing business with the United States government.

STEP 1: Obtain DUNS Number
Same day, if requested by phone (1-866-705-5711), DUNS is provided immediately. If your organization does not have one, you will need to go to the Dun & Bradstreet website at <http://fedgov.dnb.com/webform> to obtain the number. *Information for Foreign Registrants. "Webform requests take 1-2 business days."*

STEP 2: Register with SAM
Three to five business days or up to two weeks. If you already have a TIN, your SAM registration will take 3-5 business days to process. If you are applying for an EIN please allow up to 2 weeks. Ensure that your organization is registered with the System for Award Management (SAM) at System for Award Management (SAM). If your organization is not, an authorizing official of your organization must register.

STEP 3: Username & Password
Same day, Complete your AOR (Authorized Organization Representative) profile on Grants.gov and create your username and password. You will need to use your organization's DUNS Number to complete this step. [Create a Username and Password](#).

STEP 4: AOR Authorization
*Same day. The E-Business Point of Contact (E-Biz POC) at your organization must login to Grants.gov to confirm you as an Authorized Organization Representative (AOR). Please note that there can be more than one AOR for your organization. In some cases the E-Biz POC is also the AOR for an organization. **Time depends on responsiveness of your E-Biz POC.*

STEP 5: TRACK AOR STATUS
At any time, you can track your AOR status by logging in with your username and password. [Login as an Applicant](#) (enter your username & password you obtained in Step 3).

Attention Faculty or Staff of Educational Institutions
To submit your application via Grants.gov, you should first check with your Office of Sponsored Programs* to verify that your organization is registered with Grants.gov. It is the Authorized Organizational Representative (AOR) of your organization who must register the educational institution or applicant organization. Most applications by faculty, staff, or other principal investigators are actually submitted on behalf of the institution at which they are employed: awards are made to the institution. All registration steps for the institution are completed by the AOR; likewise, the AOR is the person who must actually submit the application to Grants.gov.
Questions about Grants.gov should be directed first to your Office of Sponsored Programs, which will assist you in submitting your application. Please provide that office with sufficient notice of your intent to apply using Grants.gov.

The only time it is appropriate to register as an individual with Grants.gov is when you are submitting an application that specifies it is open only to individuals, such as for an individual fellowship or traineeship.

**Your organization may refer to the office as Research, Sponsored Research, Grants, Development, or a similar title.*

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HEALTH & HUMAN SERVICES: [HHS.gov](#) | [FOIA](#) | [No Fear Act](#) | [Accessibility](#) | [Privacy](#) | [Site Map](#)

COMMUNITY: [USA.gov](#) | [Whitehouse.gov](#) | [USASpending.gov](#) | [SBA.gov](#) | [FSRS.gov](#) | [SAM.gov](#) | [DUNS Request](#)

GRANTS.GOV
200 Independence Avenue, S.W. • HHH Building
Washington, DC 20201
1-800-518-4726 • support@grants.gov

<http://www.grants.gov/web/grants/applicants/organization-registration.html>

Disadvantaged Business Enterprise (DBE)

DBE Certification Fact Sheet

MBE/WBE Certification “Maintaining the Integrity of the Program”

Program Comparison

Old MBE/WBE Program	New DBE Program
MBEs and WBEs self-certify their status.	MBEs and WBEs must be certified by EPA, SBA, DOT, or by state, local, Tribal, or private entities whose certification criteria match EPA’s. *States are not required to develop or implement a new certification program.
Self-certified MBEs and WBEs can be counted toward a recipient’s MBE/WBE accomplishments when reporting on EPA Form 5700-52A	MBEs and WBEs must be certified in order to be counted toward a recipient’s MBE/WBE accomplishments.

What Are DBEs, MBEs, and WBEs?

- **Disadvantaged Business Enterprises (DBEs) are**
 - entities owned and/or controlled by a socially and economically disadvantaged individuals as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note) (10% statute), and Public Law 102-389 (42 U.S.C. 4370d) (8% statute), respectively;
 - a Small Business Enterprise (SBE);
 - a Small Business in a Rural Area (SBRA);
 - a Labor Surplus Area Firm (LSAF); or
 - a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program.
- **Minority Business Enterprises (MBEs)** are entities that are at least 51% owned and/or controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note), and Public Law 102-389 (42 U.S.C. 4370d), respectively.
- **Women’s Business Enterprises (WBEs)** are entities that are at least 51% owned and/or controlled by women (under the 10% and 8% statutes).

Who is responsible for certifying MBE and WBE firms?

EPA OSDBU Headquarters will be responsible for implementing and processing the certification of MBE/WBE firms. Regional DBE coordinators will assist by providing forms to interested firms and fielding general questions. The states have no responsibility to implement or maintain a certification program for EPA.

Does EPA accept other certifications?

Yes. Under the new DBE Program entities can no longer self-certify. EPA will accept certifications from:

- SBA and DOT (with U.S. citizenship);
- Tribal, State and local governments, as long as their standards for certification meet or exceed our own; and
- Independent private organization certifications as long as their standards for certification meet or exceed our own.

If an entity holds one of these certifications, it is considered acceptable for establishing MBE or WBE status under EPA's DBE Program, and application for EPA certification is not needed.

What are the EPA MBE/WBE certification requirements?

- In order to be certified by EPA, an entity must first attempt to be certified by SBA or DOT, or a Tribal, State, or local government, or by an independent private organization, and be unsuccessful in that attempt.
- To qualify as a MBE or WBE under EPA's programs an entity must establish that it is at least 51% owned and/or controlled by socially and economically disadvantaged individuals who are of good character and are citizens of the United States.
- An individual claiming economic disadvantaged status must have an initial and continued personal net worth of less than \$750,000.

What does the certification process entail?

- Applications are filed with EPA OSDBU. Applications can be obtained from EPA OSDBU, from regional DBE Coordinators, and from EPA OSDBU's website, http://www.epa.gov/osbp/dbe_forms.htm. The application includes the following:
 - An attestation to the accuracy and truthfulness of the information on the application form by sworn affidavit, or an unsworn declaration executed under penalty of perjury of the laws of the United States.
 - The application must include evidence demonstrating that the entity is owned and/or controlled by one or more individuals claiming disadvantaged status, along with certifications or narratives regarding the disadvantaged status of such individuals.

- The application must include documentation of a denial of certification by a Federal agency, State government, local government, Indian Tribal government, or independent private organization, if applicable.
- Once applications are filed, EPA OSDBU will advise each applicant within 15 days, whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.
- EPA OSDBU will make its certification decision within 30 days of receipt of a complete and suitable application package.

How does Certification affect a firm's participation in the overall DBE program?

- In order for a firm to be counted towards a recipient's Minority Business Enterprise and Women Business Enterprise utilization, a firm must be certified.
- Non-certified MBEs and WBEs may be used by recipients for their procurement needs. However, those firms cannot be counted toward their MBE/ WBE accomplishments.
- DBE Program outreach efforts apply to all DBEs, not just MBEs and WBEs.

DBE Instructions

The DBE instructions were formerly addressed as Minority Business Enterprise (MBE)/Women Business Enterprise (WBE) instructions. The most current version is available online at http://www.epa.gov/osbp/dbe_team.htm.

DBE Program Overview Fact Sheet

EPA Office of Small Business Programs (Formerly the Office of Small and Disadvantaged Business Utilization "OSDBU")

New Disadvantaged Business Enterprise Program *"Increasing Opportunities for Disadvantaged Businesses under EPA Financial Assistance Agreements"*

What is The Disadvantaged Business Enterprise Program?

- It is EPA's policy that recipients of EPA financial assistance through grants and cooperative agreements award a "fair share" of subagreements to small, minority, and women-owned businesses. Since each is a separate entity, the objective is to assure that each of these business entities is given the opportunity to participate in subagreements awards under EPA financial assistance agreements. This policy applies to all subagreements for equipment, supplies, construction, and services under all EPA grants, cooperative agreements, and IAGs.
- The EPA Office of Small Business Programs (OSBP) is responsible for establishing policy and providing procedural guidance for the utilization of small, minority and women-owned businesses under the Agency's financial assistance programs through its **Disadvantaged Business Enterprise (DBE) Program, formally the Minority Business Enterprise and Women-owned Business Enterprise Program (MBE/WBE)**.
- The DBE Program is an outreach, education, and goaling program designed to increase the participation of DBEs in procurements funded by EPA assistance agreements. The EPA DBE Program encompasses many of the components of the former MBE/WBE Program and includes many new features.

Why Does the Program Exist?

- The program was mandated by congress in response to the large number of procurement opportunities available through assistance agreements vs. Contracts. At EPA, assistance agreement dollars are approximately four times as much as contract dollars. The statutory authority for the program is as follows:
 - **Public Law 101-549, Nov 15, 1990 (clean air act):**
To the extent practicable, not less than 10% made available to DBEs.
 - **Public Law 102-389, Oct 6, 1992 (clean water act):**
To the fullest extent possible, at least 8% made available to socially and economically disadvantaged concerns, including HBCUs and women.

How We Achieve the Purpose of the Program?

Recipients of EPA financial assistance agreements are **required to seek**, and **encouraged to utilize** small, minority, and women-owned businesses for their procurement needs under the financial assistance agreement. This is done through the inclusion of terms and conditions in the financial assistance agreement. The key functional components of the DBE Program are as follows:

- **Fair Share Objectives**
- **Six Good Faith Efforts and Contract Administration Requirements**
- **MBE/WBE Reporting**
- **MBE/WBE Certification**

How does the new DBE Program compare with the old MBE/WBE Program in each functional component?

Overall

Old MBE/WBE Program

New DBE Program

Known as the Minority-Owned Business Enterprise and Women-Owned Business Enterprise (MBE/WBE) Program.	Now known as the Disadvantaged Business Enterprise (DBE) Program. MBEs and WBEs are a part of the larger universe of DBEs.
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Fair Share Objectives

Old MBE/WBE Program

New DBE Program

<p>Recipients must negotiate fair share objectives with the Agency.</p>	<p>Recipients must negotiate fair share objectives with the Agency. Proposed fair share objectives and supporting documentation must be submitted within 120 days after the acceptance of the assistance award.</p>
<p>For Superfund grants, fair share objectives must be negotiated before funds may be expended for procurement under the financial assistance agreement.</p>	<p>For all grants, fair share objectives must be negotiated before funds may be expended for procurement under the financial assistance agreement.</p>
<p>Fair share objectives must be based on an availability analysis, disparity study, or other supporting data and documentation.</p>	<p>No Change</p>
<p>Fair share objectives will remain in effect for 3 fiscal years, unless there are significant changes to the data supporting the fair share objectives.</p>	<p>No Change</p>
<p>Recipients may adopt the fair share objective of another recipient.</p>	<p>No Change. Recipients will affirm the acceptance of the other recipient's fair share objective in the grant terms and conditions.</p>
<p>No exemptions to the fair share objectives requirement.</p>	<p>The following are exemptions from the fair share objective requirements:</p> <ul style="list-style-type: none"> • Grant and loan recipients receiving a total of \$250K or less in EPA financial assistance in a given fiscal year. • Tribal recipients of Performance Partnership Eligible grants under 40 CFR Part 35, Subpart B. <ul style="list-style-type: none"> – There is a 3-year phase in period for the requirement to negotiate fair share goals for Tribal and Insular Area recipients. • Recipients of Technical Assistance Grants.

The Six Good Faith Efforts and Contract Administration Requirements

Old MBE/WBE Program	New DBE Program
Following the “Six Affirmative Steps” under 40 CFR Part 31, and the Six Positive Efforts under 40 CFR Part 30 were required by all grantees.	The “Six Good Faith Efforts” combine the “Six Affirmative Steps” and the “Six Positive Efforts” and are still required by all grantees. The substance of the efforts has not changed.
No protections for DBE Subcontractors	Several mechanisms are in place to protect DBE Subcontractors: <ul style="list-style-type: none"> • 30 day payment provision, notifications of DBE terminations, and continuing the Six Affirmative Steps after termination of a DBE. • Completion of 3 new forms to prevent “bait and switch” tactics. None of these new forms are completed, or submitted by the grant recipient. These forms are filled out by the recipient’s prime contractors and subcontractors.
No mechanism for recipients to develop and maintain their own list of DBEs	Recipients are now required to create and maintain a bidders list. There is a \$250K exemption from this requirement.

MBE/WBE Reporting

Old MBE/WBE Program

New DBE Program

<p>All recipients, including Tribes and trust territories, must report MBE/WBE accomplishments on EPA Form 5700-52A.</p>	<p>No Change</p>
<p>The following recipients report on an annual basis:</p> <ul style="list-style-type: none"> • Recipients of Continuing Environmental Program Grants under 40 CFR Part 35, Subpart A; • Recipients under 40 CFR Part 35, Subpart B; • General Assistance Program (GAP) grants for tribal governments and intertribal consortia; and • Institutions of higher education, hospitals and other non-profit organizations receiving financial assistance agreements under 40 CFR Part 30. 	<p>No Change</p>
<p>The following recipients report on a quarterly basis:</p> <ul style="list-style-type: none"> • Recipients of financial assistance agreements that capitalize revolving loan funds; and • All other recipients not specified as “annual reporters”. 	<p>Recipients, who reported quarterly under the old program, now report on a semi-annual basis.</p>
<p>Self-certified MBEs and WBEs can be counted toward a recipient’s accomplishments.</p>	<p>MBEs and WBEs must be certified in order to be counted toward a recipient’s accomplishments.</p>

MBE/WBE Certification

Old MBE/WBE Program

New DBE Program

<p>MBEs and WBEs self-certify their status.</p>	<p>MBEs and WBEs must be certified by EPA, SBA, DOT, or by state, local, Tribal, or private entities whose certification criteria match EPA's.</p> <p>*States are not required to develop or implement a new certification program.</p>
<p>Self-certified MBEs and WBEs can be counted toward a recipient's MBE/WBE accomplishments when reporting on EPA Form 5700-52A</p>	<p>MBEs and WBEs must be certified in order to be counted toward a recipient's MBE/WBE accomplishments.</p>

Who do I contact for more information?

The EPA OSBP Headquarters Direct Team:

Lamont Norwood, Team Leader:	202-566-2933 norwood.lamont@epa.gov
Denean Jones, Information Management Analyst	202-566-1578 jones.denean@epa.gov
Thelma Harvey, SEE Enrollee	202-566-0334 harvey.thelma@epa.gov
David Allen, Program Analyst	202-566-0913 allen.david@epa.gov

Regional MBE/WBE Coordinators:

Region 1 – Larry Wells	617-918-1836 wells.larry@epa.gov
Region 2 - Michele Junker*	212-637-3418 junker.michele@epa.gov
Peggy DeLuca**	212-637-3369 deluca.peggy@epa.gov
Region 3 – Cynthia Burrows (interim)	215-814-5326 burrows.cynthia@epa.gov
Region 4 – Charles Hayes	404-562-8377 hayes.charles@epa.gov
Region 5 - Adrienne Callahan	312-353-5556 callahan.adrienne@epa.gov
Region 6 - Debora Bradford	214-665-7406 bradford.debora@epa.gov
Region 7 - Chester Stovall	913-551-7549 stovall.chester@epa.gov
Region 8 - Marshell Pullman	303-312-6499 pullman.marshell@epa.gov
Region 9 – Joe Ochab	415-972-3761 ochab.joe@epa.gov
Region 10 - Greg Luchey	206-553-2967 luchey.greg@epa.gov
EPA Headquarters – Veronica Parker	202-564-5347 parker.veronica@epa.gov
National Coordinator – Teree Henderson	202-566-2222 henderson.teree@epa.gov

* Grants

** Direct Procurement

DBE Reporting Check List

Standard Form 5700-52A has been downloaded from
http://www.epa.gov/ogd/forms/adobe/5700_52a_new_sec.pdf and printed.

We have read the three-page instructions for SF 5700-52A.

The report has been completed using SF 5700-52A.

The appropriate federal fiscal year has been entered in Block 1A.

All of the recipient's contact information has been included in Blocks 3A-3C, including Nation's name and address, reporting contact name, email address, phone, and FAX numbers.

The **correct** Financial Assistance Agreement identification (ID) number has been entered in Block 4A.

All sources have been checked before procurement data for the reporting period was entered on the form (i.e., the grantee's buying offices and project managers, as well as any and all sub-recipients, loan recipients, and prime contractors under the EPA-funded project).

The dollar amounts reported on the form reflect procurements made during the reporting period under **both** EPA's and the grantee's matching grant dollar share. (The sole exception is the State Revolving Fund Program, where the DBE program requirements apply up to the amount of EPA's share/capitalization grant.)

The data entered on the report meets EPA's definition of procurement (i.e., the acquisition through contract, order, purchase, lease, or barter of supplies, equipment, construction, or services needed to accomplish federal assistance programs).

Before checking Block 5B, the recipient has determined that **no** procurement was made to **non-DBEs** during the reporting period.

Data has been entered in Block 5C **only** if Block 5B has **not** been checked.

Unless Block 5B has been checked, a yes or no response has been entered in the first line of Block 5C based on EPA's definitions of "subaward" and "contracts".

Unless Block 5B has been checked, a dollar amount has been entered for "Total Procurement Amount" in Block 5C (even if there was **no** DBE procurement).

The recipient understands that any dollar amount entered for "Total Procurement Amount" in Block 5C includes any procurement dollars awarded to non DBEs as well as DBEs. (The figure entered as "Total Procurement Amount " is likely to be higher than the "Total" for DBEs entered at the bottom of Block 5C.)

If procurements during the reporting period were made to **non-DBEs only**, the recipient has explained in Block 6 what steps it is taking to identify and utilize DBEs in the future.

Part 2 of the form (on the reverse side of Part 1) has been completed **only if** procurement dollars were awarded to DBEs during the reporting period.

_____ The DBE dollar amounts entered in Block 5C of Part 1 align with the amounts entered in Part 2 of the form.

_____ DBE expenditures have not been double-entered on Part 1 of the form. The dollar amount counted towards DBEs for an individual procurement must not exceed the amount entered for the “Value of Procurement” listed in Column 3 of Part 2.

_____ **All** appropriate Blocks in both Parts 1 and 2 of the reporting form have been completed.

_____ The completed report has been signed and dated by an official or other authorized employee of the EPA recipient (**not** by a contractor, subrecipient, or loan recipient).

_____ The completed, signed, **original** DBE report has been mailed to the EPA Grants Management Office where the award originated. It is addressed to “Attention: DBE Coordinator”.

If there are any questions, contact your Regional DBE Coordinator who is listed under Regional Contacts at http://www.epa.gov/osbp/dbe_cord.htm.

DBE Reporting Fact Sheet

MBE/WBE Reporting *“Measuring the Effectiveness of the Program”*

Program Comparison

Old MBE/WBE Program	New DBE Program
Recipients must report MBE/WBE accomplishments on EPA Form 5700-52A.	No Change
<p>The following recipients report on an annual basis:</p> <ul style="list-style-type: none"> • Recipients of Continuing Environmental Program Grants under 40 CFR Part 35, Subpart A; • Recipients under 40 CFR Part 35, Subpart B; • General Assistance Program (GAP) grants for tribal governments and intertribal consortia; and • Institutions of higher education, hospitals and other non-profit organizations receiving financial assistance agreements under 40 CFR Part 30. 	No Change
<p>The following recipients report on a quarterly basis:</p> <ul style="list-style-type: none"> • Recipients of financial assistance agreements that capitalize revolving loan funds; and • All other recipients not specified as “annual reporters”. 	Recipients who reported quarterly under the old program, now report on a semi-annual basis.
Self-certified MBEs and WBEs can be counted toward a recipient’s accomplishments.	MBEs and WBEs must be certified in order to be counted toward a recipient’s accomplishments.

What is the Purpose of MBE/WBE Reporting?

The purpose of MBE/WBE reporting is to monitor the grant recipient’s

- Accomplishments in Utilizing MBEs and WBEs;
- Adherence to the Good Faith Efforts (i.e., outreach to MBEs, WBEs, and other DBEs); and
- Progress in Achieving MBE and WBE Goals.

What are the Grant Recipient's Responsibilities for MBE/WBE Reporting?

- Complete & submit EPA Form 5700-52A for each reporting period at a frequency specified in the grant agreement, to the appropriate EPA office and personnel as identified in their financial assistance agreement.
- Submit "negative reports" (e.g., reports where there were no MBEs or WBEs utilized, or no procurement expenditures of any kind were made during the reporting period).
- Collect and retain/document data on MBE, WBE, and Total Procurement expenditures made for the grant project up to the "Total Assistance Agreement Amount" (i.e., the grantee's total budget).
- Report procurement expenditures from all sources [i.e., the EPA grant recipient, sub-recipients, loan recipients (and the prime contractors of all three entities)].

What are the reporting frequencies and due dates?

Annual Reporters:

- Recipients of Continuing Environmental Program Grants under 40 CFR Part 35, Subpart A;
- Recipients under 40 CFR Part 35, Subpart B;
- General Assistance Program (GAP) grants for tribal governments and intertribal consortia; and
- Institutions of higher education, hospitals and other non-profit organizations receiving financial assistance agreements under 40 CFR Part 30.
- **Annual Reporters** must submit their completed EPA Form 5700-52A to EPA within 30 days of the end of the annual reporting period (**October 30th**).

Semi-Annual Reporters:

- Recipients of financial assistance agreements that capitalize revolving loan funds; and
- All other recipients not specified as "annual reporters".
- **Semiannual Reporters** must submit their completed EPA Form 5700-52A to EPA within 30 days of the end of the semiannual reporting period (**April 30th and October 30th**).

What must be considered in counting MBE/WBE participation?

- MBEs & WBEs must be officially certified as such, in order to claim/report them as MBE/WBE on EPA Form 5700-52A. (See Certification Fact Sheet)
- MBEs and WBEs may not act as Brokers or Passive conduits of funds.
- A MBE or WBE Trucker must serve a "commercially-useful" function.
- The amount counted towards a MBE or WBE Prime Contractor may not exceed 100% of contract value.
- To be claimed 100% MBE or WBE, a Prime Contractor who is MBE or WBE may not sub-award more than 49% of its contract value to non-MBE/WBE.

MBE/WBE Reporting Under Revolving Loan Programs

- EPA financial assistance recipients that capitalize Revolving Loan Programs need only report “Total Procurement Dollars” in the amount of loans equal or up to the capitalization grant amount.
- Entities receiving identified loans must submit their MBE/WBE participation reports/data to the EPA grant recipient (rather than to EPA).
- EPA financial assistance recipients that capitalize Revolving Loan Programs must ensure that they receive procurement reports from revolving loan recipients in time to meet EPA’s MBE/WBE Reporting deadlines.

DBE Resource List

State	DBE Certification Database Link (DOT)	MBE/WBE Certification Info Link (where available)	Additional DBE/MBE/WBE Database Sites or Information
Alabama	http://cpmsweb2.dot.state.al.us/alucp/default.aspx#home	No Specific State Link at this time	
Alaska	http://dot.alaska.gov/cvlrts/dbelinks-pop.shtml	No Specific State Link at this time	
Arizona	http://www.azdot.gov/azdbe/DBE_Search.aspx	No Specific State Link at this time	
Arkansas	http://www.arkansashighways.com/ProgCon/letting/dbedirectory.pdf	No Specific State Link at this time	
California	http://www.caltrans.ca.gov/hq/bep/find_certified.htm	No Specific State Link at this time	
Colorado	http://www.coloradodot.info/business/equal-opportunity/dbe	No Specific State Link at this time	
Connecticut	http://www.ct.gov/dot/cwp/view.asp?a=2288&q=307380	MBE certification/non-profit certification	
Delaware	http://deldot.gov/public.ejs?command=PublicDBEVendorSearch	No Specific State Link at this time	
Florida	https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp	No Specific State Link at this time	
Georgia	http://www.dot.ga.gov/doingbusiness/dbePrograms/Pages/default.aspx	No Specific State Link at this time	
Hawaii	http://hawaii.gov/dot/administration/ocr/dbe/dbe-directory-name.pdf	No Specific State Link at this time	
Idaho	http://www.itd.idaho.gov/civil/dbeforems.htm#directory	No Specific State Link at this time	
Illinois	http://www.dot.state.il.us/ucp/ucp.html		

State	DBE Certification Database Link (DOT)	MBE/WBE Certification Info Link (where available)	Additional DBE/MBE/WBE Database Sites or Information
Indiana	http://www.in.gov/indot/2392.htm	No Specific State Link at this time	
Iowa	http://www.dot.state.ia.us/contracts/contracts_eoaa.htm	No Specific State Link at this time	
Kansas	http://www.ksdot.org/divadmin/civilrights/	No Specific State Link at this time	
Kentucky	http://transportation.ky.gov/construction-procurement/pages/disadvantaged-business-enterprises.aspx	No Specific State Link at this time	
Louisiana	http://www8.dotd.louisiana.gov/UCP/Home.aspx	No Specific State Link at this time	
Maine	http://www.maine.gov/mdot/civilrights/	http://www.maine.gov/mdot/disadvantaged-business-enterprises/pdf/directory.pdf	
Maryland	http://www.mdot.maryland.gov/Office%20of%20Minority%20Business%20Enterprise/Overview_Page/Overview	No Specific State Link at this time	
Massachusetts	http://www.somwba.state.ma.us/BusinessDirectory/BusinessDirectory.aspx	No Specific State Link at this time	
Michigan	http://www.michigan.gov/mdot/0,1607,7-151-9625_21539_23108---,00.html	http://www.ci.kalamazoo.mi.us/reports/purchasingpdf/mbewbe/mbewbe.html	
Minnesota	http://www.dot.state.mn.us/civilrights/dbe.html	No Specific State Link at this time	
Mississippi	http://sp.mdot.ms.gov/Civil%20Rights/Pages/DBE.aspx	No Specific State Link at this time	
Missouri	http://www.modot.org/business/contractor_resources/External_Civil_Rights/DBE_program.htm	No Specific State Link at this time	

State	DBE Certification Database Link (DOT)	MBE/WBE Certification Info Link (where available)	Additional DBE/MBE/WBE Database Sites or Information
Montana	http://www.mdt.mt.gov/business/contracting/civil/dbe.shtml	No Specific State Link at this time	
Nebraska	http://www.transportation.nebraska.gov/letting/dbeinfo.htm	No Specific State Link at this time	
Nevada	http://www.nevadadot.com/NevadaDBE/DBE.aspx	No Specific State Link at this time	
New Hampshire	http://www.nh.gov/dot/org/administration/ofc/dbe.htm	No Specific State Link at this time	
New Jersey	http://www.state.nj.us/transportation/business/civilrights/dbe.shtm	No Specific State Link at this time	
New Mexico	https://nmdot.dbesystem.com/FrontEnd/VendorSearchPublic.asp?TN=nmdot&XID=1842	No Specific State Link at this time	
New York	https://www.dot.ny.gov/main/business-center/audit/dbe-certification	No Specific State Link at this time	
North Carolina	https://connect.ncdot.gov/business/SmallBusiness/Pages/default.aspx	No Specific State Link at this time	
North Dakota	http://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm	No Specific State Link at this time	
Ohio	https://www.ohioucp.org/nonsupported_browser.action	No Specific State Link at this time	
Oregon	http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/sbe/dbe/dbe_program.aspx	No Specific State Link at this time	
Pennsylvania	http://www.dot.state.pa.us/Internet/Bureau/pdBEO.nsf/BEOHomepage?OpenFrameset	No Specific State Link at this time	
Rhode Island	http://www.mbe.ri.gov/	No Specific State Link at this time	

State	DBE Certification Database Link (DOT)	MBE/WBE Certification Info Link (where available)	Additional DBE/MBE/WBE Database Sites or Information
South Carolina	http://www.scdot.org/doing/businessDevelopment_SCUnified.aspx	No Specific State Link at this time	
South Dakota	http://www.sddot.com/business/contractors/dbe/Default.aspx	http://www.sddot.com/operations/compliance/Docs/dbedir/DBEDir.html	
Tennessee	http://www.tdot.state.tn.us/civil-rights/smallbusiness/	No Specific State Link at this time	
Texas	http://www.dot.state.tx.us/business/business_outreach/dbe.htm	No Specific State Link at this time	
Utah	http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:2250 ,	No Specific State Link at this time	
Vermont	http://www.aot.state.vt.us/CivilRights/Dbe.htm	No Specific State Link at this time	
Virginia	http://www.dmbv.virginia.gov/	No Specific State Link at this time	
Washington	http://www.omwbe.wa.gov/	No Specific State Link at this time	
West Virginia	http://www.transportation.wv.gov/eo/DBE/Pages/default.aspx	No Specific State Link at this time	
Wisconsin	http://www.dot.wisconsin.gov/business/engrserve/dbe-main.htm	No Specific State Link at this time	
Wyoming	http://www.dot.state.wy.us/home/business_with_wydot/contractors/Disadvantaged_Business_Enterprise.html	No Specific State Link at this time	

U.S. Territories/Districts	DBE Directories Links/Resource Assistance	Additional Resource Links or Information
American Samoa		Government of Samoa Website http://americansamoa.gov/
Washington D.C.	http://www.wmata.com/business/disadvantaged_business_enterprise/	http://www.mwaa.com/4590.htm
Guam	http://www.guamchamber.com.gu/?pg=contact	
Northern Marianas	commercedept@pticom.com ,	Department of Commerce Email
Puerto Rico	http://www.dtop.gov.pr/carretera/det_content.asp?cn_id=240	http://www.dtop.gov.pr/pdf/DBE_Directory_August_12-2011.pdf
U.S. Virgin Islands	Sharon Challenger, Civil Rights Program Manager, V.I. DOT Phone: (340) 773-1290 ext.2292	directory available - may not be electronic
DOT DBE Program Links State by State	http://www.osdbu.dot.gov/DBEProgram/StateDOTDBESites.cfm	Link to all DOT sites state by state with additional links to Universities and Non-profits
MBE/WBE Directory:	http://www.sba8a.com/adtop.htm	National directory that is free to its members.

DBE Rules and Regulations

Details are located in Title 40 of the Code of Federal Regulations, Part 33.

40 C.F.R, PART 33

Subpart A—General Provisions

Section

33.101 What are the objectives of this part?

33.102 When do the requirements of this part apply?

33.103 What do the terms in this part mean?

33.104 May a recipient apply for a waiver from the requirements of this part?

33.105 What are the compliance and enforcement provisions of this part?

33.106 What assurances must EPA financial assistance recipients obtain from their contractors?

33.107 What are the rules governing availability of records, cooperation, and intimidation and retaliation?

Subpart B—Certification

33.201 What does this subpart require?

33.202 How does an entity qualify as an MBE or WBE under EPA's 8% statute?

33.203 How does an entity qualify as an MBE or WBE under EPA's 10% statute?

33.204 Where does an entity become certified under EPA's 8% and 10% statutes?

33.205 How does an entity become certified by EPA?

33.206 Is there a list of certified MBEs and WBEs?

33.207 Can an entity reapply to EPA for MBE or WBE certification?

33.208 How long does an MBE or WBE certification from EPA last?

33.209 Can EPA re-evaluate the MBE or WBE status of an entity after EPA certifies it to be an MBE or WBE?

33.210 Does an entity certified as an MBE or WBE by EPA need to keep EPA informed of any changes which may affect the entity's certification?

33.211 What is the process for appealing or challenging an EPA MBE or WBE certification determination?

33.212 What conduct is prohibited by this subpart?

Subpart C—Good Faith Efforts

33.301 What does this subpart require?

33.302 Are there any additional contract administration requirements?

33.303 Are there special rules for loans under EPA financial assistance agreements?

33.304 Must a Native American (either as an individual, organization, Tribe or Tribal Government) recipient or prime contractor follow the six good faith efforts?

**** Note: The above section contains the language regarding the Indian Self-Determination Act, and the language about tribes being able to utilize their own Tribal preference programs.**

Subpart D—Fair Share Objectives

33.401 What does this subpart require?

33.402 Are there special rules for loans under EPA financial assistance agreements?

33.403 What is a fair share objective?

- 33.404 When must a recipient negotiate fair share objectives with EPA?
- 33.405 How does a recipient determine its fair share objectives?
- 33.406 May a recipient designate a lead agency for fair share objective negotiation purposes?
- 33.407 How long do MBE and WBE fair share objectives remain in effect?
- 33.408 May a recipient use race and/or gender conscious measures as part of this program?
- 33.409 May recipient use quotas as part of this program?
- 33.410 Can a recipient be penalized for failing to meet its fair share objectives?
- 33.411 Who may be exempted from this subpart?
- 33.412 Must an Insular Area or Indian Tribal Government recipient negotiate fair share objectives?

Subpart E—Recordkeeping and Reporting

- 33.501 What are the recordkeeping requirements of this part?
- 33.502 What are the reporting requirements of this part?
- 33.503 How does a recipient calculate MBE and WBE participation for reporting purposes?

Appendix A to Part 33—Terms and Conditions

DBE Utilization Form

Also known as EPA Form 5700-52A, MBE/WBE Utilization Under Federal Grants and Cooperative Agreements

EPA Form 5700-52A MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Interagency Agreements

OMB CONTROL NO. 2090-0030
 APPROVED: 05/01/2008
 APPROVAL EXPIRES: 12/22/2013

U.S. ENVIRONMENTAL PROTECTION AGENCY MBE/WBE UTILIZATION UNDER FEDERAL GRANTS AND COOPERATIVE AGREEMENTS

PART I. (Reports are required even if no procurements are made during the reporting period.)

1A. FEDERAL FISCAL YEAR (Oct. 1-Sep 30) 20_____	1B. REPORTING PERIOD (Check ALL appropriate boxes) <input type="checkbox"/> 1 st (Oct-Dec) <input type="checkbox"/> 2 nd (Jan-Mar) <input type="checkbox"/> 3 rd (Apr-Jun) <input type="checkbox"/> 4 th (Jul-Sep) <input type="checkbox"/> Semi-Annual (Oct-Mar) <input type="checkbox"/> Semi-Annual (Apr-Sep) <input type="checkbox"/> Annual <input type="checkbox"/> Check if this is the last report for the project (Project completed).																				
1C. REVISION OF A PRIOR REPORT? Y or N Year: _____ Quarter: _____	BRIEFLY DESCRIBE THE REVISIONS YOU ARE MAKING:																				
2A. EPA FINANCIAL ASSISTANCE OFFICE ADDRESS (ATTN: DBE Coordinator)	3A. RECIPIENT NAME AND ADDRESS																				
2B. EPA DBE COORDINATOR Name: E-mail:	2C. PHONE: Fax:	3B. RECIPIENT REPORTING CONTACT: Name: E-mail:	3C. PHONE: Fax:																		
4A. FINANCIAL ASSISTANCE AGREEMENT ID NUMBER (SRF State Recipients, refer to Instructions for Completion of blocks 4A, 5A and 5C.)	4B. FEDERAL FINANCIAL ASSISTANCE PROGRAM TITLE or CFDA NUMBER:																				
5A. TOTAL ASSISTANCE AGREEMENT AMOUNT (SRF State Recipients, refer to Instructions for Completion of blocks 4A, 5A and 5C.) EPA Share: \$ _____ Recipient Share: \$ _____	5B. If NO procurement and NO accomplishments were made this reporting period (by the recipients, sub-recipients, loan recipients, and prime contractors), CHECK and SKIP to Block No. 7. (Procurements are all expenditures through contract, order, purchase, lease or barter of supplies, equipment, construction, or services needed to complete Federal assistance programs. Accomplishments, in this context, are procurements made with MBEs and/or WBEs.) <input type="checkbox"/>																				
5C. Total Procurements This Reporting Period (Only include amount not reported in any prior reporting period) Total Procurement Amount \$ _____ (Include total dollar values awarded by recipient, sub-recipients and SRF loan recipients, including MBE/WBE expenditures.)																					
5D. Were sub-awards issued under this assistance agreement? Yes <input type="checkbox"/> No <input type="checkbox"/> Were contracts issued under this assistance agreement? Yes <input type="checkbox"/> No <input type="checkbox"/>																					
5E. MBE/WBE Accomplishments This Reporting Period Actual MBE/WBE Procurement Accomplished: (Include total dollar values awarded by recipient, sub-recipients, SRF loan recipients and Prime Contractors.) <table style="width: 100%; margin-top: 10px;"> <thead> <tr> <th style="width: 15%;"></th> <th style="width: 20%; text-align: center;"><u>Construction</u></th> <th style="width: 20%; text-align: center;"><u>Equipment</u></th> <th style="width: 20%; text-align: center;"><u>Services</u></th> <th style="width: 20%; text-align: center;"><u>Supplies</u></th> <th style="width: 5%; text-align: center;"><u>Total</u></th> </tr> </thead> <tbody> <tr> <td>\$MBE:</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td style="text-align: right;">0.00</td> </tr> <tr> <td>\$WBE:</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td style="text-align: right;">0.00</td> </tr> </tbody> </table>					<u>Construction</u>	<u>Equipment</u>	<u>Services</u>	<u>Supplies</u>	<u>Total</u>	\$MBE:	_____	_____	_____	_____	0.00	\$WBE:	_____	_____	_____	_____	0.00
	<u>Construction</u>	<u>Equipment</u>	<u>Services</u>	<u>Supplies</u>	<u>Total</u>																
\$MBE:	_____	_____	_____	_____	0.00																
\$WBE:	_____	_____	_____	_____	0.00																
6. COMMENTS: (If no MBE/WBE procurements were accomplished during the reporting period, please explain what steps you are taking to achieve the MBE/WBE Program requirements specified in the terms and conditions of the Assistance Agreement.)																					
7. NAME OF RECIPIENT'S AUTHORIZED REPRESENTATIVE	TITLE																				
8. SIGNATURE OF RECIPIENT'S AUTHORIZED REPRESENTATIVE	DATE																				

EPA FORM 5700-52A available electronically at http://www.epa.gov/osbp/pdfs/5700_52a.pdf

PART II.

MBE/WBE PROCUREMENTS MADE DURING REPORTING PERIOD
EPA Financial Assistance Agreement Number: _____

1. Procurement Made By			2. Business Enterprise		3. \$ Value of Procurement	4. Date of Procurement MM/DD/YY	5. Type of Product or Services (Enter Code)	6. Name/Address/Phone Number of MBE/WBE Contractor or Vendor
Recipient	Sub-Recipient and/or SRF Loan Recipient	Prime	Minority	Women				

Type of product or service codes:

- 1 = Construction 2 = Supplies 3 = Services 4 = Equipment

Note: Refer to Terms and conditions of your Assistance Agreement to determine the frequency of reporting. Recipients are required to submit MBE/WBE reports to EPA beginning with the Federal fiscal year quarter the recipients receive the award, continuing until the project is completed.

EPA FORM 5700-52A - (Approval Expires 12/22/13)

Instructions:

A. General Instructions:

MBE/WBE utilization is based on 40 CFR Part 33. EPA Form 5700-52A must be completed by recipients of Federal grants, cooperative agreements, or other Federal financial assistance which involve procurement of supplies, equipment, construction or services to accomplish Federal assistance programs.

Recipients are required to report 30 days after the end of each federal fiscal quarter, semiannually, or annually, per the terms and conditions of the financial assistance agreement.

	Quarterly Reporting Due Date	Semiannual Reporting Due Date	Annual Reporting Due Date
Agreements awarded prior to May 27, 2008	January 30, April 30, July 30, October 30	N/A	October 30
Agreements awarded on or after May 27, 2008	N/A	April 30, October 30	October 30

MBE/WBE program requirements, including reporting, are material terms and conditions of the financial assistance agreement.

B. Definitions:

Procurement is the acquisition through contract, order, purchase, lease or barter of supplies, equipment, construction or services needed to accomplish Federal assistance programs.

A **contract** is a written agreement between an EPA recipient and another party (also considered "prime contracts") and any lower tier agreement (also considered "subcontracts") for equipment, services, supplies, or construction necessary to complete the project. This definition excludes written agreements with another public agency. This definition includes personal and professional services, agreements with consultants, and purchase orders.

A **minority business enterprise (MBE)** is a business concern that is (1) at least 51 percent owned by one or more minority individuals, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority individuals; and (2) whose daily business operations are managed and directed by one or more of the minority owners. In order to qualify and participate as an MBE prime or subcontractor for EPA

recipients under EPA's DBE Program, an entity must be properly certified as required by 40 CFR Part 33, Subpart B.

U.S. citizenship is required. Recipients shall presume that minority individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, or other groups whose members are found to be disadvantaged by the Small Business Act or by the Secretary of Commerce under section 5 of Executive order 11625. The reporting contact at EPA can provide additional information.

A **woman business enterprise (WBE)** is a business concern that is, (1) at least 51 percent owned by one or more women, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women and (2) whose daily business operations are managed and directed by one or more of the women owners. In order to qualify and participate as a WBE prime or subcontractor for EPA recipients under EPA's DBE Program, an entity must be properly certified as required by 40 CFR Part 33, Subpart B.

Business firms which are 51 percent owned by minorities or women, but are in fact managed and operated by non-minority individuals do not qualify for meeting MBE/WBE procurement goals. U.S. Citizenship is required.

Good Faith Efforts

A recipient is required to make the following good faith efforts whenever procuring construction, equipment, services, and supplies under an EPA financial assistance agreement. These good faith efforts for utilizing MBEs and WBEs must be documented. Such documentation is subject to EPA review upon request:

1. **Include of MBEs/WBEs on solicitation lists.**
2. Assure that MBEs/WBEs are solicited once they are identified.
3. Divide total requirements into smaller tasks to permit maximum MBE/WBE participation, where feasible.
4. Establish delivery schedules which will encourage MBE/WBE participation, where feasible.
5. Encourage use of the services of the U.S. Department of Commerce's Minority Business Development Agency (MBDA) and the U.S. Small Business Administration to identify MBEs/WBEs.

6. Require that each party to a subgrant, subagreement, or contract award take the good faith efforts outlined here.

C. Instructions for Part I:

- 1a. Specify Federal fiscal year this report covers. The Federal fiscal year runs from October 1st through September 30th (e.g. **November 29, 2010 falls within Federal fiscal year 2011**)

- 1b. Check applicable reporting box, quarterly, semiannually, or annually. Also indicate if this is the last report for the project.

- 1c. Indicate if this is a revision to a previous year, half-year, or quarter, and provide a brief description of the revision you are making.

- 2a-c. Please refer to your financial assistance agreement for the mailing address of the EPA financial assistance office for your agreement.

The "EPA DBE Reporting Contact" is the DBE Coordinator for the EPA Region from which your financial assistance agreement was originated. For a list of DBE Coordinators please refer to the EPA OSBP website at www.epa.gov/osbp. Click on "Regional Contacts" for the name of your coordinator.

- 3a-c. Identify the agency, state authority, university or other organization which is the recipient of the Federal financial assistance and the person to contact concerning this report.

- 4a. Provide the Assistance Agreement number assigned by EPA. A separate report must be submitted for each Assistance Agreement.

***For SRF recipients:** In box 4a list numbers for ALL OPEN Assistance Agreements being reported on this form. Please note that although the New DBE Rule (which took effect May 27, 2008) revised the reporting frequency requirements from quarterly to semiannually, that change only applies to agreements awarded AFTER the New DBE Rule took effect. Therefore, SRF recipients may either continue to report activity for all Agreements on one form on a quarterly basis until the last award that was made prior to the New DBE Rule has been closed out; OR, the recipient may split the submission of SRF reports into quarterly reports for Agreements awarded prior the New DBE Rule, and semiannually for the awards made after the New DBE Rule.

- 4b. Refer back to Assistance Agreement document for this information.

- 5a. Provide the total amount of the Assistance Agreement which includes Federal funds plus recipient matching funds and funds from other sources.

***For SRF recipients only:** SRF recipients will not enter an amount in 5a. Please leave 5a blank.

- 5b. Self-explanatory.

- 5c. Provide the total dollar amount of **ALL** procurements awarded this reporting period by the recipient, sub-recipients, and SRF loan recipients, **including** MBE/WBE expenditures. For example: Actual dollars for procurement from the procuring office; actual contracts let from the contracts office; actual goods, services, supplies, etc., from other sources including the central purchasing/ procurement centers).

***NOTE:** To prevent double counting on line 5C, if any amount on 5E is for a subcontract and the prime contract has already been included on Line 5C in a prior reporting period, then report the amount going to MBE or WBE subcontractor on line 5E, but exclude the amount from Line 5C. To include the amount on 5C again would result in double counting because the prime contract, which includes the subcontract, would have already been reported.

- 5d. State whether or not sub-awards and/or subcontracts have been issued under the assistance agreement by indicating "yes" or "no".

- 5e. Where requested, also provide the total dollar amount of all MBE/WBE procurement awarded during this reporting period by the recipient, sub-recipients, SRF loan recipients, and prime contractors in the categories of construction, equipment, services and supplies. These amounts include Federal funds plus recipient matching funds and funds from other sources.

***For SRF recipients only:** In 5c please enter the total procurement amount for the quarter, or semiannual period, under all of your SRF Assistance Agreements. The figure reported in this section is **not** directly tied to an individual Assistance Agreement identification number. **(SRF state recipients report state procurements in this section)**

6. If there were no MBE/WBE accomplishments this reporting period, please briefly explain what

- specific steps you are taking to achieve the MBE/WBE requirements specified in the terms and conditions of the Assistance Agreement.
7. Name and title of official administrator or designated reporting official.
 8. Signature, month, day, and year report submitted.

D. Instructions for Part II:

For each MBE/WBE procurement made under this assistance agreement during the reporting period, provide the following information:

1. Check whether this procurement was made by the recipient, sub-recipient/SRF loan recipient, or the prime contractor.
2. Check either the MBE or WBE column. If a firm is both an MBE and WBE, the recipient may choose to count the entire procurement towards EITHER its MBE or WBE accomplishments. The recipient may also divide the total amount of the procurement (using any ratio it so chooses) and count those divided amounts toward its MBE and WBE accomplishments. If the recipient chooses to divide the procurement amount and count portions toward its MBE and WBE accomplishments, please state the appropriate amounts under the MBE and WBE columns on the form. **The combined MBE and WBE amounts for that MBE/WBE contractor must not exceed the "Value of the Procurement" reported in column #3**
3. Dollar value of procurement.
4. Date of procurement, shown as month, day, year. Date of procurement is defined as the date the contract or procurement was awarded, **not** the date the contractor received payment under the awarded contract or procurement, unless payment occurred on the date of award. **(Where direct purchasing is the procurement method, the date of procurement is the date the purchase was made)**
5. Using codes at the bottom of the form, identify type of product or service acquired through this procurement (e.g., enter 1 if construction, 2 if supplies, etc).
6. Name, address, and telephone number of MBE/WBE firm.

**This data is requested to comply with provisions mandated by: statute or regulations (40 CFR Part 30, 31,

and 33); OMB Circulars; or added by EPA to ensure sound and effective assistance management. Accurate, complete data are required to obtain funding, while no pledge of confidentiality is provided.

The public reporting and recording burden for this collection of information is estimated to average 1 hour per response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclosure or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Include the OMB Control number in any correspondence. Do not send the completed form to this address.

EPA Form 6100-2, 6100-3, and 6100-4

Special Notice

Re: Suspended Use of EPA Forms 6100-2, 6100-3, and 6100-4

On January 31, 2011 the following EPA Forms officially expired

- EPA Form 6100-2, DBE Subcontractor Participation Form;
- EPA Form 6100-3, DBE Subcontractor Performance Form;
- EPA Form 6100-4, DBE Subcontractor Utilization Form.

Because these forms have expired, their required use is suspended until they are renewed by the Office of Management and Budget (OMB), and issued a new expiration date.

As an EPA grant recipient, if you initiated procurements, requiring the these forms, prior to the January 31, 2011 expiration date, then the requirement to submit the forms is still valid for those procurements. Procurements initiated after January 31, 2011, expiration date cannot require the use of these forms.

The process to improve and renew the 6100-2, 3, and 4 forms is underway. During this process there will be notices posted in the Federal Register soliciting your comments and feedback on improving the forms and their instructions. We encourage you to openly give us your suggestions on making the forms better. If you have any questions, please contact your Regional Small Business Coordinator, or Teree Henderson, DBE Program National Coordinator, at 202-566-2222.

EPA Form 6100-2 DBE Subcontractor Participation Form

http://www.epa.gov/osbp/pdfs/dbe/subcontractor_participation_form%20-.pdf

OMB Control No: 2090-0030

Approved: 05/01/2008

Approval Expires: 01/31/2011



Environmental
Protection Agency

Disadvantaged Business Enterprise Program DBE Subcontractor Participation Form

NAME OF SUBCONTRACTOR	PROJECT NAME
ADDRESS	CONTRACT NO.
TELEPHONE NO.	EMAIL ADDRESS
PRIME CONTRACTOR NAME	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR	AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR

Subcontractor Signature _____	Title/Date _____
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Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-2 (DBE Subcontractor Participation Form)



Environmental
Protection Agency

OMB Control No: 2090-0030

Approved: 05/01/2008

Approval Expires: 01/31/2011

Disadvantaged Business Enterprise Program DBE Subcontractor Participation Form

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Participation Form to this address.

EPA FORM 6100-2 (DBE Subcontractor Participation Form)

EPA Form 6100-3 DBE Subcontractor Performance Form

http://www.epa.gov/osbp/pdfs/dbe/subcontractor_performance_form.pdf



Environmental
Protection Agency

OMB Control No: _____
Approved: _____
Approval Expires: _____

Disadvantaged Business Enterprise Program DBE Subcontractor Participation Form

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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EPA FORM 6100-2 (DBE Subcontractor Participation Form)

EPA Form 6100-4 DBE Subcontractor Utilization Form

http://www.epa.gov/osbp/pdfs/dbe/subcontractor_utilization_form.pdf



Environmental
Protection Agency

OMB Control No: _____
Approved: _____
Approval Expires: _____

Disadvantaged Business Enterprise Program DBE Subcontractor Participation Form

NAME OF SUBCONTRACTOR ¹	PROJECT NAME
ADDRESS	CONTRACT NO.
TELEPHONE NO.	E-MAIL ADDRESS
PRIME CONTRACTOR NAME	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR	AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR

Subcontractor Signature _____ Title/Date _____

¹Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-2 (DBE Subcontractor Participation Form)



Environmental
Protection Agency

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Disadvantaged Business Enterprise Program DBE Subcontractor Utilization Form

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Utilization Form to this address.

EPA FORM 6100-4 (DBE Subcontractor Utilization Form)

ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AND DESCRIPTION

(If you should need a copy of the following regulations, you may access a copy through the World Wide Web at <http://www.epa.gov/ogd/grants/regulations.htm> or call (202) 564-5315.)

- **40 CFR Parts 7 and 12 - NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY**

This rule implements statutes which prohibit discrimination on the grounds of race, color, national origin, sex, and handicap. No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin, or on the basis of sex in any program or activity receiving EPA assistance under the Federal Water Pollution Control Act, as amended, including the Environmental Financing Act of 1972.

- **40 CFR Part 29 - INTERGOVERNMENTAL REVIEW OF THE ENVIRONMENTAL PROTECTION AGENCY PROGRAMS AND ACTIVITIES**

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, and amended, on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968, as amended and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened federalism by relying on State processes and on State, area-wide, regional, and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of the Environmental Protection Agency (EPA) and are not intended to create any right or benefit enforceable at law by a party against EPA or its officers.

You must contact your State's Single Point of Contact to find out if the program was selected for coverage by the State process and, if the program was selected, to receive information about your State's review process requirements and procedures. If you do not know who your Single point of Contact is, please call (202) 564-5305.

- **40 CFR Part 30 - GENERAL REGULATION FOR ASSISTANCE PROGRAMS FOR ALL APPLICANTS CONSIDERED: INSTITUTIONS OF HIGHER LEARNING, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS.**

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 Sections 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.

- **40 CFR Part 31 - UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

- **2 CFR Part 180 and Part 1532 - GOVERNMENT WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT); CLEAN AIR ACT AND CLEAN WATER ACT INELIGIBILITY OF FACILITIES IN PERFORMANCE OF FEDERAL CONTRACTS, GRANTS AND LOANS**

- **40 CFR Part 34 - NEW RESTRICTIONS ON LOBBYING**

This rule is in response to section 319 of Public Law 101-121. Section 319 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan.

- **40 CFR Part 40 - RESEARCH AND DEMONSTRATION GRANTS**

This part establishes mandatory policies and procedures for all EPA research and demonstration grants. These provisions establish and codify policies and procedures governing the award of research and demonstration grants by the Environmental Protection Agency.

- **40 CFR Part 45 - TRAINING ASSISTANCE**

This part establishes the policies and procedures for the award of training assistance by the Environmental Protection Agency (EPA). The provisions of this part supplement EPA's "General Regulation for Assistance Programs,".

- **40 CFR Part 47 - NATIONAL ENVIRONMENTAL EDUCATION ACT GRANTS AND COOPERATIVE AGREEMENTS.**

This regulation codifies policy and procedures for the award of grants or cooperative agreements under section 6 of the National Environmental Education Act (NEEA). Specifically, this regulation defines eligible applicants, eligible activities, and EPA priorities for selecting recipients, funding limits, and matching requirements. Projects funded under this regulation are also subject to the Code of Federal Regulations (40 CFR) part 31 for State and local recipients, and part 30 for other than State and local recipients. Those regulations contain Federal audit and other general administrative requirements. This regulation does not apply to the programs implemented under sections 5 and 7 of the NEEA.

Work Plan Guidance and Description

(Attention Applicants: If you are responding to a specific request for an application, please follow the guidance as instructed provided at the website or program office) When completing your application kit, be sure that the Work Plan is addressed thoroughly. The Work Plan is a detailed description of how the sponsored project is going to be completed.

There are several key areas that must be addressed:

1. Environmental Results
2. Description of the Project
 - A. Objective
 - B. Results or benefits expected
 - C. Approach
 - D. General Project Information
3. Quality Assurance
4. Itemized Budget Detail
(See narrative descriptions below for more detail)

1. ENVIRONMENTAL RESULTS.

This section is the introductory portion of the Work Plan. Give a summation of how the proposed project will benefit the environment. Provide a description of how your specific project will create a benefit for the environment and create a positive effect. Try to shape this around EPA's mission statement: "To Protect Human Health and the Environment".

12. DESCRIPTION OF PROJECT.

A. Objective:

- (1) Describe the primary and secondary project objectives
- (2) Identify relevant physical, economic, social, financial, institutional or other problems.
- (3) Include supporting documentation from concerned interests other than the applicant.
- (4) Include and footnote relevant data based on planning studies.

B. Results or benefits expected:

– Begin by identifying results and benefits that will accrue to the project. Include the benefits that will be accrued to:

- 1) the environment,
- 2) the recipient,
- 3) the population served, and
- 4) the general public.

C. Approach:

- (1) Provide a Work Plan that details how the project work will be accomplished and detailing the proposed project. Cite factors that could potentially accelerate or decelerate the project work. Indicate why this approach has been chosen rather than the alternative approaches. Describe any unusual project features such as design or technological innovations, cost or time reductions, or extraordinary social and community involvement.
- (2) Describe all available facilities for carrying out the project.
- (3) List all non-Federal funds sources and facilities to be used to perform the proposed project.
- (4) Provide a chronological schedule of accomplishments, progress, and milestones that are anticipated over the projects duration.
- (5) Indicate who will carry out each of the work plans elements. Be sure to include supporting agencies, consultants, and contractors.
- (6) Describe sampling and data collection procedures, analytical methods as well as other identified methods for evaluating the project results.

D. General Project Description:

- (1) Identify the kinds of data to be collected and maintained, and discuss the evaluation criteria for the project's results. Indicate whether research or demonstration will involve human subjects or research animals.
- (2) Discuss this projects effect, or its relationship to work planned, anticipated, or in process, by the grantee, or Government agencies. Discuss the Federal, state and local programs with which the work will be coordinated, and describe the extent and nature of the coordination.

3. PROJECT TITLE

In block 11 of the SF424 provide a brief description of the proposed program/project. The Project Description field 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 and must address the scope of the project and/or the primary activity to be supported by the grant. 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.).

4. QUALITY ASSURANCE.

If your proposed project involves environmentally related measurements or data generation, you must develop and implement quality assurance practices. These practices must sufficiently produce quality data to adequately meet project objectives, and to minimize data loss due to uncontrolled conditions or malfunctions. State, local, or Indian tribal government applicants should refer to regulation 40 CFR 31.45. All other applicants should refer to EPA regulation 40 CFR 30.54. (Refer to <http://www.epa.gov/ogd/grants/regulations.htm> or <http://www.epa.gov/ogd/grants/assurance.htm>)

5. BUDGET DETAIL.

In addition to completing the Standard Form (SF) 424A, "Budget Information - Non-Construction Programs", all proposed grantees are required to submit a separate detailed itemized budget. (If indirect costs are being charged, you must INCLUDE a copy of your indirect cost rate agreement, if established.)

Please address and follow the guidelines listed below (Also refer to sample within this package):

A. Personnel: List all project participants' titles. Indicate the time percentage that each individual will devote to this project during the entire project period. The budget cost should be derived as follows: Each person's time percentage His/her annual salary = Personnel costs

Indicate this calculation for each personnel member. The sum of each person's costs should be reflected as total personnel costs. (Record the total on Standard Form 424A, Section B, Line A.)

B. Travel: Indicate the budgeted travels purpose and the destination of each trip and indicate the number of travelers. (Record total on Standard Form 424A Section B, Line C.)

C. Equipment: Provide a list of equipment to be purchased. Equipment is \$5,000 or more per unit, pursuant to 40 CFR 31.3 and 30.2. (Record total on Standard Form 424A, Section B, Line D).

D. Supplies: Itemize budgeted supplies unless their total represents less than two percent of total costs. "Supplies" means all tangible personal property other than "equipment". The budget detail should identify categories of supplies to be procured (e.g., laboratory supplies or office supplies).

Supplies are typically \$5,000 or less per unit. (Record total on Standard Form 424A, Section B, Line E.)

E. Contractual: Specify the nature and cost of contractual services. EPA may review the contracts for personal services before the contracts are executed, to assure that all costs are reasonable and necessary to the project. (Record total on Standard Form 424A, Section B, Line F).

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

F. Construction: If your budget includes construction costs, contact the Grants Administration Division for additional instructions while completing your application. (Record total on Standard Form 424A, Section B, Line G)

G. Other: Itemize all costs included here. Include items here that cannot be placed in the more specific categories. Examples could be sub-grants, postage, or printing. If you are applying for a training project, the itemization should include a cost breakdown of trainee tuition and fees, book allowances, stipends, and travel. (Record total on Standard Form 424A, Section B, Line H)

A recipient of EPA assistance may only subgrant to an entity that would have been eligible to receive assistance from EPA directly (i.e., eligible subgrantee or eligible subrecipient). This also means that the entity would have to be an eligible subgrantee or eligible subrecipient who is not debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." Moreover,

recipients cannot receive EPA assistance for the sole purpose of subawarding, transferring, or contracting out work under an award to another entity. Recipients are responsible for ensuring that their subgrantees/subrecipients use EPA funds for authorized purposes and comply with all applicable Federal regulations, OMB Cost Principles, and the terms and conditions of the assistance agreement.

H. **Indirect Costs:** Please indicate how indirect charges were calculated for this project, and remember to attach a copy of your current indirect cost rate agreement. (Record total on Standard Form 424A, Section B, Line J). If an organization has not established an indirect cost rate with another Federal Entity, please specify on Standard Form 424A, Section B, Line J.

If indirect costs are being used, please INCLUDE a copy of your indirect cost rate agreement, if established.

I. **Program Income:** If any income is expected to be generated from this project, insert the estimated income amount here. Do not add or subtract this amount from the total project amount. Your detailed direct cost itemization should show this income's nature and source. Examples of Program Income include: registration fees collected, income from the sale of products produced under a grant and rental fees generated from equipment purchased with assistance funds. (Record total on Standard Form 424A, Section B, Line 7)

For reference and more information on allowable costs under federal regulations, please visit the Office of Management and Budgets website and review the circular appropriate to your organization at (<http://www.whitehouse.gov/omb/>)

PRE-AWARD COMPLIANCE FOR NON-PROFIT ORGANIZATIONS

EPA assistance awards (grants and cooperative agreements) to non-profit organizations are an important mechanism for delivering environmental protection to the public. EPA's Office of the Inspector General, however, has issued numerous audit reports documenting instances of non-profit recipients that have inadequate administrative systems to manage EPA funds or lack the capability to successfully perform the project scope of work. The Office of Grants and Debarment has identified similar issues in conducting post award monitoring activities.

Recognizing that it is preferable to address such issues before, rather than after, an assistance agreement is awarded; EPA has begun evaluating the administrative and programmatic capability of non-profit applicants.

These procedures are based on existing regulatory requirements. Specifically, 40 CFR § 30.14 authorizes EPA to impose pre-award conditions on a non-profit applicant that has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in 40 CFR Part 30, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible. Further, 40 CFR § 30.62 provides EPA with remedies to deal with non-profit recipients that mismanage assistance agreements either administratively or programmatically. Finally, under 2 CFR Part 180 and Part 1532, EPA may suspend or debar non-profit applicants or recipients that pose a serious business risk to the Government.

After receiving notification from the Program Office that an application has been recommended for funding the Grants Management Office (GMO) must: require the applicant to fill out the Administrative Capability Form contained in Appendix A to the EPA Order and provide supporting documents; and then conduct a review of this information. If the GMO, based upon a review of the completed Administrative Capability Form and after checking the Grantee Compliance Database, determines that the applicant lacks the necessary administrative capability, the award official must impose pre-award conditions under section 10(b), or special award conditions under Section 10(d), of the EPA Order. If the GMO finds that the applicant has the necessary administrative capability, pre-award or special award conditions are not required.

EPA Administrative and Financial Onsite Review Questionnaire

I. Organization Policies and Procedures

A. General Information / Policies and Procedures.

Many of these questions have “Yes” or “No” answers. For “Yes” answers, please provide the specific reference to your policies and procedures. Please explain all “No” and “Not Applicable” answers.

Thank you in advance for completing this questionnaire.

Note: 40 CFR 31 and OMB Circular A-87 (codified as 2 CFR 225) references apply to States, Local Governments and Indian Tribes.

1.	Who or which office(s) in your organization is/are responsible for reviewing, approving and signing applications, awards and amendments?

2.	Who or which office(s) in your organization is/are responsible for monitoring and overseeing assistance agreements once received from EPA?

3.	Do you have a current Organizational Chart? Show or explain any non-profit or for profit organization and/or entities your affiliated with.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

4.	How does your organization keep up-to-date on federal regulations, legal decisions, OMB Circulars, etc.?

5.	Does your organization have provisions for seeking written prior approvals for specific revisions, from the awarding agency under certain conditions? (40 CFR 31.30)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

6. The Code of Federal Regulations (40), and OMB Circulars require organizations receiving federal assistance agreements to have written policies and procedures for the following areas. (40 CFR 31.20 and 31.21) Do your policies and procedures address the items described below?

a. Personnel, including qualifications for each position, duties and responsibilities, salary ranges, EEO, annual performance appraisals, types and levels of fringe benefits, and standards of conduct governing duties and responsibilities including disciplinary actions for not adhering to the standards, for employees engaged in the award and administration of contracts. (OMB A 87 / 2 CFR Part 225, Appendix B, section 8)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

b. Time reporting, tracked to each project; (OMB A 87 / 2 CFR Part 225, Appendix B, Section 8.h)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

c. Redistributions (Chargeback's); (i.e., other organizational department costs; written, established rates required)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

d. Payroll processing and internal controls; (OMB A 87 / 2CFR Part 225, Appendix B, Section 8.h)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

e. Overtime (if allowed); (OMB A-87 / 2CFR Part 225, Appendix B, section 8)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

f. Vacation and Sick Leave (if offered by your organization); (OMB A 87 / 2 CFR Part 225, Appendix B, section 8.d)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

g. Compensatory time (if allowed).	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

h. Equipment and property purchases including cost and price analysis, purchase, use of, inventory and disposition of at the end of the project; (40 CFR 31.31, 31.32 & 31.36(f))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

(A cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability when you do not have other proposals to compare costs against. A price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicators, together with discounts.)

i. Electronic Funds Transfers (EFT) drawdowns from EPA's accounts. Does your policy address who is authorized to request payment from the federal government, what procedures are used to verify that the request are accurate, and when drawdown of funds will occur etc.; (40 CFR31.20(b)(7) and 31.21)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

j. Receipt and deposit of advanced payments (40 CFR 31.21 (c)&(e))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

k. Records retention. (40 CFR 31.42)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

l. Travel, authorizations, vouchering after the trip and, if required, trip reporting; (OMB A 87 / 2CFR Part 225, Appendix B, section 43)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

m.	Procurement Standards for supplies, expendable property, equipment, real property and services. Standards for contracting, purchasing, consultant agreements, sub-awards or grants (if applicable, especially for monitoring sub grantees) and other types of awards that transfer federal funds outside of your organization; (40 CFR 31.36, 40 CFR 31.37 and 31.40(a))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

n.	Provisions for utilizing Small Businesses, Minority Owned Firms, Women’s Business Enterprises, and Labor Surplus Area Firms (where possible) (40 CFR 31.36(e))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

o.	Program income. Is it identified, authorized, accounted for, and are limitations placed on its use; (40 CFR 31.25)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

p.	Cost sharing, matching and In-Kind contributions. Is it identified, accounted for and reported; (40 CFR 31.24 and OMB A 87 / 2CFR Part 225, Appendix B, section 12)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

7. Do you have the following documents for each grant award:

a.	Original application and certifications; (SF 424, 424A, et al.)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

b.	Work plans and/or statement of work;	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

c.	Initial award and all amendment documents;	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

d. Request for and approvals of scope and/or budget changes; (40 CFR 31.30 (a),(b) & (c))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

e. Financial Status Reports and reimbursement requests, if applicable; (40 CFR 31.41(b))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

f. Payment requests backed up by financial records to support the request; (40 CFR 31.20(a)(2))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

g. Progress reports; (40 CFR 31.40(b))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

h. Contracts / Subgrants; (40 CFR 31.37)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

i. Purchases; (40 CFR 31.32 for equipment, 40 CFR 31.33 for supplies)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

j. Consultant agreements; (40 CFR 31.36(j))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

k. Correspondence and approvals, including emails to and from EPA officials.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

II. Accounting and Financial Management

Many of these questions have “Yes” and “No” answers. For “Yes” answers, please provide the specific reference to your policies and procedures. Please explain all “No” and “Not Applicable” answers.

A. Accounting

1.	Does your organization have an accounting manual? (40 CFR 31.20) The CFR requires certain accounting practices / procedures addressed in the questions below to be written.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

2.	Does your organization’s accounting and financial management system(s) follow Generally Accepted Accounting Principles (GAAP)? (OMB A 87 / 2CFR Part 225, Appendix B, section 8)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

3.	Does your organization’s accounting and financial management system(s) provide accurate, current and complete disclosure of the financial results of each federally-sponsored project or program (i.e. each award is accounted for separately) (40 CFR 31.20(b)(1)), and produce financial reports in accordance with the requirements of 40 CFR 31.41?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

4.	Does your organization’s financial management system(s) provide records that adequately identify the source and application of funds for federally-sponsored activities, such as authorizations, obligations, unliquidated obligations, assets, outlays, income and interest? (40 CFR 31.20,.21 &.22)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

5.	Does your organization's accounting and financial management system(s) provide accurate, current and complete disclosure of the financial results of each federally-sponsored project or program (i.e. each award is accounted for separately) (40 CFR 31.20(b)(1)), and produce financial reports in accordance with the requirements of 40 CFR 31.41?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

6.	Does your organization have written policies and procedures to ensure that costs are reasonable, allocable and allowable? (40 CFR 31.20 (b)(5); OMB Circular A-87 / 2CFR Part 225, Appendix A, Section C)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

7.	Does your organization monitor allowable costs to ensure they are charged to the grant within the specified period. (40 CFR 31.23)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

8.	Does your financial management system(s) report and provide for a comparison of outlays or grant project expenditures, with budget amounts for each grant project/award or have the capability to do so? (40 CFR 31.20(b)(4))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

9.	Does your organization have budgetary controls to preclude incurring excess expenditures? (40 CFR 31.20(b)(4))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

10.	Does your accounting system have provisions for reviewing and monitoring project budgets and program plans, and reporting and rectifying deviations that may occur in them? (40 CFR 31.20(b)(4) and 31.30)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

11.	Do you have a current audit? (40 CFR 31.26)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

12.	If your organization expended more than \$500,000 of Federal funds in the most recent fiscal year, did you obtain an audit in accordance with OMB Circular A-133? (40 CFR 31.26(a))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

13.	If your organization had an A-133 Audit performed, were there any findings, material weaknesses or reportable conditions identified? If there were, briefly explain or provide a copy of the findings section and your corrective actions taken.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

14.	If your organization requests reimbursement for indirect costs under the grant award, does your organization have an approved indirect cost rate? (OMB Circular A-87 / 2CFR Part 225, Appendix E)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

15.	Does your organization have written procedures for drawing grant funds and issuing payments? (40 CFR 31.20(b)(7) and 31.21 (b) and (c)) Note: Payment requests should be restricted to immediate needs, i.e. drawing down funds 3 to 5 working days in advance of disbursements.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

16.	What type of accounting and financial management system(s) does your organization use? Name of automated system(s)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

17.	Are accounting records supported by source documentation? (40 CFR 31.20(b) (6))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

B. Personnel / Timekeeping

(Reference: OMB Circular A-97 / 2 CFR Part 225, Appendix B, section 8)

Many of these questions have “Yes” or “No” answers. For “Yes” answers, please provide the specific reference to your policies and procedures. Please explain all “No” and “Not Applicable” answers.

1.	Does your organization have written payroll policies and procedures?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

2.	Do your employees record: actual hours worked directly on all projects, indirect or administrative time not charged directly to a project, and leave taken?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

3.	For those employees required to work away from the office, are actual hours worked documented?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

4.	Do payroll registers and reports match up with costs for each employee whose compensation is charged to an assistance agreement?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

5.	Are timesheets required to be signed by the individual or supervisor?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

C. Personnel / Payroll

Many of these questions have “Yes” or “No” answers. For “Yes” answers, please provide the specific reference to your policies and procedures. Please explain all “No” and “Not Applicable” answers.

Does your organization’s written policies and procedures provide for the following controls for the payroll function?

1.	Does the policy provide adequate separation of duties?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

2.	Are salaries and wage rates established, authorized and approved in your organization to ensure equity?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

3.	Does your payroll process ensure that all deductions from employee’s salaries are authorized by the employee, and proper?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

4.	How are payrolls distributed?	<input type="checkbox"/> EFT <input type="checkbox"/> Manual Checks <input type="checkbox"/> Both

5.	If checks are distributed manually, are there sufficient controls to ensure that payroll checks are distributed to the correct employee?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

D. *Travel* (Ref: OMB Circular A-87/ 2 CFR 225, Appendix B, section 43)

Many of these questions have “Yes” or “No” answers. For “Yes” answers, please provide the specific reference to your policies and procedures. Please explain all “No” and “Not Applicable” answers.

1.	Does your organization have written travel policies and procedures?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

2.	Are internal controls in place to ensure that employees follow your organization’s travel policy, i.e. levels of review prior to authorizing payment and that the travel was associated with the specific grant project?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

3.	Are internal controls in place to ensure that travel and time reporting support the employee’s activities while on travel?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

4.	Do the policies and procedures include provisions to ensure that travel costs are allowable, allocable and reasonable?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

E. *Matching, Cost Sharing, In-Kind Contributions and Program Income*

40 CFR 31.24 (a) to (e) provides criteria on the acceptability, purpose, and types of contributions made in relation to cost sharing or matching purposes, and the support for such. 40 CFR 30.24 and 31.25 addresses the accounting for Program Income related to Federally funded projects.

Many of the questions below have “Yes” or “No” answers. For “Yes” answers, please provide the specific reference to your policies and procedures. Please explain all “No” and “Not Applicable” answers.

1.	Does your organization currently have any Matching, Cost Sharing and/or In-Kind costs included in any active awards or anticipate any of these types of costs in the foreseeable future? No _____ (Skip this entire section) Yes _____ (Please complete the rest of this section.)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

2.	Do any of the matching costs come from another federal grant(s)? (If Yes, it must be authorized in the terms and conditions of the assistance agreement)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

3.	Are these costs identified in the approved grant project budget?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

4.	Does your organization track, record, report and verify these costs?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

5.	Are all matching costs verifiable from accounting records and valued according to applicable OMB Circular cost principles?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

OMB Circular A-87 / 2CFR Part 225, Appendix B, paragraphs 8 & 12

6.	Has any program income been used to satisfy the recipient's contribution for any current award or added to the funds committed for the project?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

7.	Is there a term and condition in the award that permits the use of program income for match requirements or for adding it to the funds committed to the project?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

8.	If there is no term and condition, has the program income been deducted from the total allowable project cost?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

F. Procurement / Contracts / Subagreements

Many of these questions have “Yes” or “No” answers. For “Yes” answers, please provide the specific reference to your policies and procedures. Please explain all “No” and “Not Applicable” answers.

1.	Does your organization have written procurement policies and procedures?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

2.	Has your organization awarded contracts or subagreements under any of the award agreements being reviewed? (Agreements refer to subgrant(s). Subgrant(s) mean 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, subrecipient or by a subrecipient to a lower tier subrecipient. This includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases of goods and services.) (40 CFR 31.3)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

3. Were contracts awarded in accordance with your organization’s contracting policy and does this policy comply with 40 CFR Part 30.40 to 30.48 or Part 31.36 & .37, as described below:

OMB control number 2030-0020

EPA form number 6600-01

a.	Contains a written code of conduct that addresses conflict of interests and disciplinary actions. (40 CFR 31.36(b)(3))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

b.	Provides for competing transactions in a free and open manner. (40 CFR 31.36(c))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

c.	Provides for a review to avoid unnecessary purchases, a review of lease vs. purchase alternatives (when appropriate), conducting solicitations with a clear scope of work and bidder requirements, conserving natural resources, and utilizing small, MBE and WBE firms when possible. (40 CFR 31.36(c)(3))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

d.	Requires performing and documenting a cost analysis for sole source procurements. (A cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability when you do not have other proposals to compare costs against.) (40 CFR 31.36(f))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

e.	Requires performing and documenting a price analysis for competitive bidding and small purchase procurement actions. (A price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts.) (40 CFR 31.36(f))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

f.	Requires documenting the basis for all procurement selections, justifying a lack of competition and basis for award cost and price. (40 CFR 31.36 (b)(9))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

g.	Provides for the Grantor's pre-award review of the procurement when the award or contract modification exceeds \$100,000, is not competed, or only one bid is received. (40 CFR 31.36(g)(2))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

h.	Discusses purchase/agreement /contract cost thresholds (small purchases vs. major procurements) and personnel required to approve procurements.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

i.	Has provisions that no contract or sub award will be entered into with parties that are debarred, suspended or excluded from Federal assistance programs. (40 CFR 31.35)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

4.	Do any of your organization's contracts for grant projects exceed the Federal Small Purchases threshold, (\$100,000)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

5.	If Yes, did EPA request to review the contract prior to award? (40 CFR 31.36(g)(2))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

6.	If Yes, did EPA provide written comments?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

7.	Does your organization use a pre-qualified list of persons, firms or products to acquire goods and services?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

8.	Did your organization follow its procurement policies to place and update vendors on the list?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

9.	Has your organization established an affirmative procurement system for recycled materials and compliance with environmental statutes? (40 CFR 31.13)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

10.	Does your organization have internal control processes to ensure that only required goods and services are acquired in quantities needed? (40 CFR 31.36(b)(4))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

11.	Does your organization have internal control processes to ensure that only acceptable goods and services are paid for by the accounting/finance department? (40 CFR 31.20(b)(5))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

12.	Does your organization have guidelines for documenting its contract files?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

13.	Has your organization awarded contracts to consultants under current assistance agreements?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

14.	Are internal controls for consulting agreements in place to ensure that your organization does not charge EPA assistance agreements more than the authorized direct salary cap? (40 CFR 31.36(j))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

15.	Do your consulting agreements specify the services to be provided, engagement duration, reporting requirements, work location and pay rates including base rate, fringe benefits and overhead?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

G. Small Businesses, Minority Owned Firms, Women’ Business Enterprises and Labor Surplus Area Firms (where applicable). (40 CFR 31.36(e))

For “Yes” answers, please provide the specific reference to your policies and procedures. Please explain all “No” and “Not Applicable” answers.

1.	Does your organization submit timely reports (MBE/WBE Reports) to EPA, on business activities with these types of firms?	<input type="checkbox"/> Yes, date of the last submittal to EPA _____ Date <input type="checkbox"/> No, please explain.

H. Property Management (40 CFR 31.31 & 40 CFR 31.32)

Many of these questions have “Yes” or “No” answers. For “Yes” answers, please provide the specific reference to your policies and procedures. Please explain all “No” and “Not Applicable” answers.

1.	Does your organization have written property management policies and procedures?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

2.	Has your organization purchased capital equipment on any of its active assistance agreements? Yes ___ (Please complete this section.) No ___ (Go to Section I.)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

Equipment, under Federal Guidelines, is equipment that is considered tangible items with a useful life greater than one year and greater than \$5,000 in value. Grantees may have limits that are different than the Federal Guidelines. That is acceptable as long as the limits are not greater than the Federal Guidelines.

3.	Does your organization have an inventory control system? (40 CFR 31.32)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

4.	Does your organization maintain property records that identify equipment purchased, either entirely or partially, with Federal funds? (40 CFR 31.32(d))	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

5.	Does your organization perform a property inventory at least every two years? Date of last inventory _____	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

6.	Does your organization maintain records of property dispositions?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

I. Internal Controls

Many of these questions have “Yes” or “No” answers. For “Yes” answers, please provide the specific reference to your policies and procedures. Please explain all “No” and “Not Applicable” answers.

1.	Does your organization have policies and procedures to ensure compliance with the cash management requirements in 40 CFR 31.20((b)(3)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

a.	Does your organization have an internal auditor, audit staff or someone on the Board of Directors that provides for an independent review of the accounting and financial management process, cash receipts and payments, and safeguarding of assets?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

2.	Does your organization have policies and procedure to ensure compliance with closing out assistance awards after the performance and budget periods? (40 CFR 31.50)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

3. Does your organization have a process in place to ensure compliance with the Programmatic Term and Conditions in the following areas:

a.	Submitting programmatic progress reports;	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

b.	Establishing and obtaining approval of a Quality Action Plan, if required;	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

c.	Establishing a process to track, monitor and report on Environmental Results?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 30 hours per respondent. If you wish to comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, send them to US EPA, Collections Strategies Division (2822T), 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA Electronic Funds Transfer (EFT)

Assistance Agreement Payment Process

Assistance Agreement Payment Process

- Award signed by EPA award official
- Recipient signs acceptance of agreement
- Finance office notified that award is accepted
- Funds are made available to recipients

Payment Methods - EPA EFT via ACH

- Electronic Funds Transfer (EFT) via EPA's accounting system
 - Recipient provides banking information to receive funds electronically
 - Submits ACH payment request
 - Payments electronically deposited within 2-3 working days

The ACH Enrollment Form - SF 3881 is available online at <http://www.epa.gov/ogd/forms/adobe/SF3881.pdf>.

**ACH VENDOR/MISCELLANEOUS PAYMENT
ENROLLMENT FORM**

OMB No. 1510-0056

This form is used for Automated Clearing House (ACH) payments with an addendum record that contains payment-related information processed through the Vendor Express Program. Recipients of these payments should bring this information to the attention of their financial institution when presenting this form for completion. See reverse for additional instructions.

PRIVACY ACT STATEMENT

The following information is provided to comply with the Privacy Act of 1974 (P.L. 93-579). All information collected on this form is required under the provisions of 31 U.S.C. 3322 and 31 CFR 210. This information will be used by the Treasury Department to transmit payment data, by electronic means to vendor's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Automated Clearing House Payment System.

AGENCY INFORMATION

FEDERAL PROGRAM AGENCY U.S. Environmental Protection Agency		
AGENCY IDENTIFIER: LVFC	AGENCY LOCATION CODE (ALC): 68128933	ACH FORMAT: <input checked="" type="checkbox"/> CCD+ <input type="checkbox"/> CTX
ADDRESS: PO Box 98515 Las Vegas, NV 89193-8515		
CONTACT PERSON NAME:		TELEPHONE NUMBER: (702) 798-2485
ADDITIONAL INFORMATION: FAX Number: (702) 798-2423		

PAYEE/COMPANY INFORMATION

NAME	SSN NO. OR TAXPAYER ID NO.
ADDRESS	
CONTACT PERSON NAME:	
TELEPHONE NUMBER: ()	

FINANCIAL INSTITUTION INFORMATION

NAME:	
ADDRESS:	
ACH COORDINATOR NAME:	TELEPHONE NUMBER: ()
NINE-DIGIT ROUTING TRANSIT NUMBER: _ _ _ _ _	
DEPOSITOR ACCOUNT TITLE:	
DEPOSITOR ACCOUNT NUMBER:	LOCKBOX NUMBER:
TYPE OF ACCOUNT: <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS <input type="checkbox"/> LOCKBOX	
SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL: (Could be the same as ACH Coordinator)	TELEPHONE NUMBER: ()

AUTHORIZED FOR LOCAL REPRODUCTION

SF 3881 (Rev. 2/2003)
Prescribed by Department of Treasury
31 U.S.C. 3322; 31 CFR 210

Instructions for Completing SF 3881 Form

Make three copies of form after completing. Copy 1 is the Agency Copy; copy 2 is the Payee/Company Copy; and copy 3 is the Financial Institution Copy.

1. Agency Information Section - Federal agency prints or types the name and address of the Federal program agency originating the vendor/miscellaneous payment, agency identifier, agency location code, contact person name and telephone number of the agency. Also, the appropriate box for ACH format is checked.
2. Payee/Company Information Section - Payee prints or types the name of the payee/company and address that will receive ACH vendor/miscellaneous payments, social security or taxpayer ID number, and contact person name and telephone number of the payee/company. Payee also verifies depositor account number, account title, and type of account entered by your financial institution in the Financial Institution Information Section.
3. Financial Institution Information Section - Financial institution prints or types the name and address of the payee/company's financial institution who will receive the ACH payment, ACH coordinator name and telephone number, nine-digit routing transit number, depositor (payee/company) account title and account number. Also, the box for type of account is checked, and the signature, title, and telephone number of the appropriate financial institution official are included.

Burden Estimate Statement

The estimated average burden associated with this collection of information is 15 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Management Service, Facilities Management Division, Property and Supply Branch, Room B-101, 3700 East West Highway, Hyattsville, MD 20782 and the Office of Management and Budget, Paperwork Reduction Project (1510-0056), Washington, DC 20503.

For more information about the SF 3881 ACH Vendor Payment Enrollment Form or to acquire the form visit: <http://www.epa.gov/ogd/forms/adobe/SF3881.pdf>.

Payment Methods - ASAP

- Electronic system thru Federal Reserve Bank of Richmond
- Utilizes ACH and FEDWIRE
- Federal agencies establish accounts and spending authorizations
- Recipient initiates payments
- System approves or rejects payments
- Approved payments made same or next day
- Funds are credited to recipient account
- Enrollment Process
 - Recipient contacts EPA to request enrollment
 - Agency contacts Treasury and provides recipient enrollment data
 - Treasury provides recipient with software, instructions, user IDs, and training
 - EPA reconciles grant balances with recipient and establishes accounts in ASAP
- Benefits of ASAP
 - One time enrollment
 - No communication software costs
 - Minimal hardware costs
 - Fewer systems
 - Greater flexibility

Required Financial Reports

- As of October 1, 2009, the Federal Financial Report (FFR) Standard Form (SF) 425 replaced:
 - Standard Forms 269 and 269A Financial Status Report (FSR)
 - Standard Forms 272 and 272A Federal Cash Transactions Report
- FFR SF 425 can be downloaded from <http://www.epa.gov/ogd/forms/adobe/SF425.pdf>.

Payment Process Recipients Manual, Exhibit A

http://www.epa.gov/ocfo/finservices/recipient_manual.pdf



United States
Environmental Protection Agency
Las Vegas Finance Center (LVFC)

October 2009
Replaces July 2008 edition

US ENVIRONMENTAL PROTECTION AGENCY ELECTRONIC FUNDS TRANSFER (EFT) PAYMENT PROCESS

Recipients' Manual

Prepared by: Las Vegas Finance Center (LVFC)

I PURPOSE

These instructions provide procedures to be followed by participating recipient organizations for requesting funds authorized by assistance agreements from the U.S. Environmental Protection Agency (EPA) under the Electronic Funds Transfer (EFT) Payment System, herein referred to as the EPA-EFT Payment Process. This system utilizes Automated Clearing House for transferring payments to your banking institution. All required financial forms as well as instructions on how to complete them can be found on Las Vegas Finance Center's (LVFC) webpage:
<http://www.epa.gov/ocfo/finservices/payinfo.htm>

II AUTHORITY

These instructions are established under provisions in the Federal Acquisition Regulation guidelines provided by the U.S. General Services Administration (GSA), Section 52.232-28 *Electronic Funds Transfer Payment Methods* as prescribed in 32.908(d) as revised.

III GENERAL

The EPA-EFT Payment Process is an electronic funds transfer process initiated by EPA in response to the Debt Collection Improvement Act of 1996, P.L. 104-134, that requires all federal payments be made via Direct Deposit/Electronic Funds Transfer (DD/EFT).

Using the EPA-EFT Payment Process, the recipient submits a *U.S. EPA Payment Request* (EPA form 190-F-04-001) via fax to LVFC at **702-798-2423**.

LVFC will review each request. When the request is approved for payment, EPA will electronically transfer funds through the U.S. Department of Treasury and the Federal Reserve for credit to the recipient's account at their designated financial institution, usually within 48 to 72 hours following receipt and approval of the request. If the entire request or a portion of the request is rejected, the recipient will be notified by LVFC no later than one workday following receipt of the request.

IV ENROLLMENT PROCESS FOR THE EPA-EFT PAYMENT SYSTEM

- A. The recipient organization must complete the ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881). The recipient will send the completed SF 3881 to LVFC.
- B. LVFC receives and reviews the completed SF 3881 form for accuracy, and will enter the enrollment information into its vendor database for assistance agreements.
- C. LVFC will provide the recipient a confirmation assigning them an EFT Control Number as well as a link to LVFC's internet website where the recipient can access all required forms and instructions on how to complete them.

V PROCEDURES FOR REQUESTING FUNDS

Once EFT enrollment is complete and the Assistance Agreement has been affirmed by the recipient organization and sent back to the grant specialist, recipients may begin requesting funds based on their immediate disbursement requirements.

A. Preparation of U.S. EPA Payment Request

1. All payment requests must include the EFT Control Number provided by LVFC.
2. Payment Requests cannot exceed authorized amounts for each individual assistance agreement. Recipients should refer to individual assistance agreements for any additional terms and conditions applicable when requesting funds from EPA (i.e., LUST, Site Specific Superfund, etc.). Recipients who receive assistance agreements from EPA's Superfund program must also include the Site Specific Superfund Account Number in the Account Number/Activity Code field.

B. Submitting the U.S. EPA Payment Request to EPA

The U.S. EPA Payment Request should be faxed to **702-798-2423** as early in the day as possible to allow for timely processing.

C. Review of EFT Payment Request

Upon receipt of the payment request, LVFC will review the request to determine if:

- § Funds drawn are being used within an authorized budget period
- § The EFT Control Number is correct
- § The recipient name is correct
- § Assistance Agreement numbers are correct and sufficient funds are available
- § All required expenditure or program reports have been received
- § Cash on hand (COH) is not excessive(see Section VI - Cash Management Requirements); and
- § U.S. EPA Payment Request is signed.

D. Approved Payment Request

Payments approved by LVFC are transmitted to the recipient's financial institution usually within 48 to 72 hours following the approval. When the recipient's financial institution receives the funds, they will provide the recipient with notice of credit and/or addenda/remittance information. If the addenda/remittance information has not been received on the anticipated payment date, the recipient organization should contact its financial institution to determine if an EPA payment was received. If a payment was not received, the recipient organization should notify LVFC immediately so that appropriate action may be taken.

E. Rejection or Modification of the U.S. EPA Payment Request

Under the EPA-EFT Payment Process, all or part of a request may be approved for payment. If a request is modified or rejected, LVFC will immediately notify the recipient.

VI CASH MANAGEMENT REQUIREMENTS

The EPA-EFT Payment Process is designed to provide federal funds to a recipient organization generally within 48 to 72 hours following LVFC approval of the U.S. EPA Payment Request. Therefore, the recipient organization should request funds based on immediate disbursement requirements only, and should disburse funds as soon as possible to minimize the Federal cash on hand in accordance with policies established in Treasury Department Circular 1075, Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs. EPA will monitor payment requests to ensure that recipient organizations are maintaining minimal balances of Federal funds. Each payment request will be reviewed by EPA prior to approval to ensure that payment will not result in excessive funds on hand or violation of award authority.

VII FINANCIAL STATUS REPORTING

A. Recipients' Responsibilities and Records.

Recipients of Federal funds under EPA assistance agreements are responsible for providing EPA with financial reports. Records must be maintained to satisfy the particular requirements of the programs under which the Assistance Agreement was awarded. Under the EPA-EFT Payment Process, such records must enable EPA to ascertain that the cash requests are directly related to and closely timed to the actual disbursement needs for liabilities involving EPA supported projects. Moreover, the records must have the capability of providing information as to the Federal share of accrued costs. Copies of the following Financial Reports as well as all other required financial reports can be retrieved from the LVFC website: <http://www.epa.gov/ocfo/finservices/forms.htm>.

B. Required Reports

1. Federal Financial Report, SF425. A final SF425 (see website for the form and instructions) report must be submitted within 90 days after the budget period end date. The report must be prepared in accordance with the instructions and forwarded to:

Las Vegas Finance Center
PO Box 98515
Las Vegas, NV 89193-8515
or faxed to **702-798-2423**

Generally applicable reporting requirements may be found in the Code of Federal Regulations, for example:

State/Local Governments and Indian Tribes, see 40 CFR Part 31.
Recipients other than State/Local Governments, such as Universities, etc., see 40 CFR Part 30. Cooperative Agreements for Superfund State Contracts for Superfund Response Action, see 40 CFR Part 35 Subpart O.

In addition, recipients should consult the terms and conditions of their assistance agreements for additional reporting requirements.

Fair Share Objectives Fact Sheet

http://www.epa.gov/osbp/pdfs/dbe/mbe_wbe_certification.pdf

FAIR SHARE OBJECTIVES

Program Comparison

Old MBE/WBE Program

New DBE Program

Recipients must negotiate fair share objectives with the Agency.	Recipients must negotiate fair share objectives with the Agency. Proposed fair share objectives and supporting documentation must be submitted within 120 days after the acceptance of the assistance award.
For Superfund grants, fair share objectives must be negotiated before funds may be expended for procurement under the financial assistance agreement.	For all grants, fair share objectives must be negotiated before funds may be expended for procurement under the financial assistance agreement.
Fair share objectives must be based on an availability analysis, disparity study, or other supporting data and documentation.	No Change
Fair share objectives will remain in effect for 3 fiscal years, unless there are significant changes to the data supporting the fair share objectives.	No Change
Recipients may adopt the fair share objective of another recipient.	No Change. Recipients will affirm the acceptance of the other recipient's fair share objective in the grant terms and conditions.
No exemptions to the fair share objectives requirement.	The following are exemptions from the fair share objective requirements: <ul style="list-style-type: none"> • Grant and loan recipients receiving a total of \$250K or less in EPA financial assistance in a given fiscal year. • Tribal recipients of Performance Partnership Eligible grants under 40 CFR Part 35, Subpart B. <ul style="list-style-type: none"> – There is a 3-year phase in period for the requirement to negotiate fair share goals for Tribal and Insular Area recipients. • Recipients of Technical Assistance Grants.

What are Fair Share Objectives?

- A fair share objective is goal based on the capacity and availability of qualified, certified MBEs and WBEs in the relevant geographic market for the procurement categories of construction, equipment, services, and supplies...compared to the number of all qualified entities in the same market for the same procurement categories, adjusted, as appropriate, to reflect the level of MBE and WBE participation expected absent the effects of discrimination.
- A fair share objective is **not a quota**.
- A recipient cannot be penalized for not meeting its fair share objectives.

What is the process for negotiating fair share objectives?

- A recipient must submit its proposed MBE and WBE fair share objectives and supporting documentation **to its designated Regional MBE/WBE Coordinator within 120 days** after its acceptance of its financial assistance award.
- EPA must respond in writing to the recipient's submission **within 30 days of receipt**, either agreeing with the submission or providing initial comments for further negotiation. Failure to respond within this time frame may be considered as agreement by EPA with the fair share objectives submitted by the recipient.
- MBE and WBE fair share objectives **must be agreed upon by the recipient and EPA before funds may be expended** for procurement under the recipient's financial assistance agreement.
- **Fair Share Objectives will remain in effect for three fiscal years** unless there are significant changes to the data supporting the fair share objectives.

Under the new DBE Program, may I adopt the Fair Share Objective of another recipient?

- Yes! Recipients may use the approved fair share objective of another recipient with the same or similar relevant geographic buying market, purchasing the same or similar items.
- Recipients who normally accept the negotiated fair share objective of the state in which they are located, can continue to do so. This will be done by affirming the acceptance of the fair share objective in the grant terms and conditions. However, they may also elect to negotiate their own fair share objectives.

How do I determine a fair share objective?

There are many methods that can be used to formulate a fair share objective. For more information on methods, please refer to the DBE Program Manual which can be found at www.epa.gov/osdbu.

Federal Funding Accountability and Transparency Act (FFATA)

- The Office of Grants and Debarment’s “Initial Guidance on Federal Funding Accountability and Transparency Act Requirements for Subaward and Executive Compensation Data Reporting for non-ARRA Assistance Agreements” can be found at http://www.epa.gov/ogd/forms/ffata_memo_final_10_22_10.pdf.
- FFATA Guidance and Background Materials can be found on USASpending.gov at <http://usaspending.gov/news>.
- System for Award Management (SAM) registration can be found at www.sam.gov.
 - Many recipients of Federal funding already have completed Registration. Please check whether you have registered.
- DUNS Registration: <http://fedgov.dnb.com/webform>
 - Most recipients of Federal funding already have completed DUNS registration. Please check whether you have registered.
- FFATA Subaward Reporting System (FSRS): <https://www.fsr.gov/>
 - Sub-award reporting user guides, FAQ and on-line demonstrations are available at www.fsr.gov.
 - More information, from the Office of Management and Budget, regarding the directive entitled “Open Government Directive – Federal Spending Transparency and Subaward and Compensation Data Reporting” can be found at http://www.whitehouse.gov/sites/default/files/omb/open/Executive_Compensation_Reporting_08272010.pdf

Functional Requirements Letter (FRL) 8569-3

<http://edocket.access.gpo.gov/2008/pdf/E8-11409.pdf>

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8569-3]

Disallowing Management Fees in EPA Assistance Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The term “management fees or similar charges” refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under EPA assistance agreements. EPA will not, as a matter of policy, allow recipients of EPA financial assistance to charge management fees to their agreements with the Agency. Recipients will have actual notice of EPA’s policy prohibiting management fees through a term and condition and competitive solicitation announcements.

EPA funds for financial assistance are limited. The Agency has decided that, in the absence of contrary statutory direction, the public’s interest in supporting projects that promote environmental protection is best served by ensuring that EPA financial assistance is used only to pay for costs that are allocable to the specific project receiving EPA financial assistance, and are reasonable and necessary for the performance of the project. Management fees or similar charges may not be used to improve or expand the capacity of organizations carrying out EPA funded projects, except to the extent authorized by the terms of the agreement as a direct cost of carrying out the scope of work. EPA’s “no management fee” policy is consistent with OMB Circular A-122, as codified at 2 CFR Part 230. According to 2 CFR Part 230, Appendix B, Item 9, contributions to contingency reserves for unforeseen events are unallowable. Therefore, management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable under EPA assistance agreements.

FOR FURTHER INFORMATION CONTACT:

Brian Hanlon, 202-564-2865.

Dated: May 15, 2008.

Howard Corcoran,

Director, Office of Grants and Debarment.

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Glossary

Accounting – A recording of all and any financial transactions maintained for all financial activities.

Accrued expenditures - 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 (such as annuities, insurance claims, and other benefit payments). (A-102 & A-110)

Accrued income - the sum of: (1) earnings during a given period from services performed by the recipient and 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. (A-102 & A-110)

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. (A-102 & A-110)

Administrative Order - a legal document signed by EPA directing an individual, business, or other entity to take corrective action or refrain from an activity. The order describes the violations and actions to be taken, and can be enforced in court. Such orders may be issued, for example, as a result of an administrative complaint whereby the respondent is ordered to pay a penalty for violations of a statute.

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 kinds of activities that can be supported by grants under a particular program. (A-102)

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. (A-110)

Allocable costs - costs that are allocable to a particular cost objective to the extent benefits received by such objective. (A-87)

Allocation – The assignment of costs to a particular cost objective in the budget work plan.

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 indicated 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 Part 35-Subpart A)

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)

Amendment

1. Formal amendment - a written modification of an assistance agreement signed by both the award official and the authorized representative of the recipient. (Assistance Administration Manual)
2. Informal amendment - proposed project change which does not substantially alter the objective or scope of the project.

Applicable credits – receipts or reductions of expenditures that offset or reduce costs allocable to federal awards as direct or indirect costs.

Applicant - any entity that files an application or unsolicited proposal for EPA financial assistance under 40 CFR Chapter I - Environmental Protection Agency, Subchapter A - General. (40 CFR Part 30)

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)

Approval official - an EPA official delegated the authority to approve or reject applications for assistance and the technical/programmatic terms and conditions of proposed assistance projects. (Assistance Administration Manual)

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. (40 CFR Part 30)

Audit finding - deficiencies which an auditor is required to report in the schedule of findings and questioned costs

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)

Availability – a measure of the approximate representation and capacity of DBEs in the relevant labor market and qualified to do the work in issue, adjusted, as appropriate, to reflect the estimated representation and capacity of such DBEs that would exist in the absence of discrimination. (DBE Guide)

Availability analysis – account for the appropriate firms in the market area and determines the percentage of firms that are DBEs. Two common methods for analyzing the market are the (1) availability analysis and (2) disparity study.

Award (see also "assistance agreement, "cooperative agreement", "grant", "grant agreement") - 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. (A-110)

Award official - the EPA official with the authority to execute assistance agreements and to take other actions authorized by 40 CFR Chapter I, Subchapter A and by EPA orders. (40 CFR Part 30) (Assistance Administration Manual)

Awarding agency - (1) with respect to a grant, the Federal Agency, and (2) with respect to a subgrant, the party that awarded the subgrant. (A-102)

Bid responsibility – in the contract-bidding process, the apparent ability of a bidder to successfully carry out the requirements of a contract. The determination of bidder responsibility focuses upon the bidder’s apparent ability to perform in the required manner on the date the performance is required. (DBE Guide)

Bid responsiveness – a responsive bid is one which on its face meets the specifications and the material terms of an Invitation for Bid. Material terms are those terms affecting price, quantity, quality, or delivery and any other terms which are clearly identified by the bid solicitation documents as requirements that must be complied with at the time of bid in order for the bid to be accepted as “responsive”. (DBE Guide)

Bookkeeping – The recording of financial transactions.

Budget period (see also "funding period") - the length of time EPA specifies in an assistance agreement during which the recipient may spend or obligate Federal funds. (40 CFR Part 30)

Cash contributions

1. 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. (A-102)
2. 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".) (Assistance Administration Manual)

Central Service Cost Allocation Plan – A strategy identified and consistently allocated to the benefiting departments to cover the needs for the grant recipient, as well as for the federal government award project.

Closeout - 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. (A-110) 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. (Assistance Administration Manual)

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)

Cognizant agency - the Federal agency which, on behalf of all Federal agencies, is responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under A-87. (A-87)

Commitment

1. The official reservation of funds and authorization to incur obligations. (Assistance Administration Manual)
2. 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)

Construction – the construction, alteration, or repair) including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms “buildings, structures, or other real property” include but are not limited to improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, and processing, or assembling of vessels, aircraft, or other personal property. (DBE Guide)

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. (Assistance Administration Manual)

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)

Continuing environmental program - 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.)

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. ("Principles of Federal Appropriations Law")

Contract - (except as used in the definitions for grant and subgrant and except where qualified by Federal) a procurement contract under a grant or subgrant, and procurement subcontract under a contract. (A-102)

Contractor - any party to whom a recipient awards a subagreement. (40 CFR Part 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). (40 CFR Part 30) A legal instrument EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose in which substantial EPA involvement is anticipated during the performance of the project.

Cost - cost 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. (A-87)

Cost Allocation Plan (CAP) - any of the following:

1. "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.
2. "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.
3. "indirect cost rate proposal" - the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate as described in Attachment E of OMB Circular A-87. (A-87)

Cost objective - a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which provision is made to accumulate those costs. (A-87)

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)

Cost principles – guidelines to provide that federal awards bear their fair share of cost.

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. (A-102)

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. (A-110)

Decision official (see "approval official")

Deviation - written approval from the Director, Grants Administration Division for exception(s) from financial assistance regulations not based on statutory or executive order requirements.

Disadvantaged Business Enterprise (DBE) – a business owned by an individual certified as socially and economically disadvantaged by the Small Business Administration. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities, the Small Business Administration shall consider the assets and net worth of such socially disadvantaged individuals.

In determining the economic disadvantage of an Indian Tribe, the Small Business Association shall consider, where available, information such as the per capita income of members of the tribe excluding judgment awards, percentage of local Indian population below the poverty level, and Tribe's access to capital markets. A business is certified as a disadvantaged business enterprise by a state or federal agency. An independent business concern qualifies when at least 51 percent of the company is owned and controlled by a minority group member(s).

A minority group member is an individual who is a citizen of the United States and is one of the following:

1. Native American (American Indian, Eskimo, Aleut, native Hawaiian)
2. Female Americans
3. Black American
4. Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central American)
5. Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, or the Indian subcontinent)
6. Disabled Americans

The minority ownership's interest must be real, substantial, and continuing. Such interest is characterized by:

1. Risk of loss/share of profit commensurate with the proportional ownership
2. Receipt of the customary incidents of ownership, such as compensation (i.e., salary and other personnel compensation)

A minority owner must have and exercise control over the business decisions. Characteristics of control include, but are not limited to:

1. Authority to sign bids and contracts
2. Decisions in price negotiations
3. Incurring liabilities for the firm
4. Final staffing decisions
5. Policy making
6. General company management decisions

Only those firms performing a "useful business function according to custom and practice in the industry" qualify as DBEs. Acting merely as a passive conduit of funds to some other firm where such activity does not directly contribute to the project does not meet this requirement. The purpose of this approach is to discourage the use of MBE "fronts" and limit the creation of an artificial supplier and broker marketplace.

The following institutions qualify as disadvantaged business concerns:

1. Historically Black colleges and universities (HBCUs) and colleges and universities having a student body in which 40 percent of the students are Hispanic
2. Minority institutions (as that term is defined by the Secretary of Education pursuant to the General Education Provision act (20 U.S.C. section 1221 *et seq.*)
3. Private and voluntary organizations controlled by individuals who are socially and economically disadvantaged

(DBE Guide)

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. (A110)

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. (A-102 & A-110)

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. (40 CFR Part 30)

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. (A-110)

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. (A-110)

Expenditure report

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). (A-102)

Fair Share or Fair Share Objective – an amount of funds reasonably commensurate with the total project funds and the availability of qualified disadvantaged business enterprises (DBEs) taking into account experience on EPA-funded projects and other comparable projects in the area. A fair share objective does not constitute an absolute requirement, but a commitment on the part of the recipient or prime contractor to make good faith efforts as defined in Chapter 4, Section C of EPA's *Guidance for Utilization of Small, Minority and Women's Business Enterprises in Procurement Under Assistance Agreements – 6010* (1997 Edition), to use DBEs to achieve the fair share objective. If a recipient chooses to meet EPA's fair share objectives by relying on its own local DBE program, it may do so. However, it should be made aware that it would have to defend a legal challenge to the merits of its program based upon such merits, independent of EPA's fair share objective. (DBE Guide)

Federal awarding agency - the Federal agency that provides an award to the recipient. (A-110)

Federal Funding Accountability and Transparency Act (FFATA) - The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov.

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. (A-110)

Federal share of real property, equipment, or supplies - that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds. (A-110)

Federally recognized Indian Tribal government - the governing body or a governmental agency of any Indian tribe, band, nations, 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. (A-87 & A-102)

Financial Management System – an established set of procedures and principles for maintaining integrity through accurate records of receipt and expenditure of funds.

Financial Status Report (FSR) - a standard, government-wide report recipients must submit to the Federal funding agency that identifies the status of funds for a specific grant or cooperative agreement. (40 CFR Part 31)

Fund - an independent fiscal and accounting entity with a self-balancing set of accounts: where debits equal credits, expenditures equal income, and obligations and disbursements balance evenly.

Fund Accounting - An organized way to manage cash and other financial resources, which records financial resources and obligations in established categories.

Funding period (see also "budget period") - the period of time when Federal funding is available for obligation by the recipient. (A-110)

Generally Accepted Accounting Principles (GAAP) - meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants

Government - a state or local government or a federally recognized Indian tribal government. (A-102)

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 (A-102)

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)

Grant Specialist (GS) - 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.

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. (OMB Circular A-102)

Indirect cost - 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. (A-87: proposed revision 8/19/93)

Indirect costs audit – review conducted to determine whether prospective indirect cost rates properly allocate allowable costs.

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. (A-87: proposed revision 8/19/93)

Indirect cost rate agreement - an agreement between the recipient and the appropriate Federal agency which identifies the basis for the indirect cost rate, usually submitted annually. (Region 9)

Indirect cost rate proposal - the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate as described in attachment E of OMB Circular A-87. (OMB Circular A-87)

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.") (Assistance Administration Manual)

Intangible property and debt instruments - means, but is not limited to, trademarks, copyright, 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. (OMB Circular A-110)

Integrated Financial Management System (IFMS) - EPA's official automated accounting system

Interagency/intergovernmental Agreement / International Agreement (IAG)

1. A written agreement between Federal agencies under which goods and services are provided in exchange for funds, or where services are provided without payment.
2. 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.
3. 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.
(Headquarters)

Interim and final cost audits – reviews conducted to assess the allowability of costs claimed under the assistance agreement or contract; they ensure compliance with the applicable requirements and award conditions

Internal Control - a process, affected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations

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 Circulars A-87 & A-102)

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. (Assistance Administration Manual)

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. (Region 9)

Minority Business Enterprise (MBE) – see Disadvantaged Business Enterprise. (DBE Guide)

Modified Accrual Basis of Accounting - the method EPA recommends for tracking General, Special Revenue, and Debt Service Funds.

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. (Region 9)

Nonexpendable personal property - personal property with a useful life of at least two years and an acquisition cost of \$500 or more (40 CFR Part 30 & Assistance Administration Manual)

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. (OMB Circulars A-102 & A-110)

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 file both complement the official administrative file.) (Assistance Administration Manual)

OMB - the U.S. Office of Management and Budget (OMB Circular A-102)

OMB A-133 Single Audit – a review of financial and administrative compliance.

Outcome - the environmental result, effect, or consequence that will occur from carrying out an environmental program or activity that is related to an environmental or program goal or objective. Outcomes must be quantitative, and they may not necessarily be achievable during a grant funding period

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)

Output - an activity or product which the applicant agrees to complete during the budget period

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. (OMB Circular A-102)

Personal property

1. 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. (OMB Circular A-110)
2. Property other than real property. It may be tangible (having physical existence), such as equipment and supplies, or intangible (having no physical existence), such as patents, inventions, and copyrights. (40 CFR Part 30 & Assistance Administration Manual)

Phoenix Database – an Internet database developed by the Department of Commerce's Minority Business Development Agency (MBDA) that contains information concerning minority-owned businesses. Located online at <http://www.mbda.gov/> (DBE Guide)

Planning target - the amount of financial assistance which the Regional Administrator suggests than an applicant for continuing environmental program support (State, interstate or local agency) consider in developing its application and work program. (Assistance Administration Manual)

Preaward audit – review conducted to evaluate prospective cost or pricing data

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 subagreement price based on adequate price competition, previous experience with similar work, established catalog or market price, law, or regulation. (Assistance Administration Manual)

Principal investigator – the person in charge of the project, an official authorized to sign contracts and reports

Prior approval - documentation/written approval by an authorized official evidencing consent prior to incurring specific cost. (Combination of OMB Circulars A102 & A-110)

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".) (40 CFR Part 33)

Program element - one of the major groupings of outputs of a continuing environmental program (e.g., administration, enforcement, monitoring). (Assistance Administration Manual)

Program income

1. 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 24(e) and (h) of OMB Circular A-110). 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. (OMB Circular A-110)
2. 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 fines 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 II 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.) (Assistance Administration Manual)

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. (OMB Circular A-110)

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.

Project narrative (see "work plan/work program")

Project Officer (PO) - the EPA official designated in the assistance agreement as EPA's program contact with the recipient. Project officers are responsible for monitoring the project. (40 CFR Part 30 & Assistance Administration Manual)

Project period

1. The period established in the award document during which Federal sponsorship begins and ends. (OMB Circular A-110)
2. 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. (40 CFR Part 30 & Assistance Administration Manual)

Property - unless otherwise stated, real property, equipment, intangible property and debt instruments. (40 CFR Part 35; A-110)

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. (40 CFR Part 30 & Assistance Administration Manual)

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. (40 CFR Part 30 & Assistance Administration Manual)

Quality assurance project plan - an organization's written procedures which delineate how it produces quality data for a specific project or measurement method. (40 CFR Part 30 & Assistance Administration Manual)

Questioned Cost - A cost that is questioned by the auditor because of an audit finding:

1. Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement or other agreement or document governing the use of Federal funds, including funds used for cost sharing (i.e. matching funds)
2. Where the costs, at the time of the audit, are not supported by adequate documentation
3. Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances

Real property - land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment (OMB Circulars A-102 & A-110; 40 CFR Part 30; Assistance Administration Manual)

Recipient

1. 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. (OMB Circular A-110)

2. Any entity which has been awarded and accepted an EPA assistance agreement. (40 CFR Part 30; Assistance Administration Manual)

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. (Assistance Administration Manual; 40 CFR Part 35)

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 (Assistance Administration Manual)

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. (OMB Circular A-110)

Service contract – a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. Some of the areas in which service contracts are found include advisory and assistance, architectural and engineering services.

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. (Assistance Administration Manual)

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 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. (OMB Circular A-102; 40 CFR Part 31)

Single audit - an audit which includes both the entity's financial statements and federal awards

Six Affirmative Steps - actions that should be taken to assure that DBEs are used on EPA-funded projects whenever possible. (DBE Guide)

Small award - a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(ii) (currently \$25,000). (OMB Circular A-110)

Small Business Enterprise (SBE) – any business entity, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards set forth in 13 CFR Part 121.

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. (OMB Circular A-87)

Subagreement - 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. (40 CFR Part 30, Assistance Administration Manual)

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 be 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 OMB Circular A-110. (OMB Circular A-110)

Subcontract – Procurement under a contract legally obligating the seller to furnish the supplies or services and the buyer to pay for them.

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. (OMB Circular A-102; 40 CFR Part 31)

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. The term “subrecipient” as used in this manual is synonymous with the term “subgrantee”. (OMB Circular A-102; 40 CFR Part 31)

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. The term “subrecipient” as used in this manual is synonymous with the term “subgrantee”. (OMB Circular-110)

Supplies

1. All tangible personal property other than equipment as defined in 40 CFR Part 31. (OMB Circular A-102)
2. 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*. (OMB Circular A-110)

Suspension

1. 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." (OMB Circular A-110)
2. Depending on the context, either:
 - a. 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
 - b. 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. (OMB Circular A-102; 40 CFR Part 31)

System for Award Management (SAM) – is combining eight federal procurement systems and the Catalog of Federal Domestic Assistance into one new system. SAM is being deployed in phases. In July 30, 2012, it incorporated the Central Contractor Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS). SAM can be accessed at www.sam.gov.

Termination

1. 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:
 - a. withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;
 - b. withdrawal of the unobligated balance as of the expiration of a grant;
 - c. refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or
 - d. voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception. (OMB Circular A-102; 40 CFR Part 31)
2. The cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion. (OMB Circular A-110)
3. 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-cancellable commitments made prior to termination. (Assistance Administration Manual)

Terms and conditions of a grant or subgrant refer to all requirements of the grant or subgrant, whether in statute, regulations, or the award document. (OMB Circular A-102; 40 CFR Part 31)

Third party in-kind contributions

1. The value of non-cash contributions provided by non-Federal third parties.
2. 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. (OMB Circular A-110)

3. 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. (OMB Circular A- 102; 40 CFR Part 31)

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. (Assistance Administration Manual)

Unliquidated obligations

1. 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. (OMB Circular A-102; 40 CFR Part 31)
2. 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. (OMB Circular A-110)
3. An obligation for which payment has not been made; contingent liabilities for contracts and orders outstanding. (Assistance Administration Manual)

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. (OMB Circulars A-102 & A110; 40 CFR Part 31)

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. (Assistance Administration Manual)

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. (OMB Circular A-110)

Unsolicited proposal - an informal written offer to perform EPA funded work for which EPA did not publish a solicitation. (40 CFR Part 30; Assistance Administration Manual)

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; Assistance Administration Manual)

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. (Assistance Administration Manual)

Women-owned Business Enterprise (WBE) – see disadvantaged business enterprise. (DBE Guide)

Working capital advance refers to a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period. (OMB Circular A-110)

Work plan/work programs (see also "project narrative") - the document which identifies how and when the applicant will use program funds to produce specific outputs. (40 CFR Part 35; Assistance Administration Manual)

Work plan component - a negotiated set or group of work plan commitments established in the grant agreement. A work plan may have one or more work plan commitments

Goals and Objectives for Administrative and Financial Guidance for Assistance Agreements

The essential elements for administration of EPA assistance agreements are listed below. Use the following goals and objectives as a check list of essential systems, policies, procedures, processes, and documentation necessary to compliance with EPA assistance agreement regulations.

Goal 1 Establish organizational policies and procedures for EPA Grant management.

- Objective 1.1 Assign responsibility for reviewing, approving, and signing applications, awards, and amendments.
- Objective 1.2 Assign responsibility for monitoring and overseeing assistance agreements once received from EPA.
- Objective 1.3 Create an organizational chart to explain any affiliations with nonprofit or for-profit organizations or entities.
- Objective 1.4 Develop a plan for keeping up-to-date on federal regulations, legal decisions, OMB Circulars, etc.
- Objective 1.5 Develop a procedure for seeking written prior approvals for specific revisions, from the awarding agency that are compatible with 40 CFR 30.25(c) and 40 CFR 31.30.
- Objective 1.6 Write policies and procedures for meeting 40 CFR 30.21 and 30.22, 40 CFR 31.20 and 31.21 federal requirements for assistance agreements covering:
 - 1.6.a Personnel records for employees engaged in the award and administration of contracts, including:
 - 1.6.a.i Qualifications for each position
 - 1.6.a.ii Duties and responsibilities
 - 1.6.a.iii Salary ranges
 - 1.6.a.iv EEO
 - 1.6.a.v Annual performance appraisals
 - 1.6.a.vi Types and levels of fringe benefits
 - 1.6.a.vii Standards of conduct governing duties and responsibilities, including:
 - 1.6.a.viii Disciplinary actions for not adhering to the standards
 - 1.6.a.xi (OMB A 122/2 CFR Part 230, Appendix B, Paragraph 8 and 40 CFR 30.42; OMB A 87/2 CFR Part 225, Appendix B, Section 8 and 40 CFR 31.36(b)(3); OMB A-21/2 CFR Part 220, Appendix A, section J.10)
 - 1.6.b Time reporting tracked to each project (OMB A 122/2 CFR Part 230, Appendix B, Paragraph 8.m; OMB A 87/2 CFR Part 225, Appendix B, Section 8.h; OMB A-21/2 CFR Part 220, Appendix A, section J.10)
 - 1.6.c Payroll processing and internal controls (OMB A 122/2 CFR Part 230, Appendix B, Paragraph 8.m; OMB A 87/2 CFR Part 225, Appendix B, Section 8.h; OMB A-21/2 CFR Part 220, Appendix A, section J.10)
 - 1.6.d Overtime (if allowed) (OMB A-122/2CFR Part 230, Appendix B, paragraph 8.f; OMB A-87/2 CFR Part 225, Appendix B, section 8; OMB A-21/2 CFR 220, Appendix A, section J.10)
 - 1.6.e Vacation and sick leave (if offered by your organization) (OMB A 122/2 CFR Part 230, Appendix B, paragraph 8g; OMB A 87/2 CFR Part 225, Appendix B, section 8.d; OMB A-21/2 CFR 220, Appendix A Section J.10(f))
 - 1.6.f Compensatory time (if allowed) (OMB A 122/2 CFR Part 230, Appendix B, paragraph 8.d)
 - 1.6.g Equipment and property purchases, including:

- 1.6.g.i Cost and price analysis
- 1.6.g.ii Purchase
- 1.6.g.iii Use of
- 1.6.g.vi Inventory and disposition of at the end of the project
- 1.6.g.v (40 CFR 30.34 and 30.44, 40 CFR 31.31, 31.32, and 31.36(f))
- 1.6.h Electronic Funds Transfers (EFT) drawdowns from EPA's accounts:
 - 1.6.h.i Personnel authorized to request payment from the federal government
 - 1.6.h.ii Verification that the requests are accurate
 - 1.6.h.iii Verification that drawdown of funds will occur
 - 1.6.h.vi (40 CFR 30.21(b)(5) and 30.22, 40 CFR 31.20(b)(7) and 31.21))
- 1.6.i Receipt and deposit of advanced payments (40 CFR 30.22(i)(2) and 40 CFR 31.21(c)&(e))
- 1.6.j Records retention (40 CFR 30.50 and 30.53, 40 CFR 31.42) for at least three years after the close out or final audit
- 1.6.k Travel, authorizations, vouchering after the trip and, if required, trip reporting (OMB A 122/2 CFR Part 230, Appendix B, Paragraph 51; OMB A 87/2 CFR Part 225, Appendix B, Section 43; OMB A-21/2 CFR Part 220, Appendix A, section J.53)
- 1.6.l Procurement standards for:
 - 1.6.l.i Supplies, expendable property, and equipment
 - 1.6.l.ii Real property and services
 - 1.6.l.iii Contracting
 - 1.6.l.vi Purchasing
 - 1.6.l.v Consultant agreements
 - 1.6.l.vi Sub-awards or grants (if applicable, especially for monitoring sub-grantees)
 - 1.6.l.vii Other types of awards that transfer federal funds outside of the organization
 - 1.6.l.viii (40 CFR 30.40-30.47, 40 CFR 30.5 and 30.51(a), 40 CFR 31.36, 40 CFR 31.37 and 31.40(a))
- 1.6.m Provisions for utilizing small businesses, minority owned firms, women's business enterprises, and labor surplus area firms (where possible) (40 CFR 30.44(b), 40 CFR 31.36(e))
- 1.6.n Program income:
 - 1.6.n.i Identified
 - 1.6.n.ii Authorized
 - 1.6.n.iii Accounted for
 - 1.6.n.vi Limitations placed on its use
 - 1.6.n.v (40 CFR 30.24, 40 CFR 31.25)
- 1.6.o Cost sharing, matching and in-kind contributions:
 - 1.6.o.i Identified
 - 1.6.o.ii Accounted for
 - 1.6.o.iii Reported
 - 1.6.o.iv (40 CFR 30.23 and OMB A 122/2 CFR Part 230, Appendix B, paragraph 12; 40 CFR 31.24 and OMB A 87/2 CFR Part 225, Appendix B, section 12; OMB A-21/2 CFR 220, Appendix A, Section J.15(b))

- Objective 1.7 Document each grant award separately, including:
- 1.7.a Original application and certifications (SF 424, 424A, et al.)
 - 1.7.b Work plans and/or statement of work
 - 1.7.c Initial award and all amendment documents
 - 1.7.d Request for approvals of scope and/or budget changes (40 CFR 30.25(b)&(c), 40 CFR 31.30(a)(b)&(c))
 - 1.7.e Financial status reports and reimbursement requests, if applicable (40 CFR 30.52(a)(1), 40 CFR 31.41(b))
 - 1.7.f Payment requests backed up by financial records to support the request (40 CFR 30.21(a) and 30.21(b)(2), 40 CFR 31.20(a)(2))
 - 1.7.g Progress reports (40 CFR 30.51(b), 40 CFR 31.40(b))
 - 1.7.h Contracts / subgrants (40 CFR 30.46 and 30.47, 40 CFR 31.37)
 - 1.7.i Purchases (40 CFR 30.34 or 40 CFR 31.32 for equipment, 40 CFR 30.35 or 40 CFR 31.33 for supplies)
 - 1.7.j Consultant agreements (40 CFR 30.27(b) or 31.36(j))
 - 1.7.k Correspondence and approvals, including emails to and from EPA officials

Goal 2 Establish accounting and financial management policies and procedures for EPA grant management.

- Objective 2.A Define accounting policies and procedures.
- 2.A.1 Write an accounting manual for the organization addressing the following practices and procedures. (40 CFR 30.21(b)(5) and (6) or 40 CFR 31.20)
 - 2.A.2 Follow Generally Accepted Accounting Principles (GAAP) in the accounting and financial management system. (OMB Circular A 122/2 CFR Part 230, Appendix A, Paragraph A.2.e; OMB A 87/2 CFR Part 225, Appendix B, Section 8; OMB Circular A-21/2 CFR Part 220, Appendix A, section J)
 - 2.A.3 Ensure system provides accurate, current, and complete disclosure of the financial results of each federally-sponsored project or program (i.e., each award is accounted for separately). (40 CFR 30.21(b)(1) or 31.20(b)(1))
 - 2.A.3.a Produce financial reports in accordance with the requirements of 40 CFR 30.52 or 40 CFR 31.41.
 - 2.A.4 Provide records that identify the source and application of funds for federally-sponsored activities, such as authorizations, obligations, unliquidated obligations, assets, outlays, income and interest. (40 CFR 30.21 and 30.22; 40 CFR 31.20, .21, and .22)
 - 2.A.5 Provide effective control over, and accountability for all funds, property, and other assets, including ensuring that all such assets are used solely for purposes authorized by the awards. (40 CFR 30.21(b)(3); 40 CFR 31.20(b)(3))
 - 2.A.6 Write policies and procedures to ensure that costs are reasonable, allocable, and allowable. (40 CFR 30.21(b)(6); 40 CFR 31.20(b)(5); OMB Circular A-122/2 CFR Part 230, Appendix A, Section A; OMB Circular A-87/2 CFR Part 225, Appendix A, Section C; OMB Circular A 21/2 CFR 220, Appendix A, Section C)
 - 2.A.7 Monitor allowable costs to ensure they are charged to the grant within the specified period. (40 CFR 30.28, 40 CFR 31.23)
 - 2.A.8 Report outlays or grant project expenditures, with budget amounts for each grant project/award.

- 2.A.8.a Document a comparison of outlays or grant project expenditures, with budget amounts for each grant project/award. (40 CFR 30.21(b)(4); 40 CFR 31.20(b)(4))
- 2.A.9 Describe budgetary controls to preclude incurring excess expenditures. (40 CFR 30.21(b)(3) and (4); 40 CFR 31.20(b)(4))
- 2.A.10 Describe the process for reviewing and monitoring project budgets and program plans, reporting and rectifying deviations that may occur. (40 CFR 30.25(b); 40 CFR 31.20(b)(4) and 31.30)
- 2.A.11 Audit at least once per year. (40 CFR 30.26(a) or 40 CFR 31.26)
- 2.A.12 Align audit with OMB Circular A-133, if the organization has expended more than \$500,000 in federal funds during the most recent fiscal year. (40 CFR 30.26(a), 40 CFR 31.26(a))
- 2.A.13 Explain in writing any findings, material weaknesses, or reportable conditions identified in the A-133 Audit, if applicable.
 - 2.A.13.a Describe in writing any corrective actions taken, if any.
- 2.A.14 Determine whether or not the organization has an approved indirect cost rate for reimbursement requests for indirect costs under the grant award. (OMB Circular A-122/2 CFR Part 230, Appendix A, Section C and D; OMB Circular A-87/2 CFR Part 225, Appendix E or OMB Circular A-21/2 CFR 220, Appendix A, Section G)
- 2.A.15 Document procedures for drawing grant funds and issuing payments.
 - 2.A.15.a Note that payment requests should be restricted to immediate needs (i.e., drawing down funds three to five working days in advance of disbursements.) (40 CFR 30.21(b)(5) and 30.22(b); 40 CFR 31.20(b)(7) and 31.21(b)&(c))
- 2.A.16 Identify the type of accounting and financial management system (by name if an automated system is used).
- 2.A.17 Ensure accounting records are supported by source documentation. (40 CFR 30.21(b)(7); 40 CFR 31.20(b)(6))
- Objective 2.B Define personnel/timekeeping policies and procedures. (OMB Circular A-122/2 CFR Part 230, Appendix B, section 8; OMB Circular A-87/2 CFR Part 225, Appendix B, section 8 or OMB Circular A 21/2 CFR 220, Appendix A, section J, paragraph 10)
 - 2.B.1 Write policies and procedures for payroll.
 - 2.B.2 Record actual employee hours worked directly on all projects, indirect or administrative time not charged directly to a project, and leave taken.
 - 2.B.3 Document actual hours worked by employees required to work away from the office.
 - 2.B.4 Match payroll registers and reports with costs for each employee whose compensation is charged to an assistance agreement.
 - 2.B.5 Ensure timesheets are signed by the individual or supervisor.
- Objective 2.C Establish controls for the payroll function.
 - 2.C.1 Provide adequate separation of duties.
 - 2.C.2 Ensure equity in salaries and wage rates established, authorized, and approved by the organization.
 - 2.C.3 Ensure all deductions from employee's salaries are properly authorized by the employee.
 - 2.C.4 Describe how payrolls are distributed.
 - 2.C.5 Proscribe sufficient controls to ensure that payroll checks are distributed to the correct employee, if checks are distributed manually.
- Objective 2.D Establish policies and procedures for travel. (OMB Circular A-122/2 CFR Part 230, Appendix B, section 51; OMB Circular A-87/2 CFR Part 225, Appendix B, section 43 or OMB Circular A 21/2 CFR 220, Appendix A, section J, paragraph 53)
 - 2.D.1 Document travel policies and procedures.

- 2.D.2 Describe internal controls to ensure that employees follow the organization’s travel policy (i.e., levels of review prior to authorizing payment and determination that the travel was associated with the specific grant project).
- 2.D.3 Describe internal controls to ensure that travel and time reporting support the employee’s activities while on travel.
- 2.D.4 Explain how the policies and procedures ensure that travel costs are allowable, allocable, and reasonable.
- Objective 2.E Establish policies and procedures for matching, cost sharing, in-kind contributions, and program income. (40 CFR Part 30.23(a)-(i) and 40 CFR 31.24(a)-(e); 40 CFR 30.24 and 31.25)
 - 2.E.1 Document matching, cost sharing, and/or in-kind costs included in any active and/or anticipated awards.
 - 2.E.2 Document any matching costs from other federal grant(s).
 - 2.E.2.a Authorize matching costs in the terms and conditions of the assistance agreement.
 - 2.E.3 Identify any matching costs in the approved grant project budget.
 - 2.E.4 Track, record, report, and verify any matching costs.
 - 2.E.5 Ensure all matching costs are verifiable from accounting records and valued according to applicable OMB Circular cost principles.
 - 2.E.5.a (40 CFR Part 30.24 or Part 31.25; OMB Circular A-122/2 CFR Part 230, Appendix B, paragraphs 8 and 12; OMB Circular A-87/2 CFR Part 225, Appendix B, paragraphs 8 and 12 or OMB Circular A 21/2 CFR 220, Appendix A, section J, paragraph 15)
 - 2.E.6 Record any program income used to satisfy the recipient’s contribution for any current award or added to the funds committed for the project.
 - 2.E.7 Ensure there is a term and condition in the award that permits the use of program income for match requirements or for adding it to the funds committed to the project.
 - 2.E.8 Deduct program income from the total allowable project cost, if there is no term or condition in the award.
- Objective 2.F Establish policies and procedures for procurement, contracts, and subagreements.
 - 2.F.1 Document procurement policies and procedures.
 - 2.F.2 Review all contracts and subagreements under any of the award agreements made under a grant by a grantee to an eligible subgrantee, subrecipient, or by a subrecipient to a lower tier subrecipient for:
 - 2.F.2.a Type of financial assistance (e.g., money, property in lieu of money)
 - 2.F.2.b Type of agreement (e.g., contractual legal agreement)
 - 2.F.2.c Assurance that assistance does not include procurement purchases of goods and services
 - 2.F.3 Verify that contracts were awarded in accordance with the organization’s contracting policy.
 - 2.F.3.a Verify that the organization’s contracting policy complies with 40 CFR Part 30.40-30.48 or Part 31.36 and .37.
 - 2.F.3.a.i Document in the procurement manual a code of conduct that addresses conflict of interests and disciplinary actions for non-compliance with this code. (40 CFR 30.42; 40 CFR 31.36(b)(3))
 - 2.F.3.a.ii Provide for competing transactions in a free and open manner. (40 CFR 30.43; 40 CFR 31.36(c))
 - 2.F.3.a.iii Provide for:
 - 2.F.a.iii.1 A review to avoid unnecessary purchases
 - 2.F.a.iii.2 A review of lease vs. purchase alternatives, when appropriate

- 2.F.a.iii.3 Conducting solicitations with a clear scope of work and bidder requirements
- 2.F.a.iii.4 Conservation of natural resources
- 2.F.a.iii.5 Utilization of small, minority-owned (MBE), and women-owned (WBE) business enterprises when possible.
- 2.F.a.iii.6 (40 CFR 30.44; 40 CFR 31.36(c)(3))
- 2.F.3.a.iv Require performing and documenting a cost analysis for sole source procurements. (A cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability when you do not have other proposals to compare costs against.) (40 CFR 30.45; 40 CFR 31.36(f))
- 2.F.3.a.v Require performing and documenting a price analysis for competitive bidding and small purchase procurement actions. (A price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices, and similar indicia, together with discounts.) (40 CFR 30.45; 40 CFR 31.36(f))
- 2.F.3.a.vi Document the basis for all procurement selections, justifying a lack of competition and basis for award cost and price. (40 CFR 30.46; 40 CFR 31.36(b)(9))
- 2.F.3.a.vii Provide for the Grantor's pre-award review of the procurement when the award or contract modification exceeds \$100,000, is not competed, or only one bid is received. (40 CFR 30.44(e); 40 CFR 31.36(g)(2))
- 2.F.3.a.viii Discuss purchase/agreement/contract cost thresholds (small purchases vs. major procurements) and personnel required to approve procurements.
- 2.F.3.a.ix Proscribe that no contract or sub-award will be entered into with parties that are debarred, suspended, or excluded from federal assistance programs. (40 CFR 30.13; 40 CFR 31.35)
- 2.F.4 Determine if any of the organization's contracts for grant projects exceed the Federal Small Purchases threshold (\$100,000).
- 2.F.5 Anticipate an EPA request to review the contract prior to award if any of the organization's contracts for grant projects exceed the Federal Small Purchases threshold (\$100,000).
- 2.F.6 Incorporate EPA review comments into the organization's policies and procedures for procurement, contracts, and subagreements.
- 2.F.7 Use a pre-qualified list of persons, firms, or products to acquire goods and services.
- 2.F.8 Follow procurement policies to place and update vendors on the list.
- 2.F.9 Establish an affirmative procurement system for recycled materials and compliance with environmental statutes. (40 CFR 30.16; 40 CFR 31.13)
- 2.F.10 Describe internal control processes to ensure that only required goods and services are acquired in the quantities needed. (40 CFR 30.44(a)(1); 40 CFR 31.36(b)(4))
- 2.F.11 Describe internal control processes to ensure that only acceptable goods and services are paid for by the accounting/finance department. (40 CFR 30.21(b)(6); 40 CFR 31.20(b)(5))
- 2.F.12 Create guidelines for documenting contract files.
- 2.F.13 Determine if contracts can be awarded to consultants under the assistance agreement.
- 2.F.14 Describe internal control processes for consulting agreements to ensure that the organization does not charge EPA assistance agreements more than the authorized direct salary cap.
- 2.F.15 Specify in the consultant agreements the:
 - 2.F.15.a Services to be provided
 - 2.F.15.b Engagement duration

- 2.F.15.c Reporting requirements
- 2.F.15.d Work location
- 2.F.15.e Pay rates, including base rate, fringe benefits, and overhead
- Objective 2.G Establish policies and procedures to ensure that small businesses, minority owned firms, women’s business enterprises, and labor surplus area firms are utilized whenever possible. (40 CFR 30.44(b); 40 CFR 31.36(e))
 - 2.G.1 Submit timely reports on business activities with Disadvantaged Business Enterprises (DBE).
- Objective 2.H Establish policies and procedures for property management. (40 CFR 30.30-30.37; 40 CFR 31.31 and 40 CFR 31.32)
 - 2.H.1 Document policies and procedures for property management.
 - 2.H.2 Record capital equipment purchased on any active assistance agreements.
 - 2.H.2.a Equipment, under the Federal Guidelines, is equipment that is considered tangible items with a useful life greater than one year and greater than \$5,000 in value. Grantees may have limits that are different than the Federal Guidelines as long as the limits are not greater.
 - 2.H.3 Describe the inventory control system. (40 CFR 30.34; 40 CFR 31.32)
 - 2.H.4 Maintain property records that identify equipment purchased, either entirely or partially, with federal funds. (40 CFR 30.34(f); 40 CFR 31.32(d))
 - 2.H.5 Perform a property inventory at least once every two years.
 - 2.H.6 Maintain records of property dispositions.
- Objective 2.I Establish policies and procedures for internal controls.
 - 2.I.1 Document policies and procedures to ensure compliance with the cash management requirements in 40 CFR Part 30.21(b)(3) and 40 CFR 31.20(b)(3).
 - 2.I.1.a Identify an internal auditor, audit staff, or someone on the Board of Directors to provide for an independent review of the accounting and financial management process, cash receipts and payments, and safeguarding of assets.
 - 2.I.2 Document policies and procedures to ensure compliance with closing out assistance awards after the performance and budget periods. (40 CFR Part 30.71 and 40 CFR 31.50)
 - 2.I.3 Describe the process to ensure compliance with programmatic term and conditions in the following areas:
 - 2.I.3.a Submitting programmatic progress reports
 - 2.I.3.b Establishing and obtaining approval of a quality action plan, if required
 - 2.I.3.c Establishing a process to track, monitor, and report on environmental results

Minority Business Enterprise and Women Business Enterprise (MBE/WBE)

MBE/WBE Certification Fact Sheet

See DBE Certification Fact Sheet

MBE/WBE Reporting Fact Sheet

See DBE Reporting Fact Sheet

MBE/WBE Utilization under Federal Grants and Cooperative Agreements

See DBE Utilization Form

Negotiated Fair Share Objectives

http://www.epa.gov/osbp/db_e_fair.htm

Region 1

Fair Share Goals Set as of September 5, 2012

Region 1

Recipient		MBE %	WBE %
Connecticut	Combined (Includes Construction, Goods/ Equipment and Services)	3.00%	5.00%
Maine	Combined (Includes Construction, Goods/ Equipment and Services)	1.11%	4.34%
Massachusetts	Combined (Includes Construction, Goods/ Equipment and Services)	3.40%	3.80%
New Hampshire	Combined (Includes Goods/Equipment and Services)	1.45%	6.62%
Good thru FY-14			
Rhode Island	Construction Supplies Services Goods/Equipment Combined	Proposed goals have not been submitted by the state	
Vermont	Construction Supplies Services Goods/Equipment Combined	1.00% 1.20% 1.20% 2.00%	5.00% 3.80% 1.70% 8.00%

Region 2

Fair Share Goals Set October 1, 2006

Region 2

Recipient		MBE %	WBE %
New Jersey	Construction		
	Supplies		
	Services		
	Goods/Equipment		
	Combined	7.00%	3.00%
New York Upstate	Construction	6.00%	6.00%
	Supplies	8.80%	8.80%
	Services	8.80%	8.80%
	Goods/Equipment	8.80%	8.80%
	Combined		
New York City	Construction	21.50%	13.70%
	Supplies	18.80%	20.50%
	Services	18.80%	20.50%
	Goods/Equipment	18.80%	20.50%
	Combined		

Region 3

FY'10 Fair Share Negotiated Goals

Region 3

Recipient		MBE %	WBE %
Delaware Department of Agriculture	Construction	2.49%	3.69%
	Supplies	2.41%	2.41%
	Services	4.85%	3.62%
	Goods/Equipment	11.69%	12.62%
	Combined		
Delaware NR & Envir. Control	Construction	2.49%	3.69%
	Supplies	2.41%	2.41%
	Services	4.85%	3.62%
	Goods/Equipment	11.69%	12.62%
	Combined		
Maryland Alliance for the Chesapeake Bay, Inc,	Construction	11.00%	11.00%
	Supplies	11.00%	11.00%
	Services	12.00%	10.00%
	Goods/Equipment	11.00%	11.00%
	Combined		
Maryland Interstate Comm. Potomac River Basin	Construction		
	Supplies	13.04%	9.13%
	Services	2.60%	7.14%
	Goods/Equipment		
	Combined		
Maryland Department of Environment	Construction	11.00%	11.00%
	Supplies	11.00%	11.00%
	Services	12.00%	10.00%
	Goods/Equipment	11.00%	11.00%
	Combined		
Maryland Department of NR	Construction		
	Supplies	7.00%	10.00%
	Services	7.00%	10.00%
	Goods/Equipment	7.00%	10.00%
	Combined		
DC Water Authority	Construction	32.00%	6.00%
	Supplies		
	Services	28.00%	4.00%
	Goods/Equipment		
	Combined		

FY'10 Fair Share Negotiated Goals

Region 3

Recipient		MBE %	WBE %
Pennsylvania Allegheny County Health Department (BAPC)	Construction	2.92%	17.57%
	Supplies	1.30%	17.21%
	Services	2.26%	19.89%
	Goods/Equipment	3.50%	18.07%
	Combined		
Pennsylvania Department of Health (BAFS)	Construction		
	Supplies		
	Services	2.00%	6.00%
	Goods/Equipment		
	Combined		
Pennsylvania Susquehanna River Basin Commission	Construction		
	Supplies	5.00%	24.20%
	Services	5.00%	24.20%
	Goods/Equipment		
	Combined		
Pennsylvania Department of Environmental Protection	Construction	2.92%	17.57%
	Supplies	1.30%	17.21%
	Services	2.26%	19.89%
	Goods/Equipment	3.50%	18.07%
	Combined		
Pennsylvania Alliance for Chesapeake Bay, Inc.	Construction	2.92%	17.57%
	Supplies	1.30%	17.21%
	Services	2.26%	19.89%
	Goods/Equipment	3.50%	18.07%
	Combined		
Virginia Department of Conservation & Recreation	Construction	4.10%	2.50%
	Supplies	0.80%	1.30%
	Services	2.60%	1.60%
	Goods/Equipment	0.60%	1.20%
	Combined		
Virginia Department of Enviro. Quality	Construction	4.10%	2.50%
	Supplies	0.80%	1.30%
	Services	2.60%	1.60%
	Goods/Equipment	0.60%	1.20%
	Combined		

FY'10 Fair Share Negotiated Goals

Region 3

Recipient		MBE %	WBE %
Virginia Department of Health	Construction	4.10%	2.50%
	Supplies	0.80%	1.30%
	Services	2.60%	1.60%
	Goods/Equipment	0.60%	1.20%
	Combined		
Virginia Institute of Marine Science	Construction	4.10%	2.50%
	Supplies	0.80%	1.30%
	Services	2.60%	1.60%
	Goods/Equipment	0.60%	1.20%
	Combined		
Virginia Alliance for Chesapeake Bay, Inc.	Construction	4.10%	2.50%
	Supplies	0.80%	1.30%
	Services	2.60%	1.60%
	Goods/Equipment	0.60%	1.20%
	Combined		
West Virginia Department of Enviro. Protection	Construction	0.16%	0.64%
	Supplies	0.25%	5.27%
	Services	0.70%	17.76%
	Goods/Equipment	0.28%	5.95%
	Combined		
West Virginia Department of Health & HS/Office of Enviro. Health Services	Construction	2.00%	7.55%
	Supplies	1.70%	39.00%
	Services	6.57%	45.93%
	Goods/Equipment	2.59%	25.83%
	Combined		

Region 4

Fair Share Goals for Fiscal Years 2011-2013

Region 4

Recipient		MBE %	WBE %
Alabama ADEM	Commodities (Supplies)	4.00%	11.00%
	Contractual (Services)	8.00%	30.00%
	Equipment	5.00%	20.00%
	Construction	5.00%	17.00%
Florida SRF Construction FDEP	Construction	9.00%	3.00%
Georgia GEFA	Supplies	4.00%	4.00%
	Services	4.00%	4.00%
	Equipment	4.00%	4.00%
	Construction	4.00%	4.00%
Kentucky KDEP	Supplies	3.40%	6.30%
	Services	10.80%	18.60%
	Equipment	1.10%	1.20%
	Construction	4.10%	4.60%
Mississippi SRF Construction MSDH	Construction	3.10%	1.10%
Non SRF Programs MSDH	Supplies	7.70%	3.40%
	Services	1.10%	2.20%
	Equipment	6.80%	5.10%
North Carolina NCDENR	Supplies	7.00%	9.00%
	Services	7.00%	9.00%
	Equipment	7.00%	9.00%
	Construction	8.00%	5.00%
	Professional Services	4.00%	10.00%
South Carolina SCDHEC	Supplies	9.00%	9.00%
	Services	11.00%	11.00%
	Equipment	10.00%	10.00%
	Construction	3.60%	2.40%

Fair Share Goals for Fiscal Years 2012-2013

Region 4

Recipient		MBE %	WBE %
Tennessee	Supplies	5.20%	5.20%
TDEC	Services	5.20%	5.20%
	Equipment	5.20%	5.20%
	Construction	2.60%	2.60%

Region 5

Fair Share Goals for FY'11 - FY'14

Region 5

Recipient		MBE %	WBE %
Illinois IEPA *	Construction		
	Supplies		
	Services		
	Goods/Equipment		
	Combined	5.00%	12.00%
Illinois Metro Water *	Mechanical	13.00%	6.00%
	Electrical	11.00%	8.00%
	Construction	20.00%	10.00%
	Hauling Services	19.00%	13.00%
	Excavation Services	15.00%	8.00%
	Concrete Services	20.00%	9.00%
Indiana IDEM	Construction	7.00%	5.00%
	Professional Services	8.00%	8.00%
	Supplies and Equipment	4.00%	9.00%
Michigan MDNRE - Wayne City	Construction		
	Supplies		
	Services		
	Goods/Equipment		
	Combined	2.00%	6.00%
Minnesota MPCA **	Construction		
	Supplies		
	Services		
	Goods/Equipment		
	Combined	2.00%	2.00%
Minnesota MPFA	Construction		
	Supplies		
	Services		
	Goods/Equipment		
	Combined	3.50%	5.00%
Ohio	Construction	2.00%	1.30%
	Supplies		
	Services		
	Goods/Equipment		
	Combined	0.06%	0.05%
Wisconsin WDNR *	Construction		
	Supplies		
	Services		
	Goods/Equipment		
	Combined	3.00%	6.00%

* Goals have not been negotiated; goal are subject to change.

** Goals based upon disparity study; therefore, goals in place from FY'11 - FY'20

Region 6

Fair Share Goals as of July 16, 2013

*Fair Share Goals for all Recipients with State, Unless Specifically Identified
Region 6

Recipient		MBE %	WBE %
*Arkansas Department of Environmental Quality	Construction	8.30%	11.00%
	Supplies	2.60%	8.70%
	Services	13.10%	20.00%
	Goods/Equipment	2.80%	1.10%
	FY14-FY17 Availability Analysis		
*Louisiana Department of Environmental Quality	Construction	23.40%	11.90%
	Supplies	1.40%	1.40%
	Services	17.10%	12.40%
	Goods/Equipment	1.50%	1.40%
	FY11-FY13 Availability Analysis		
*New Mexico Environmental Department	Construction	41.03%	6.47%
	Supplies	25.51%	35.30%
	Services	38.78%	40.00%
	Goods/Equipment	36.69%	30.65%
	FY12-FY14 Availability Analysis		
New Mexico Pueblo de San Ildefonso	Construction	41.03%	6.47%
	Supplies	25.51%	35.30%
	Services	38.78%	40.00%
	Goods/Equipment	36.69%	30.65%
	FY12-FY14 Availability Analysis		
*Oklahoma Department of Environmental Quality	Construction	11.52%	7.61%
	Supplies	12.19%	21.24%
	Services	14.29%	26.51%
	Goods/Equipment	12.13%	12.28%
	FY12-FY14 Availability Analysis		
*Oklahoma Water Resources Board	Construction	13.94%	6.92%
	Supplies	7.48%	0.00%
	Services	14.29%	26.51%
	Goods/Equipment	9.13%	19.90%
	FY12-FY14 Availability Analysis		
*Oklahoma Cherokee Nation	Construction	10.60%	5.84%
	Supplies	5.06%	26.29%
	Services	12.66%	24.59%
	Goods/Equipment	8.49%	11.10%
	FY12-FY14 Availability Analysis		

Recipient		MBE %	WBE %
*Oklahoma QuaPaw Tribe of Oklahoma Board	Construction	11.52%	7.61%
	Supplies	12.19%	21.24%
	Services	14.29%	26.51%
	Goods/Equipment	12.13%	12.28%
FY'11-FY'13 Availability Analysis			
*Texas Commission on Environment and Quality	Construction	7.34%	10.60%
	Supplies	19.37%	14.15%
	Services	12.98%	23.70%
	Goods/Equipment	19.57%	19.64%
FY'12-FY'14 Availability Analysis			
Texas Water Development Board	Construction	12.94%	8.72%
	Supplies	9.68%	9.34%
	Services	10.84%	5.72%
	Goods/Equipment	7.12%	5.39%
FY'12-FY'14 Availability Analysis			
Texas City of Houston	Construction	19.00%	5.00%
	Supplies	10.00%	4.00%
	Services	17.00%	6.00%
	Goods/Equipment	10.00%	4.00%
FY'12-FY'14 Availability Analysis			

Region 7

Fair Share Goals Set October 1, 2006

Region 7

Recipient		MBE %	WBE %
Iowa	Construction	1.70%	2.20%
	Supplies	0.60%	5.60%
	Services	2.50%	11.30%
	Goods/Equipment	2.50%	10.40%
	Average	1.80%	7.40%
Kansas	Construction	4.10%	6.90%
	Supplies	0.80%	4.10%
	Services	5.60%	35.00%
	Goods/Equipment	1.20%	3.90%
	Average	2.90%	12.50%
Missouri	Construction	10.00%	5.00%
	Supplies	10.00%	5.00%
	Services	10.00%	5.00%
	Goods/Equipment	10.00%	5.00%
	Average	10.00%	5.00%
Nebraska	Construction	6.00%	8.00%
	Supplies	4.10%	12.00%
	Services	5.00%	11.00%
	Goods/Equipment	6.00%	11.00%
	Average	5.50%	10.50%
4 State Average	Construction	5.50%	5.50%
	Supplies	3.90%	6.70%
	Services	5.80%	15.60%
	Goods/Equipment	4.90%	7.60%
	Average	5.00%	8.80%

Region 8

Fair Share Goals for Fiscal Year 2011-2013

Region 8

Recipient		MBE %	WBE %
Colorado	Construction	6.10%	6.60%
	Supplies	6.10%	6.60%
	Services	6.10%	6.60%
	Equipment	6.10%	6.60%
	Combined		
Montana	Construction	2.00%	3.00%
	Supplies	2.00%	3.00%
	Services	2.00%	3.00%
	Equipment	2.00%	3.00%
	Combined		
North Dakota	Construction	2.00%	3.00%
	Supplies	2.00%	3.00%
	Services	2.00%	3.00%
	/Equipment	2.00%	3.00%
	Combined		
South Dakota	Construction	1.00%	4.00%
	Supplies	1.00%	3.00%
	Services	1.00%	6.00%
	Equipment	0.00%	5.00%
	Combined		
Utah	Construction	4.00%	2.00%
	Supplies	0.25%	0.25%
	Services	0.50%	0.50%
	Equipment	0.25%	0.25%
	Combined		
Wyoming	Construction	1.50%	2.50%
	Supplies	1.00%	2.50%
	Services	1.00%	1.50%
	Equipment	2.50%	5.00%
	Combined		

Region 9

MBE/WBE Fair Share Goals Chart

State Agency	Procurement Category	Approved FY 2010-12 MBE Goals	Approved FY 2010-12 WBE Goals
Nevada Department of Conservation and Natural Resources (Division of Environmental Protection)	Construction	12 %	10 %
	Equipment	11 %	23 %
Nevada Department of Agriculture	Services	7 %	25 %
Nevada Division of Wildlife	Supplies	13 %	28 %
Nevada State Health Division			
Las Vegas Paiute Tribe			
Yerington Paiute Tribe			

Revised and Approved MBE/WBE Fair Share goals (Effective 12/25/11)

State Agency	Procurement Categories	Approved FY 2012-14 MBE Goals	Approved FY 2012-14 WBE Goals
California State Water Resources Control Board	Construction	2%	1%
California Department of Pesticide Regulation	Equipment	1%	1%
California State Coastal Conservancy	Services	1%	1%
California Department of Conservation (Oil & Gas)	Supplies	1%	1%
California Natural Resources Agency			
California Department of Toxic Substances Control			
California Air Resources Board			
California Dept of Water Resources			
California Environmental Protection Agency			
California Department of Fish and Game			
Grindstone Indian Rancheria			
Morongo Band of Mission Indians			

Revised and Approved MBE/WBE Fair Share goals (Effective 12/25/211)

State Agency	Procurement Category	Approved FY 2012-14 MBE Goals	Approved FY 2012-14 WBE Goals
California Department of Public Health (CADPH)	Construction	11 %	4%
	Equipment	2%	2%
	Services	4%	2%
	Supplies	2%	1%

State Agency	Procurement Category	Approved FY 2010-12 MBE Goals	Approved FY 2010-12 WBE Goals
Arizona Department of Environmental Quality	Construction	15 %	7 %
Arizona Department of Agriculture	Equipment	14 %	20 %
Arizona Structural Pest Control Commission	Services	15 %	32 %
Arizona Radiation Regulatory Agency	Supplies	15 %	31 %
Arizona Water Infrastructure Authority			
Gila River Indian Community			

Revised and Approved MBE/WBE Fair Share goals (Effective 12/23/09)			
State Agency	Procurement Category	FY 2010-12 MBE Goal (%)	FY 2010-12 WBE Goal (%)
Hawaii Department of Health	Construction	12 %	5 %
Hawaii Department of Agriculture	Equipment	2 %	3 %
HI Dept of Business, Economic Devel. & Tourism	Services	3 %	2 %
Hawaii Dept. of Land and Natural Resources (Division of Forestry & Wildlife)	Supplies	1 %	1 %

Revised and Approved MBE/WBE Fair Share goals (Effective 01/01/2011)			
Non-State Grant Recipient	Procurement Category	Approved FY 2011-13 MBE Goals	Approved FY 2011-13 WBE Goals
City of Eureka, California	Construction	7 %	1 %
	Equipment	N/A	N/A
	Services	N/A	N/A
	Supplies	N/A	N/A

Revised and Approved MBE/WBE Fair Share goals (Effective 01/01/2011)			
Non-State Grant Recipient	Procurement Category	Approved FY 2011-13 MBE Goals	Approved FY 2011-13 WBE Goals
Shasta County, California	Construction	10 %	0 %
	Equipment	N/A	N/A
	Services	N/A	N/A
	Supplies	N/A	N/A

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Region 10

Fair Share Goals for Fiscal Year 2011-2013

Region 10

Recipient		MBE %	WBE %
Alaska Department of Environmental Conservation (ADEC)	CWSRF	4.58%	2.04%
	DWSRF	4.58%	2.04%
	Services	3.22%	2.54%
	Equipment		
	Supplies	2.06%	1.29%
Idaho IDEQ	CWSRF Supplies	0.70%	1.40%
	CWSRF Services	1.20%	1.80%
	CWSRF Construction	2.40%	1.60%
	CWSRF Equipment	0.10%	0.30%
	Equipment	0.10%	0.30%
	Services	1.20%	1.80%
	Supplies	0.70%	1.40%
Idaho Department of Agriculture (Using IDEQ's Goals)	Construction		
	Supplies	0.70%	1.40%
	Services	1.20%	1.80%
	Equipment	0.10%	0.30%
	Combined		
Idaho Department of Water (Using IDEQ's Goals)	CWSRF Construction	2.40%	1.60%
	CWSRF Supplies	0.70%	1.40%
	CWSRF Services	1.20%	1.80%
	CWSRF Equipment	0.10%	0.30%
	Equipment	1.20%	1.80%
	Services	0.70%	1.40%
	Supplies	0.10%	0.30%
Oregon Department of Enviro. Quality (ODEQ)	CWSRF Construction	1.98%	1.85%
	CWSRF Services	2.78%	5.97%
	DWSRF Construction	1.98%	1.85%
	DWSRF Services	2.78%	5.97%
	Services	1.69%	4.48%
	Supplies	0.31%	0.63%
	Equipment	1.71%	2.56%
Oregon Department of Agriculture	Supplies	3.83%	3.83%
	Services	3.83%	3.83%
	Equipment	0.14%	0.24%
	Combined		
Oregon Department of Health (Using ODEQ's goals)	CWSRF Construction	1.98%	1.85%
	CWSRF Services	2.78%	5.97%
	DWSRF Construction	1.98%	1.85%
	DWSRF Services	2.78%	5.97%
	Services	1.69%	4.48%
	Supplies	0.31%	0.63%
	Equipment	1.71%	2.56%

Fair Share Goals for Fiscal Year 2011-2013

Region 10

Recipient		MBE %	WBE %
Washington Department of Agriculture (Using 2007 NO CHARGE)	Construction		
	Supplies	8.00%	4.00%
	Services	10.00%	4.00%
	Equipment	8.00%	4.00%
	Combined		
Washington Department of Ecology (Using 2007 NO CHARGE)	Construction	10.00%	6.00%
	Services	10.00%	4.00%
	Equipment	8.00%	4.00%
	Supplies	8.00%	4.00%
Washington Department of Health (Using 2007 NO CHARGE)	Construction	10.00%	6.00%
	Supplies	8.00%	4.00%
	Services	10.00%	4.00%
	Equipment	8.00%	4.00%

Office of Management and Budget

OMB Circular A-87

http://www.whitehouse.gov/sites/default/files/omb/assets/agencyinformation_circulars_pdf/a87_2004.pdf

Title 2: Grants and Agreements, Part 225—Cost Principles for State, Local and Indian Tribal Governments (Revised 05/10/04)

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Cost Principles for State, Local, and Indian Tribal Governments

- Purpose.** This Circular establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally recognized Indian tribal governments (governmental units).
- Authority.** This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; the Chief Financial Officers Act of 1990; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").
- Background.** As part of the government-wide grant streamlining effort under P.L. 106-107, Federal Financial Award Management Improvement Act of 1999, OMB led an interagency workgroup to simplify and make consistent, to the extent feasible, the various rules used to award Federal grants. An interagency task force was established in 2001 to review existing cost principles for Federal awards to State, local, and Indian tribal governments; Colleges and Universities; and Non-Profit organizations. The task force studied Selected Items of Cost in each of the three cost principles to determine which items of costs could be stated consistently and/or more clearly. A proposed revised Circular reflecting the results of those efforts was issued on August 12, 2002 at 67 FR 52558. Extensive comments on the proposed revisions, discussions with interest groups, and related developments were considered in developing this revision.
- Rescissions.** This Circular rescinds and supersedes Circular A 87, as amended, issued May 4, 1995.
- Policy.** This Circular establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency, and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal award. Provision for profit or other increment above cost is outside the scope of this Circular.
- Definitions.** Definitions of key terms used in this Circular are contained in Attachment A, Section B.
- Required Action.** Agencies responsible for administering programs that involve cost reimbursement contracts, grants, and other agreements with governmental units shall issue regulations to implement the provisions of this Circular and its Attachments.
- OMB Responsibilities.** The Office of Management and Budget (OMB) will review agency regulations and implementation of this Circular, and will provide policy interpretations and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

9. **Information Contact.** Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, Financial Standards and Reporting Branch, Office of Management and Budget, Washington, DC 20503, telephone 202 395 3993.

10. **Policy Review Date.** OMB Circular A 87 will have a policy review three years from the date of issuance.

11. **Effective Date.** This Circular is effective as follows:

- Except as otherwise provided herein, these rules are effective June 9, 2004.

[Attachment A](#) General Principles for Determining Allowable Costs

[Attachment B](#) Selected Items of Cost

[Attachment C](#) State/Local Wide Central Service Cost Allocation Plans

[Attachment D](#) Public Assistance Cost Allocation Plans

[Attachment E](#) State and Local Indirect Cost Rate Proposals

GENERAL PRINCIPLES FOR DETERMINING ALLOWABLE COSTS

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A. *Purpose and Scope*

1. Objectives. This Attachment establishes principles for determining the allowable costs incurred by State, local, and federally recognized Indian tribal governments (governmental units) under grants, cost reimbursement contracts, and other agreements with the Federal Government (collectively referred to in this Circular as "Federal awards"). The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by law. Provision for profit or other increment above cost is outside the scope of this Circular.

2. Policy guides.

- a. The application of these principles is based on the fundamental premises that:

- (1) Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices.

- (2) Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

- (3) Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal awards.

- b. Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs. The Office of Management and Budget (OMB) encourages Federal agencies to test fee for service alternatives as a replacement for current cost reimbursement payment methods in response to the National Performance Review's (NPR) recommendation. The NPR recommended the fee for service approach to reduce the burden associated with maintaining systems for charging administrative costs to Federal programs and

preparing and approving cost allocation plans. This approach should also increase incentives for administrative efficiencies and improve outcomes.

3. Application.

- a. These principles will be applied by all Federal agencies in determining costs incurred by governmental units under Federal awards (including subawards) except those with (1) publicly financed educational institutions subject to OMB Circular A 21, "Cost Principles for Educational Institutions," and (2) programs administered by publicly owned hospitals and other providers of medical care that are subject to requirements promulgated by the sponsoring Federal agencies. However, this Circular does apply to all central service and department/agency costs that are allocated or billed to those educational institutions, hospitals, and other providers of medical care or services by other State and local government departments and agencies.
- b. All subawards are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a governmental unit (other than a college, university or hospital), this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial organizations shall apply; if a subaward is to a college or university, Circular A 21 shall apply; if a subaward is to a hospital, the cost principles used by the Federal awarding agency for awards to hospitals shall apply, subject to the provisions of subsection A.3.a. of this Attachment; if a subaward is to some other non profit organization, Circular A 122, "Cost Principles for Non Profit Organizations," shall apply.
- c. These principles shall be used as a guide in the pricing of fixed price arrangements where costs are used in determining the appropriate price.
- d. Where a Federal contract awarded to a governmental unit incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply. In such cases, the governmental unit and the cognizant Federal agency shall establish an appropriate advance agreement on how the governmental unit will comply with applicable CAS requirements when estimating, accumulating and reporting costs under CAS covered contracts. The agreement shall indicate that OMB Circular A 87 requirements will be applied to other Federal awards. In all cases, only one set of records needs to be maintained by the governmental unit.
- e. Conditional exemptions.

(1) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(2) To promote efficiency in State and local program administration, when Federal non entitlement programs with common purposes have specific statutorily authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non Federal sources, Federal agencies may exempt these covered State administered, non entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A 87 (Attachment A, subsection C.3), "Cost Principles for State, Local, and Indian Tribal Governments," A 21 (Section C, subpart 4), "Cost Principles for Educational Institutions," and A 122 (Attachment A, subsection A.4), "Cost Principles for Non Profit Organizations," and from all of the administrative requirements provisions of OMB Circular A 110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non Profit Organizations," and the agencies' grants

management common rule.

(3) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A 87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

B. Definitions

1. "Approval or authorization of the awarding or cognizant Federal agency" means documentation evidencing consent prior to incurring a specific cost. If such costs are specifically identified in a Federal award document, approval of the document constitutes approval of the costs. If the costs are covered by a State/local wide cost allocation plan or an indirect cost proposal, approval of the plan constitutes the approval.
2. "Award" means grants, cost reimbursement contracts and other agreements between a State, local and Indian tribal government and the Federal Government.
3. "Awarding agency" means (a) with respect to a grant, cooperative agreement, or cost reimbursement contract, the Federal agency, and (b) with respect to a subaward, the party that awarded the subaward.
4. "Central service cost allocation plan" means 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.
5. "Claim" means a written demand or written assertion by the governmental unit or grantor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A voucher, invoice or other routine request for payment that is not a dispute when submitted is not a claim. Appeals, such as those filed by a governmental unit in response to questioned audit costs, are not considered claims until a final management decision is made by the Federal awarding agency.
6. "Cognizant agency" means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this Circular on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies.
7. "Common Rule" means the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule" originally issued at 53 FR 8034 8103 (March 11, 1988). Other common rules will be referred to by their specific titles.
8. "Contract" means 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.
9. "Cost" means 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.

10. "Cost allocation plan" means central service cost allocation plan, public assistance cost allocation plan, and indirect cost rate proposal. Each of these terms are further defined in this section.

11. "Cost objective" means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

12. "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 through the Bureau of Indian Affairs.

13. "Governmental unit" means the entire State, local, or federally recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award.

14. "Grantee department or agency" means the component of a State, local, or federally recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal award.

15. "Indirect cost rate proposal" means 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 this Circular.

16. "Local government" means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

17. "Public assistance cost allocation plan" means 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 this Circular.

18. "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.

C. *Basic Guidelines*

1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:

- a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
- b. Be allocable to Federal awards under the provisions of this Circular.
- c. Be authorized or not prohibited under State or local laws or regulations.
- d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.
- e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
- f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

- g. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.
- h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
- i. Be the net of all applicable credits.
- j. Be adequately documented.

2. Reasonable costs. A cost is reasonable if, in its nature and amount, 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. The question of reasonableness is particularly important when governmental units or components are predominately federally funded. In determining reasonableness of a given cost, consideration shall be given to:

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.
- b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.
- c. Market prices for comparable goods or services.
- d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.
- e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

3. Allocable costs.

- a. A cost is allocable 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 an appropriate allocation of indirect costs.
- c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons.
- 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.

4. Applicable credits.

- a. Applicable credits refer to those receipts or reduction of expenditure type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs. Examples of such transactions are: 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 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 any 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, item 11, "Depreciation and use allowances," for areas of potential application in the matter of Federal financing of activities.)

D. *Composition of Cost*

1. Total cost. The total cost of Federal awards is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits.
2. Classification of costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost. Guidelines for determining direct and indirect costs charged to Federal awards are provided in the sections that follow.

E. *Direct Costs*

1. General. Direct costs are those that can be identified specifically with a particular final cost objective.
2. Application. Typical direct costs chargeable to Federal awards are:
 - a. Compensation of employees for the time devoted and identified specifically to the performance of those awards.
 - b. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards.
 - c. Equipment and other approved capital expenditures.
 - d. Travel expenses incurred specifically to carry out the award.
3. Minor items. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all cost objectives.

F. *Indirect Costs*

1. General. Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. Indirect cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.
2. Cost allocation plans and indirect cost proposals. Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Attachments C, D, and E.
3. Limitation on indirect or administrative costs.
 - a. In addition to restrictions contained in this Circular, there may be laws that further limit the amount of administrative or indirect cost allowed.
 - b. Amounts not recoverable as indirect costs or administrative costs under one Federal award may not be shifted to another Federal award, unless specifically authorized by Federal legislation or regulation.

G. *Interagency Services.* The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rate share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Attachment C.

H. *Required Certifications.* Each cost allocation plan or indirect cost rate proposal required by Attachments C and E must comply with the following:

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency or maintained on file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Attachments C and E. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal.
2. No cost allocation plan or indirect cost rate shall be approved by the Federal Government unless the plan or rate proposal has been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate and the governmental unit has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government may either disallow all indirect costs or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because of failure of the governmental unit to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

ATTACHMENT B
Circular No. A 87

SELECTED ITEMS OF COST

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Sections 1 through 43 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in Attachment A to this Circular. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. *Advertising and public relations costs.*

- a. The term advertising costs means the costs of advertising media and corollary administrative costs.

Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

- b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

- c. The only allowable advertising costs are those which are solely for:
 - (1) The recruitment of personnel required for the performance by the governmental unit of obligations arising under a Federal award ;
 - (2) The procurement of goods and services for the performance of a Federal award;
 - (3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when governmental units are reimbursed for disposal costs at a predetermined amount; or
 - (4) Other specific purposes necessary to meet the requirements of the Federal award.
 - d. The only allowable public relations costs are:
 - (1) Costs specifically required by the Federal award;
 - (2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of Federal awards (these costs are considered necessary as part of the outreach effort for the Federal award); or
 - (3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.
 - e. Costs identified in subsections c and d if incurred for more than one Federal award or for both sponsored work and other work of the governmental unit, are allowable to the extent that the principles in Attachment A, sections E. (“Direct Costs”) and F. (“Indirect Costs”) are observed.
 - f. Unallowable advertising and public relations costs include the following:
 - (1) All advertising and public relations costs other than as specified in subsections c, d, and e;
 - (2) Costs of meetings, conventions, convocations, or other events related to other activities of the governmental unit, including:
 - (a) Costs of displays, demonstrations, and exhibits;
 - (b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and
 - (c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;
 - (3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;
 - (4) Costs of advertising and public relations designed solely to promote the governmental unit.
2. **Advisory councils.** Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.
3. **Alcoholic beverages.** Costs of alcoholic beverages are unallowable.

4. *Audit costs and related services.*

- a. The costs of audits required by, and performed in accordance with, the Single Audit Act, as implemented by Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" are allowable. Also see 31 USC 7505(b) and section 230 ("Audit Costs") of Circular A-133.
- b. Other audit costs are allowable if included in a cost allocation plan or indirect cost proposal, or if specifically approved by the awarding agency as a direct cost to an award.
- c. The cost of agreed-upon procedures engagements to monitor subrecipients who are exempted from A-133 under section 200(d) are allowable, subject to the conditions listed in A-133, section 230 (b)(2).

5. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectable accounts and other claims, related collection costs, and related legal costs, are unallowable.

6. *Bonding costs.*

- a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the governmental unit. They arise also in instances where the governmental unit requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.
- b. Costs of bonding required pursuant to the terms of the award are allowable.
- c. Costs of bonding required by the governmental unit in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

7. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

8. *Compensation for personal services.*

- a. General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this Circular, and that the total compensation for individual employees:
 - (1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non Federal activities;
 - (2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and
 - (3) Is determined and supported as provided in subsection h.
- b. Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

- c. Unallowable costs. Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.
- d. Fringe benefits.

(1) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: (a) they are provided under established written leave policies; (b) the costs are equitably allocated to all related activities, including Federal awards; and, (c) the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section 22, Insurance and indemnification); pension plan costs (see subsection e.); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities.

- e. Pension plan costs. Pension plan costs may be computed using a pay as you go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For pension plans financed on a pay as you go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the governmental unit's contribution to

the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

- f. Post retirement health benefits. Post retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection e. for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay as you go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For PRHB financed on a pay as you go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, the PRHB costs must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post retirement benefits to retirees and other beneficiaries.

(6) The Federal Government shall receive an equitable share of any amounts of previously allowed post retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. Severance pay.

(1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by (a) law, (b) employer employee agreement, or (c) established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case by case basis and is allowable only if approved by the cognizant Federal agency.

h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5) unless a statistical sampling system (see subsection (6)) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

(a) More than one Federal award,

(b) A Federal award and a non Federal award,

(c) An indirect cost activity and a direct cost activity,

(d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

(a) They must reflect an after the fact distribution of the actual activity of each employee,

(b) They must account for the total activity for which each employee is compensated,

(c) They must be prepared at least monthly and must coincide with one or more pay periods,

and

(d) They must be signed by the employee.

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:

(i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;

(ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and

(iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(a) Substitute systems which use sampling methods (primarily for Temporary Assistance to Needy Families (TANF), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection (c);

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection (a) may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards.

(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those claimed as allowable costs under Federal awards.

i. Donated services.

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

9. **Contingency provisions.** Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see Attachment B, section 22.c.), pension plan reserves (see Attachment B, section 8.e.), and post-retirement health and other benefit reserves (see Attachment B, section 8.f.) computed using acceptable actuarial cost methods.

10. **Defense and prosecution of criminal and civil proceedings, and claims.**

- a. The following costs are unallowable for contracts covered by 10 U.S.C. 2324(k), "Allowable costs under defense contracts."

(1) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of false certification brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification)).

(2) Costs incurred by a contractor in connection with any criminal, civil or administrative proceedings commenced by the United States or a State to the extent provided in 10 U.S.C. 2324(k).

- b. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

11. **Depreciation and use allowances.**

- a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefiting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.) except as provided for in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government-wide financial statements.
- b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

- c. The computation of depreciation or use allowances will exclude:
- (1) The cost of land;
 - (2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and
 - (3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching requirement.
- d. Where the depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used.

Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

- e. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (e.g., plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life, or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.
- f. Where the use allowance method is followed, the use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs. The use allowance for equipment will be computed at an annual rate not exceeding $6 \frac{2}{3}$ percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell.

The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these criteria will be subject to the $6 \frac{2}{3}$ percent equipment use allowance limitation.

- g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

- h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use. Governmental units will manage equipment in accordance with State laws and procedures. When the depreciation method is followed, depreciation records indicating the amount of depreciation taken each period must also be maintained.

12. *Donations and contributions.*

- a. Contributions or donations rendered. Contributions or donations, including cash, property, and services, made by the governmental unit, regardless of the recipient, are unallowable.
- b. Donated services received:

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the Federal Grants Management Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

13. *Employee morale, health, and welfare costs.*

- a. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the governmental unit's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.
- b. Such costs will be equitably apportioned to all activities of the governmental unit. Income generated from any of these activities will be offset against expenses.

14. *Entertainment.* Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

15. *Equipment and other capital expenditures.*

- a. For purposes of this subsection 15, the following definitions apply:

(1) "Capital Expenditures" means expenditures for the acquisition cost of capital assets (equipment, buildings, land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the governmental unit's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life

of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5000.

(3) "Special purpose equipment" means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment, which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5000 or more have the prior approval of the awarding agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

(4) When approved as a direct charge pursuant to Attachment B, section 15.b (1), (2), and (3) above, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the awarding agency. In addition, Federal awarding agencies are authorized at their option to waive or delegate the prior approval requirement.

(5) Equipment and other capital expenditures are unallowable as indirect costs. However, see section 11, Depreciation and use allowance, for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see section 37, Rental costs, concerning the allowability of rental costs for land, buildings, and equipment.

(6) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

(7) When replacing equipment purchased in whole or in part with Federal funds, the governmental unit 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.

16. ***Fines and penalties.*** Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal award or written instructions by the awarding agency authorizing in advance such payments.

17. *Fund raising and investment management costs.*

- a. Costs of organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable, regardless of the purpose for which the funds will be used.
- b. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable. However, such costs associated with investments covering pension, self insurance, or other funds which include Federal participation allowed by this Circular are allowable.
- c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subsection C.3.b. of Attachment A.

18. *Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal programs.*

- a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:
 - (a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under sections 11 and 15.
 - (b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.
 - (c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 22.d.
 - (d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.
- b. Substantial relocation of Federal awards from a facility where the Federal Government participated in the financing to another facility prior to the expiration of the useful life of the financed facility requires Federal agency approval. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation charged to date may require negotiation of space charges for Federal awards.
- c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a., e.g., land or included in the fair market value used in any adjustment resulting from a relocation of Federal awards covered in subsection b. shall be excluded in computing Federal award costs.

19. *General government expenses.*

- a. The general costs of government are unallowable (except as provided in Attachment B, section 43, Travel costs). These include:
 - (1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executive of federally recognized Indian tribal government;

(2) Salaries and other expenses of a State legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

(3) Costs of the judiciary branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by program statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General); and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

- b. For federally recognized Indian tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable.

20. *Goods or services for personal use.* Costs of goods or services for personal use of the governmental unit's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

21. *Idle facilities and idle capacity.*

- a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) "Idle facilities" means completely unused facilities that are excess to the governmental unit's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between: (a) that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and (b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, property taxes and depreciation or use allowances.

- b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

- c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

22. *Insurance and indemnification.*

- a. Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.
- b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:
 - (1) Types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice.
 - (2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.
- c. Actual losses which could have been covered by permissible insurance (through a self insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award or as described below. However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.
- d. Contributions to a reserve for certain self insurance programs including workers compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:
 - (1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate of return.
 - (2) Earnings or investment income on reserves must be credited to those reserves.
 - (3) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee related coverages will normally be limited to the value of claims (a) submitted and adjudicated but not paid, (b) submitted but not adjudicated, and (c) incurred but not submitted. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

- e. (4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer.
- f. Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., subsection 8.f. for post retirement health benefits), are allowable in the year of payment provided (1) the governmental unit follows a consistent costing policy and (2) they are allocated as a general administrative expense to all activities of the governmental unit.
- g. Insurance refunds shall be credited against insurance costs in the year the refund is received.
- h. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal award, except as provided in subsection d.
- i. Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship are unallowable.

23. *Interest.*

- a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically provided in subsection b. or authorized by Federal legislation.
- b. Financing costs (including interest) paid or incurred which are associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable subject to the conditions in (1) through (4) of this section 23.b. Financing costs (including interest) paid or incurred on or after September 1, 1995 for land or associated with otherwise allowable costs of equipment is allowable, subject to the conditions in (1) through (4).

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;

(2) These assets are used in support of Federal awards;

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(4) For debt arrangements over \$1 million, unless the governmental unit makes an initial equity contribution to the asset purchase of 25 percent or more, the governmental unit shall reduce claims for interest cost by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, non-Federal entities shall prepare a cumulative (from the inception

of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest cost. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (i.e., usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest cost. The rate of interest to be used to compute earnings on excess cash flows shall be the three-month Treasury bill closing rate as of the last business day of that month.

(5) Interest attributable to fully depreciated assets is unallowable.

24. *Lobbying.*

- a. General. The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans shall be governed by the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Government wide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), and 57 FR 1772 (January 15, 1992), respectively.
- b. Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally sponsored agreement or regulatory matter on any basis other than the merits of the matter.

25. *Maintenance, operations, and repairs.* Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: (1) keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, (2) do not add to the permanent value of property or appreciably prolong its intended life, and (3) are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (see sections 11 and 15).

26. *Materials and supplies costs.*

- a. Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.
- b. Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.
- c. Only materials and supplies actually used for the performance of a Federal award may be charged as direct costs.
- d. Where federally donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

27. **Meetings and conferences.** Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. But see Attachment B, section 14, Entertainment costs.

28. **Memberships, subscriptions, and professional activity costs.**

- a. Costs of the governmental unit's memberships in business, technical, and professional organizations are allowable.
- b. Costs of the governmental unit's subscriptions to business, professional, and technical periodicals are allowable.
- c. Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the Federal awarding agency.
- d. Costs of membership in organizations substantially engaged in lobbying are unallowable.

29. **Patent costs.**

- a. The following costs relating to patent and copyright matters are allowable:
 - (i) cost of preparing disclosures, reports, and other documents required by the Federal award and of searching the art to the extent necessary to make such disclosures;
 - (ii) cost of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and
 - (iii) general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements (but see Attachment B, sections 32, Professional service costs, and 38, Royalties and other costs for use of patents and copyrights).
- b. The following costs related to patent and copyright matter are unallowable:
 - (i) Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures not required by the award
 - (ii) Costs in connection with filing and prosecuting any foreign patent application, or (ii) any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government (but see Attachment B, section 38., Royalties and other costs for use of patents and copyrights).

30. **Plant and homeland security costs.** Necessary and reasonable expenses incurred for routine and homeland security to protect facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; contractual security services; consultants; etc. Capital expenditures for homeland and plant security purposes are subject to section 15., Equipment and other capital expenditures, of this Circular.

31. **Pre award costs.** Pre award costs are those 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. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

32. *Professional service costs.*

- a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the governmental unit, are allowable, subject to subparagraphs b and c when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.

In addition, legal and related services are limited under Attachment B, section 10.

- b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

- (1) The nature and scope of the service rendered in relation to the service required.

- (2) The necessity of contracting for the service, considering the governmental unit's capability in the particular area.

- (3) The past pattern of such costs, particularly in the years prior to Federal awards.

- (4) The impact of Federal awards on the governmental unit's business (i.e., what new problems have arisen).

- (5) Whether the proportion of Federal work to the governmental unit's total business is such as to influence the governmental unit in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

- (6) Whether the service can be performed more economically by direct employment rather than contracting.

- (7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.

- (8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

- c. In addition to the factors in subparagraph b, retainer fees to be allowable must be supported by available or rendered evidence of bona fide services available or rendered.

33. *Proposal costs.* Costs of preparing proposals for potential Federal awards are allowable. Proposal costs should normally be treated as indirect costs and should be allocated to all activities of the governmental unit utilizing the cost allocation plan and indirect cost rate proposal. However, proposal costs may be charged directly to Federal awards with the prior approval of the Federal awarding agency.

34. *Publication and printing costs.*

- a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling. Publication costs also include page charges in professional publications.
- b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the governmental unit.

- c. Page charges for professional journal publications are allowable as a necessary part of research costs where:

- (1) The research papers report work supported by the Federal Government: and

- (2) The charges are levied impartially on all research papers published by the journal, whether or not by federally sponsored authors

35. ***Rearrangement and alteration costs.*** Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable. Special arrangements and alterations costs incurred specifically for a Federal award are allowable with the prior approval of the Federal awarding agency.

36. ***Reconversion costs.*** Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

37. ***Rental costs of buildings and equipment.***

- a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.
- b. Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance.
- c. Rental costs under "less-than-arms-length" leases are allowable only up to the amount (as explained in Attachment B, section 37.b) that would be allowed had title to the property vested in the governmental unit. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between (i) divisions of a governmental unit; (ii) governmental units under common control through common officers, directors, or members; and (iii) a governmental unit and a director, trustee, officer, or key employee of the governmental unit or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, a governmental unit may establish a separate corporation for the sole purpose of owning property and leasing it back to the governmental unit.
- d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in subsection b) that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. The provisions of Financial Accounting Standards Board Statement 13, Accounting for Leases, shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in Attachment B, section 23. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the governmental unit purchased the facility.

38. ***Royalties and other costs for the use of patents.***

- a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:
 - (1) The Federal Government has a license or the right to free use of the patent or copyright.

- (2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.
- (3) The patent or copyright is considered to be unenforceable.
- (4) The patent or copyright is expired.
- b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, e.g.:
 - (1) Royalties paid to persons, including corporations, affiliated with the governmental unit.
 - (2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.
 - (3) Royalties paid under an agreement entered into after an award is made to a governmental unit.
- c. In any case involving a patent or copyright formerly owned by the governmental unit, the amount of royalty allowed should not exceed the cost which would have been allowed had the governmental unit retained title thereto.

39. ***Selling and marketing.*** Costs of selling and marketing any products or services of the governmental unit are unallowable (unless allowed under Attachment B, section 1. as allowable public relations costs or under Attachment B, section 33. as allowable proposal costs.

40. ***Taxes.***

- a. Taxes that a governmental unit is legally required to pay are allowable, except for self assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. This provision becomes effective for taxes paid during the governmental unit's first fiscal year that begins on or after January 1, 1998, and applies thereafter.
- b. Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.
- c. This provision does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency may accept a reasonable approximation thereof.

41. ***Termination costs applicable to sponsored agreements.*** Termination of awards generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Circular in termination situations.

- a. The cost of items reasonably usable on the governmental unit's other work shall not be allowable unless the governmental unit submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the governmental unit, the awarding agency should consider the governmental unit's plans and orders for current and scheduled activity.

Contemporaneous purchases of common items by the governmental unit shall be regarded as evidence that such items are reasonably usable on the governmental unit's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award shall be

limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

- b. If in a particular case, despite all reasonable efforts by the governmental unit, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the governmental unit to discontinue such costs shall be unallowable.
- c. Loss of useful value of special tooling, machinery, and equipment is generally allowable if:
 - (1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the governmental unit,
 - (2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency, and
 - (3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.
- d. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:
 - (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and
 - (2) the governmental unit makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.
- e. Settlement expenses including the following are generally allowable:
 - (1) Accounting, legal, clerical, and similar costs reasonably necessary for:
 - (a) The preparation and presentation to the awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for default (see Subpart __.44 of the Grants Management Common Rule implementing OMB Circular A-102); and
 - (b) The termination and settlement of subawards.
 - (2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award, except when grantees or contractors are reimbursed for disposals at a predetermined amount in accordance with Subparts __.31 and __.32 of the Grants Management Common Rule implementing OMB Circular A-102.
- f. Claims under subawards, including the allocable portion of claims which are common to the Federal award, and to other work of the governmental unit are generally allowable.

An appropriate share of the governmental unit's indirect expense may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in Attachment A. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

42. **Training costs.** The cost of training provided for employee development is allowable.

43. **Travel costs.**

- a. General. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the governmental unit. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the governmental unit's non-federally sponsored activities. Notwithstanding the provisions of Attachment B, section 19, General government expenses, travel costs of officials covered by that section are allowable with the prior approval of an awarding agency when they are specifically related to Federal awards.
- b. Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as the result of the governmental unit's written travel policy. In the absence of an acceptable, written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57, Title 5, United States Code ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter shall apply to travel under Federal awards (48 CFR 31.205-46(a)).
- c. Commercial air travel.

(1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would:

- (a) require circuitous routing;
- (b) require travel during unreasonable hours;
- (c) excessively prolong travel;
- (d) result in additional costs that would offset the transportation savings; or
- (e) offer accommodations not reasonably adequate for the traveler's medical needs. The governmental unit must justify and document these conditions on a case-by-case basis in order for the use of first-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a governmental unit's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the governmental unit can demonstrate either of the following: (a) that such airfare was not available in the specific case; or (b) that it is the governmental unit's overall practice to make routine use of such airfare.

- d. Air travel by other than commercial carrier. Costs of travel by governmental unit-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of allowable commercial air travel, as provided for in subsection c., is unallowable.

- e. Foreign travel. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must receive such approval. For purposes of this provision, “foreign travel” includes any travel outside Canada, Mexico, the United States, and any United States territories and possessions. However, the term “foreign travel” for a governmental unit located in a foreign country means travel outside that country.

ATTACHMENT C
Circular No. A 87

STATE/LOCAL WIDE CENTRAL SERVICE COST ALLOCATION PLANS

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A. *General.*

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.
2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

B. *Definitions.*

1. "Billed central services" means central services that are billed to benefitted agencies and/or programs on an individual fee for service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.
2. "Allocated central services" means central services that benefit operating agencies but are not billed to the agencies on a fee for service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.
3. "Agency or operating agency" means an organizational unit or sub division within a governmental unit that is responsible for the performance or administration of awards or activities of the governmental unit.

C. *Scope of the Central Service Cost Allocation Plans.* The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. *Submission Requirements.*

1. Each State will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.
2. Each local government that has been designated as a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant agency annually. OMB periodically lists major local governments in the Federal Register.
3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Circular and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub recipient, the primary recipient will be responsible for negotiating indirect cost rates and/or monitoring the sub recipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency on a case by case basis.

E. *Documentation Requirements for Submitted Plans.* The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency on a case by case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General. All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the State/local government whether or not they are shown as benefiting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Circular, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non Federal awards/activities.

2. Allocated central services. For each allocated central service, the plan must also include the following: a brief description of the service*, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. shall also be included.

3. Billed services.

a. a. General. The information described below shall be provided for all billed central services, including internal service funds, self insurance funds, and fringe benefit funds.

b. Internal service funds.

(1) For each internal service fund or similar activity with an operating budget of \$5 million or more, the plan shall include: a brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Circular, with an explanation of how variances will be handled.

(2) Revenues shall consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users shall be provided. Expenses shall be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. Self insurance funds. For each self insurance fund, the plan shall include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a

listing of all non operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

- d. Fringe benefits. For fringe benefit costs, the plan shall include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies*; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post retirement health insurance plans, the following information shall be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or State mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required certification. Each central service cost allocation plan will be accompanied by a certification in the following form:

CERTIFICATE OF COST ALLOCATION PLAN

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of OMB Circular A 87, "Cost Principles for State, Local, and Indian Tribal Governments," and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

F. Negotiation and Approval of Central Service Plans.

1. All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the Federal cognizant agency on a timely basis. The cognizant agency will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its

awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency.

2. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation shall be made available to all Federal agencies for their use.

3. Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, shall be adjusted, or a refund shall be made at the option of the Federal cognizant agency. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. *Other Policies.*

1. Billed central service activities. Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working capital reserves. Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 days may be approved by the cognizant Federal agency in exceptional cases.

3. Carry forward adjustments of allocated central service costs. Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry forward" procedure applies to all central services whose costs were fixed in the approved plan. However, a carry forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of billed central services. Billing rates used to charge Federal awards shall be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non Federal) share exceeds \$500,000.

5. Records retention. All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

6. Appeals. If a dispute arises in the negotiation of a plan between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.
7. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

ATTACHMENT D
Circular No. A 87

PUBLIC ASSISTANCE COST ALLOCATION PLANS

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A. **General.** Federally financed programs administered by State public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Attachment extends these requirements to all Federal agencies whose programs are administered by a State public assistance agency. Major federally financed programs typically administered by State public assistance agencies include: Temporary Assistance to Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. **Definitions.**

1. "State public assistance agency" means a State agency administering or supervising the administration of one or more public assistance programs operated by the State as identified in Subpart E of 45 CFR Part 95. For the purpose of this Attachment, these programs include all programs administered by the State public assistance agency.
2. "State public assistance agency costs" means all costs incurred by, or allocable to, the State public assistance agency, except expenditures for financial assistance, medical vendor

payments, food stamps, and payments for services and goods provided directly to program recipients.

C. **Policy.** State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the State public assistance agency. Where a letter of approval or disapproval is transmitted to a State public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Attachment (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. **Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans.**

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.
2. Under the coordination process outlined in subsection E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the quarter following the submission of the plan or amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the State public assistance agency and will inform the State agency of the action taken on the plan or plan amendment.

E. **Review of Implementation of Approved Plans.**

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the funding agencies, single audits, or audits conducted by the cognizant audit agency.
2. Where inappropriate charges affecting more than one funding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.
3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more funding agencies, the dispute shall be resolved in accordance with the appeals procedures set out in 45 CFR Part 75. Disputes involving only one funding agency will be resolved in accordance with the funding agency's appeal process.
4. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. **Unallowable Costs.** Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Circular. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual awards.

STATE AND LOCAL INDIRECT COST RATE PROPOSALS

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A. *General.*

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to

Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Attachment C) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain State/local wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc.

5. This Attachment does not apply to State public assistance agencies. These agencies should refer instead to Attachment D.

B. *Definitions.*

1. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

2. "Indirect cost rate" is 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.

3. "Indirect cost pool" is the accumulated costs that jointly benefit two or more programs or other cost objectives.

4. "Base" means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

5. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

6. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

7. "Provisional rate" means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.

8. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

9. "Base period" for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of costs.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates.

1. General.

- a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.
- b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).
- c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified method.

- a. Where a grantee agency's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the grantee agency's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.
- b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.
- c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. Multiple allocation base method.

- a. Where a grantee agency's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

- b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.
- c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and (2) it is common to the benefitted functions during the base period.
- d. Except where a special indirect cost rate(s) is required in accordance with subsection 4, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.
- e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special indirect cost rates.

- a. In some instances, a single indirect cost rate for all activities of a grantee department or agency or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) the rate differs significantly from the rate which would have been developed under subsections 2. and 3., and (2) the award to which the rate would apply is material in amount.
- b. Although this Circular adopts the concept of the full allocation of indirect costs, there are some Federal statutes which restrict the reimbursement of certain indirect costs. Where such restrictions exist, it may be necessary to develop a special rate for the affected award. Where a "restricted rate" is required, the procedure for developing a non restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals.

1. Submission of indirect cost rate proposals.

- a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in the Common Rule.
- b. A governmental unit for which a cognizant agency assignment has been specifically designated must submit its indirect cost rate proposal to its cognizant agency. The Office of Management and Budget (OMB) will periodically publish lists of governmental units identifying the appropriate Federal cognizant agencies. The cognizant agency for all governmental units or agencies not identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. In these cases, a governmental unit must develop an indirect cost proposal in accordance with the requirements of this Circular and maintain the proposal and related supporting documentation for audit. These governmental units are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub recipient, the primary recipient will be responsible for negotiating and/or monitoring the sub recipient's plan.
- c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant Federal agency).
- d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant Federal agency. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of proposals. The following shall be included with each indirect cost proposal:

- a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency and is available to the funding agency.
- b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency in a subsequent proposal.
- c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.
- d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required certification. Each indirect cost rate proposal shall be accompanied by a certification in the following form:

CERTIFICATE OF INDIRECT COSTS

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and OMB Circular A 87, "Cost Principles for State, Local, and Indian Tribal Governments." Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

E. Negotiation and Approval of Rates.

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant Federal agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant Federal agency.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency has reasonable assurance based on past experience and reliable projection of the grantee agency's costs, that the rate is not likely to exceed a rate based on actual costs. Long term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates shall be made available to all Federal agencies for their use.

4. Refunds shall be made if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies.

1. Fringe benefit rates. If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual grantee agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate

computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the grantee agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency.

2. Billed services provided by the grantee agency. In some cases, governmental units provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental unit should be guided by the requirements in Attachment C relating to the development of billing rates and documentation requirements, and should advise the cognizant agency of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case by case basis as warranted by the circumstances involved.

3. Indirect cost allocations not using rates. In certain situations, a governmental unit, because of the nature of its awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for review, negotiation, and approval.

4. Appeals. If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

5. Collection of unallowable costs and erroneous payments. Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal agency regulations).

6. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

OMB Circular A-133

http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf

Circular No. A-133 Revised to show changes published in the *Federal Register* June 27, 2003 and June 26, 2007

Audits of States, Local Governments, and Non-Profit Organizations

Accompanying *Federal Register* Materials:

-- Audits of States, Local Governments, and Non-Profit Organizations June 30, 1997

-- Revision published June 27, 2003

This revision: (1) increased the dollar threshold for the audit requirement; and (2) made changes regarding determination of cognizant and oversight agencies for audit.

-- Revision published June 26, 2007

This revision: (1) replaced the term "reportable conditions" with "significant deficiencies" to conform with current auditing standards; and (2) updated report submission requirements. Definition of "significant deficiencies" and "material weaknesses" are as defined in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA) and Government Auditing Standards issued by the Government Accountability Office.

[Note: The June 27, 2003 revisions: (1) increased the dollar threshold for the audit requirement, and (2) made changes regarding determination of cognizant and oversight agencies for audit. The June 26, 2007 revisions make changes to (1) to replace the terms "reportable conditions" with "significant deficiencies" to conform with changes in auditing standards; and (2) reporting submission requirements.

In several places, the Circular includes guidelines for the reporting of "significant deficiencies" and "material weaknesses." These terms are to be used as defined in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA), and Government Auditing Standards issued by the Government Accountability Office.]

Circular No. A-133
Revised to show changes published in the Federal Registers
of June 27, 2003 and June 26, 2007
Audits of States, Local Governments, and Non-Profit Organizations

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Audits of States, Local Governments, and Non-Profit Organizations

1. Purpose. This Circular is issued pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards.

2. Authority. Circular A-133 is issued under the authority of sections 503, 1111, and 7501 *et seq.* of title 31, United States Code, and Executive Orders 8248 and 11541.

3. Rescission and Supersession. This Circular rescinds Circular A-128, "Audits of State and Local Governments," issued April 12, 1985, and supersedes the prior Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions," issued April 22, 1996. For effective dates, see paragraph 10.

4. Policy. Except as provided herein, the standards set forth in this Circular shall be applied by all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the subsequent statute shall govern.

Federal agencies shall apply the provisions of the sections of this Circular to non-Federal entities, whether they are recipients expending Federal awards received directly from Federal awarding agencies, or are subrecipients expending Federal awards received from a pass-through entity (a recipient or another subrecipient).

This Circular does not apply to non-U.S. based entities expending Federal awards received either directly as a recipient or indirectly as a subrecipient.

5. Definitions. The definitions of key terms used in this Circular are contained in § ____ .105 in the Attachment to this Circular.

6. Required Action. The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in the Attachment to this Circular. Federal agencies making awards to non-Federal entities, either directly or indirectly, shall adopt the language in the Circular in codified regulations as provided in Section 10 (below), unless different provisions are required by Federal statute or are approved by the Office of Management and Budget (OMB).

7. OMB Responsibilities. OMB will review Federal agency regulations and implementation of this Circular, and will provide interpretations of policy requirements and assistance to ensure uniform, effective and efficient implementation.

8. Information Contact. Further information concerning Circular A-133 may be obtained by contacting the Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3993.

9. Review Date. This Circular will have a policy review three years from the date of issuance.

10. Effective Dates. The standards set forth in § ____.400 of the Attachment to this Circular, which apply directly to Federal agencies, shall be effective July 1, 1996, and shall apply to audits of fiscal years beginning after June 30, 1996, except as otherwise specified in § ____.400(a).

The standards set forth in this Circular that Federal agencies shall apply to non-Federal entities shall be adopted by Federal agencies in codified regulations not later than 60 days after publication of this final revision in the *Federal Register*, so that they will apply to audits of fiscal years beginning after June 30, 1996, with the exception that § ____.305(b) of the Attachment applies to audits of fiscal years beginning after June 30, 1998. The requirements of Circular A-128, although the Circular is rescinded, and the 1990 version of Circular A-133 remain in effect for audits of fiscal years beginning on or before June 30, 1996.

The revisions published in the *Federal Register* June 27, 2003, are effective for fiscal years ending after December 31, 2003, and early implementation is not permitted with the exception of the definition of *oversight agency for audit* which is effective July 28, 2003.

Augustine T. Smythe
Acting Director

The revisions published in the *Federal Register* June 26, 2007, are effective for fiscal years ending on or after December 15, 2006.

Rob Portman
Director

Attachment

PART __ --AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS

Subpart A--General

Sec.

- __ .100 Purpose.
- __ .105 Definitions.

Subpart B--Audits

- __ .200 Audit requirements.
- __ .205 Basis for determining Federal awards expended.
- __ .210 Subrecipient and vendor determinations.
- __ .215 Relation to other audit requirements.
- __ .220 Frequency of audits.
- __ .225 Sanctions.
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- __ .235 Program-specific audits.

Subpart C--Auditees

- __ .300 Auditee responsibilities.
- __ .305 Auditor selection.
- __ .310 Financial statements.
- __ .315 Audit findings follow-up.
- __ .320 Report submission.

Subpart D--Federal Agencies and Pass-Through Entities

- __ .400 Responsibilities.
- __ .405 Management decision.

Subpart E--Auditors

- __ .500 Scope of audit.
- __ .505 Audit reporting.
- __ .510 Audit findings.
- __ .515 Audit working papers.
- __ .520 Major program determination.
- __ .525 Criteria for Federal program risk.
- __ .530 Criteria for a low-risk auditee.

Appendix A to Part __ - Data Collection Form (Form SF-SAC).

Appendix B to Part __ - Circular A-133 Compliance Supplement.

Subpart A--General

§ __.100 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

§ __.105 Definitions.

Auditee means any non-Federal entity that expends Federal awards which must be audited under this part.

Auditor means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of non-profit organizations.

Audit finding means deficiencies which the auditor is required by § __.510(a) to report in the schedule of findings and questioned costs.

CFDA number means the number assigned to a Federal program in the Catalog of Federal Domestic Assistance (CFDA).

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by the Office of Management and Budget (OMB) in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a State shall identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § __.400(d)(1) and § __.400(d)(2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in § __.520, and, with the exception of R&D as described in § __.200(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § __.400(a).

Compliance supplement refers to the Circular A-133 Compliance Supplement, included as Appendix B to Circular A-133, or such documents as OMB or its designee may issue to replace it. This document is available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325.

Corrective action means action taken by the auditee that:

- (1) Corrects identified deficiencies;
- (2) Produces recommended improvements; or
- (3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Federal agency has the same meaning as the term agency in Section 551(1) of title 5, United States Code.

Federal award means Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. It does

not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract. Contracts to operate Federal Government owned, contractor operated facilities (GOCOs) are excluded from the requirements of this part.

Federal awarding agency means the Federal agency that provides an award directly to the recipient.

Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in § ____.205(h) and § ____.205(i).

Federal program means:

(1) All Federal awards to a non-Federal entity assigned a single number in the CFDA.

(2) When no CFDA number is assigned, all Federal awards from the same agency made for the same purpose should be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

(i) Research and development (R&D);

(ii) Student financial aid (SFA); and

(iii) "Other clusters," as described in the definition of cluster of programs in this section.

GAGAS means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Generally accepted accounting principles has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (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.

Internal control means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(1) Effectiveness and efficiency of operations;

(2) Reliability of financial reporting; and

(3) Compliance with applicable laws and regulations.

Internal control pertaining to the compliance requirements for Federal programs (Internal control over Federal programs) means a process--effected by

an entity's management and other personnel--designed to provide reasonable assurance regarding the achievement of the following objectives for Federal programs:

- (1) Transactions are properly recorded and accounted for to:
 - (i) Permit the preparation of reliable financial statements and Federal reports;
 - (ii) Maintain accountability over assets; and
 - (iii) Demonstrate compliance with laws, regulations, and other compliance requirements;
- (2) Transactions are executed in compliance with:
 - (i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and
 - (ii) Any other laws and regulations that are identified in the compliance supplement; and
- (3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity.

Local government means any unit of local government within a State, including a county, 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.

Major program means a Federal program determined by the auditor to be a major program in accordance with § __.520 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § __.215(c).

Management decision means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

Non-Federal entity means a State, local government, or non-profit organization.

Non-profit organization means:

- (1) any corporation, trust, association, cooperative, or other organization that:
 - (i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - (ii) Is not organized primarily for profit; and
 - (iii) Uses its net proceeds to maintain, improve, or expand its operations; and
- (2) The term non-profit organization includes non-profit institutions of higher education and hospitals.

OMB means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency for audit are described in § __.400(b).

Effective July 28, 2003, the following is added to this definition:
A Federal agency with oversight for an auditee may reassign oversight to another Federal agency which provides substantial funding and agrees to be the oversight agency for audit. Within 30 days after any reassignment, both the old and the new oversight agency for audit shall notify the auditee, and, if known, the auditor of the reassignment."

Pass-through entity means a non-Federal entity that provides a Federal award to a subrecipient to carry out a Federal program.

Program-specific audit means an audit of one Federal program as provided for in § __.200(c) and § __.235.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Recipient means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.

Research and development (R&D) means all research activities, both basic and applied, and all development activities that are performed by a non-Federal entity. Research is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. 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. 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.

Single audit means an audit which includes both the entity's financial statements and the Federal awards as described in § __.500.

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, any multi-State, regional, or interstate entity which has governmental functions, and any Indian tribe as defined in this section.

Student Financial Aid (SFA) includes those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070 et seq.) which is administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subrecipient means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in § ____.210.

Types of compliance requirements refers to the types of compliance requirements listed in the compliance supplement. Examples include: activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; matching, level of effort, earmarking; and, reporting.

Vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in § ____.210.

Subpart B--Audits

§ ____.200 Audit requirements.

(a) Audit required. Non-Federal entities that expend \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in § ____.205.

(b) Single audit. Non-Federal entities that expend \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in a year in Federal awards shall have a single audit conducted in accordance with § ____.500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § ____.235. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) Exemption when Federal awards expended are less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003). Non-Federal

entities that expend less than \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in § .215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

(e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

§ .205 Basis for determining Federal awards expended.

(a) Determining Federal awards expended. The determination of when an award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(b) Loan and loan guarantees (loans). Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the fiscal year;
plus

(2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) Loan and loan guarantees (loans) at institutions of higher education. When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered Federal awards expended in that year. The balance of loans for previous years is not included as Federal awards expended because the lender accounts for the prior balances.

(d) Prior loan and loan guarantees (loans). Loans, the proceeds of which were received and expended in prior-years, are not considered Federal awards expended under this part when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) Endowment funds. The cumulative balance of Federal awards for endowment funds which are federally restricted are considered awards expended in each year in which the funds are still restricted.

(f) Free rent. Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part

of an award to carry out a Federal program shall be included in determining Federal awards expended and subject to audit under this part.

(g) Valuing non-cash assistance. Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) Medicare. Medicare payments to a non-Federal entity for providing patient care services to Medicare eligible individuals are not considered Federal awards expended under this part.

(i) Medicaid. Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) Certain loans provided by the National Credit Union Administration. For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured institutions are not considered Federal awards expended.

§ __.210 Subrecipient and vendor determinations.

(a) General. An auditee may be a recipient, a subrecipient, and a vendor. Federal awards expended as a recipient or a subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

(b) Federal award. Characteristics indicative of a Federal award received by a subrecipient are when the organization:

(1) Determines who is eligible to receive what Federal financial assistance;

(2) Has its performance measured against whether the objectives of the Federal program are met;

(3) Has responsibility for programmatic decision making;

(4) Has responsibility for adherence to applicable Federal program compliance requirements; and

(5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) Payment for goods and services. Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

(1) Provides the goods and services within normal business operations;

- (2) Provides similar goods or services to many different purchasers;
- (3) Operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program.

(d) Use of judgment in making determination. There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

(e) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

(f) Compliance responsibility for vendors. In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

§ .215 Relation to other audit requirements.

(a) Audit under this part in lieu of other audits. An audit made in accordance with this part shall be in lieu of any financial audit required under individual Federal awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this part neither limit the authority of Federal agencies, including their Inspectors General, or GAO to conduct or arrange for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) Federal agency to pay for additional audits. A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange for funding the full cost of such additional audits.

(c) Request for a program to be audited as a major program. A Federal agency may request an auditee to have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § __.520 and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

§ __.220 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part shall be performed annually. Any biennial audit shall cover both years within the biennial period.

(a) A State or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period under audit.

(b) Any non-profit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

§ __.225 Sanctions.

No audit costs may be charged to Federal awards when audits required by this part have not been made or have been made but not in accordance with this part. In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action using sanctions such as:

(a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;

(b) Withholding or disallowing overhead costs;

(c) Suspending Federal awards until the audit is conducted; or

(d) Terminating the Federal award.

§ __.230 Audit costs.

(a) Allowable costs. Unless prohibited by law, the cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations.

(b) Unallowable costs. A non-Federal entity shall not charge the following to a Federal award:

(1) The cost of any audit under the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 et seq.) not conducted in accordance with this part.

(2) The cost of auditing a non-Federal entity which has Federal awards expended of less than \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) per year and is thereby exempted under **§ ____.200(d)** from having an audit conducted under this part. However, this does not prohibit a pass-through entity from charging Federal awards for the cost of limited scope audits to monitor its subrecipients in accordance with **§ ____.400(d)(3)**, provided the subrecipient does not have a single audit. For purposes of this part, limited scope audits only include agreed-upon procedures engagements conducted in accordance with either the AICPA's generally accepted auditing standards or attestation standards, that are paid for and arranged for a pass-through entity and address only one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and, reporting.

§ ____.235 Program-specific audits.

(a) Program-specific audit guide available. In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) Program-specific audit guide not available. (1) When a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee shall prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of **§ ____.315(b)**, and a corrective action plan consistent with the requirements of **§ ____.315(c)**.

(3) The auditor shall:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the Federal program consistent with the requirements of **§ ____.500(c)** for a major program;

(iii) Perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the requirements of **§ ____.500(d)** for a major program; and

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding in accordance with the requirements of § ____.500(e).

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in conformity with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which shall describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § ____.505(d)(1) and findings and questioned costs consistent with the requirements of § ____.505(d)(3).

(c) Report submission for program-specific audits.

(1) The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal agency that provided the funding or a different period is specified in a program-specific audit guide. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the required reporting shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period, unless a different period is specified in a program-specific audit guide.) Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit to the Federal clearinghouse designated by OMB the data collection form prepared in accordance with § ____.320(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide to be retained as an archival copy. Also, the auditee shall submit to the Federal awarding agency or pass-through entity the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit shall consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with

§ __.320(b), as applicable to a program-specific audit, and one copy of this reporting package shall be submitted to the Federal clearinghouse designated by OMB to be retained as an archival copy. Also, when the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit one copy of the reporting package to the Federal clearinghouse on behalf of the Federal awarding agency, or directly to the pass-through entity in the case of a subrecipient. Instead of submitting the reporting package to the pass-through entity, when a subrecipient is not required to submit a reporting package to the pass-through entity, the subrecipient shall provide written notification to the pass-through entity, consistent with the requirements of § __.320(e)(2). A subrecipient may submit a copy of the reporting package to the pass-through entity to comply with this notification requirement.

(d) Other sections of this part may apply. Program-specific audits are subject to § __.100 through § __.215(b), § __.220 through § __.230, § __.300 through § __.305, § __.315, § __.320(f) through § __.320(j), § __.400 through § __.405, § __.510 through § __.515, and other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program laws and regulations.

Subpart C--Auditees

§ __.300 Auditee responsibilities.

The auditee shall:

(a) Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

(b) Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.

(c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

(d) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § __.310.

(e) Ensure that the audits required by this part are properly performed and submitted when due. When extensions to the report submission due date required by § __.320(a) are granted by the cognizant or oversight agency for audit, promptly notify the Federal clearinghouse designated by OMB and each pass-through entity providing Federal awards of the extension.

(f) Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § __.315(b) and § __.315(c), respectively.

§ __.305 Auditor selection.

(a) Auditor procurement. In procuring audit services, auditees shall follow the procurement standards prescribed by the Grants Management Common Rule (hereinafter referred to as the "A-102 Common Rule") published March 11, 1988 and amended April 19, 1995 [insert appropriate CFR citation], Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," or the FAR (48 CFR part 42), as applicable (OMB Circulars are available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503). Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in the A-102 Common Rule, OMB Circular A-110, or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

(b) Restriction on auditor preparing indirect cost proposals. An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs. To minimize any disruption in existing contracts for audit services, this paragraph applies to audits of fiscal years beginning after June 30, 1998.

(c) Use of Federal auditors. Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

§ __.310 Financial statements.

(a) Financial statements. The auditee shall prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, organization-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § __.500(a) and prepare separate financial statements.

(b) Schedule of expenditures of Federal awards. The auditee shall also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. While not required, the auditee may choose to provide information requested by Federal awarding

example, when a Federal program has multiple award years, the auditee may list the amount of Federal awards expended for each award year separately. At a minimum, the schedule shall:

(1) List individual Federal programs by Federal agency. For Federal programs included in a cluster of programs, list individual Federal shall be shown either by individual award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.

(3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available.

(4) Include notes that describe the significant accounting policies used in preparing the schedule.

(5) To the extent practical, pass-through entities should identify in the schedule the total amount provided to subrecipients from each Federal program.

(6) Include, in either the schedule or a note to the schedule, the value of the Federal awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year end. While not required, it is preferable to present this information in the schedule.

§ __.315 Audit findings follow-up.

(a) **General.** The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under **§ __.510(c)**. Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

(b) **Summary schedule of prior audit findings.** The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph **(b)(1)** of this section, or no longer valid or not warranting further action in accordance with paragraph **(b)(4)** of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which

the finding occurred was submitted to the Federal clearinghouse;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) Corrective action plan. At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

§ __.320 Report submission.

(a) General. The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the data collection form and reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period.) Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) Data Collection. (1) The auditee shall submit a data collection form which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be approved by OMB, available from the Federal clearinghouse designated by OMB, and include data elements similar to those presented in this paragraph. A senior level representative of the auditee (e.g., State controller, director of finance, chief executive officer, or chief financial officer) shall sign a statement to be included as part of the form certifying that: the auditee complied with the requirements of this part, the form was prepared in accordance with this part (and the instructions accompanying the form), and the information included in the form, in its entirety, are accurate and complete.

(2) The data collection form shall include the following data elements:

- (i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).
- (ii) Where applicable, a statement that **significant deficiencies** in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses.
- (iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee.
- (iv) Where applicable, a statement that **significant deficiencies** in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.
- (v) The type of report the auditor issued on compliance for major

programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

- (vi) A list of the Federal awarding agencies which will receive a copy of the reporting package pursuant to **§ ___ .320(d)(2)** of OMB Circular A-133.
- (vii) A yes or no statement as to whether the auditee qualified as a low-risk auditee under **§ ___ .530** of OMB Circular A-133.
- (viii) The dollar threshold used to distinguish between Type A and Type B programs as defined in **§ ___ .520(b)** of OMB Circular A-133.
- (ix) The Catalog of Federal Domestic Assistance (CFDA) number for each Federal program, as applicable.
- (x) The name of each Federal program and identification of each major program. Individual programs within a cluster of programs should be listed in the same level of detail as they are listed in the schedule of expenditures of Federal awards.
- (xi) The amount of expenditures in the schedule of expenditures of Federal awards associated with each Federal program.
- (xii) For each Federal program, a yes or no statement as to whether there are audit findings in each of the following types of compliance requirements and the total amount of any questioned costs:
 - (A) Activities allowed or unallowed.
 - (B) Allowable costs/cost principles.
 - (C) Cash management.
 - (D) Davis-Bacon Act.
 - (E) Eligibility.
 - (F) Equipment and real property management.
 - (G) Matching, level of effort, earmarking.
 - (H) Period of availability of Federal funds.
 - (I) Procurement and suspension and debarment.
 - (J) Program income.
 - (K) Real property acquisition and relocation assistance.
 - (L) Reporting.
 - (M) Subrecipient monitoring.
 - (N) Special tests and provisions.
- (xiii) Auditee Name, Employer Identification Number(s), Name and Title of Certifying Official, Telephone Number, Signature, and Date.
- (xiv) Auditor Name, Name and Title of Contact Person, Auditor Address, Auditor Telephone Number, Signature, and Date.
- (xv) Whether the auditee has either a cognizant or oversight agency for audit.
- (xvi) The name of the cognizant or oversight agency for audit determined in accordance with **§ ___ .400(a)** and **§ ___ .400(b)**, respectively.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor shall complete the applicable sections of the form. The auditor shall sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of

the form is limited to the data elements prescribed by OMB.

(c) Reporting package. The reporting package shall include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § ____.310(a) and § ____.310(b), respectively;

(2) Summary schedule of prior audit findings discussed in § ____.315(b);

(3) Auditor's report(s) discussed in § ____.505; and

(4) Corrective action plan discussed in § ____.315(c).

(d) Submission to clearinghouse. All auditees shall submit to the Federal clearinghouse designated by OMB a single copy of the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section.

(e) Additional submission by subrecipients. (1) In addition to the requirements discussed in paragraph (d) of this section, auditees that are also subrecipients shall submit to each pass-through entity one copy of the reporting package described in paragraph (c) of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the pass-through entity provided.

(2) Instead of submitting the reporting package to a pass-through entity, when a subrecipient is not required to submit a reporting package to a pass-through entity pursuant to paragraph (e)(1) of this section, the subrecipient shall provide written notification to the pass-through entity that: an audit of the subrecipient was conducted in accordance with this part (including the period covered by the audit and the name, amount, and CFDA number of the Federal award(s) provided by the pass-through entity); the schedule of findings and questioned costs disclosed no audit findings relating to the Federal award(s) that the pass-through entity provided; and, the summary schedule of prior audit findings did not report on the status of any audit findings relating to the Federal award(s) that the pass-through entity provided. A subrecipient may submit a copy of the reporting package described in paragraph (c) of this section to a pass-through entity to comply with this notification requirement.

(f) Requests for report copies. In response to requests by a Federal agency or pass-through entity, auditees shall submit the appropriate copies of the reporting package described in paragraph (c) of this section and, if requested, a copy of any management letters issued by the auditor.

(g) Report retention requirements. Auditees shall keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the Federal clearinghouse

designated by OMB. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

(h) Clearinghouse responsibilities. The Federal clearinghouse designated by OMB shall distribute the reporting packages received in accordance with paragraph (d)(2) of this section and § ____.235(c)(3) to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required data collection forms and reporting packages.

(i) Clearinghouse address. The address of the Federal clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132.

(j) Electronic filing. Nothing in this part shall preclude electronic submissions to the Federal clearinghouse in such manner as may be approved by OMB. With OMB approval, the Federal clearinghouse may pilot test methods of electronic submissions.

Subpart D--Federal Agencies and Pass-Through Entities
§ ____.400 Responsibilities.

(a) Cognizant agency for audit responsibilities. Recipients expending more than \$25 million (*\$50 million for fiscal years ending after December 31, 2003*) a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment.

Following is effective for fiscal years ending on or before December 31, 2003: To provide for continuity of cognizance, the determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 1995, 2000, 2005, and every fifth year thereafter. For example, audit cognizance for periods ending in 1997 through 2000 will be determined based on Federal awards expended in 1995. (However, for States and local governments that expend more than \$25 million a year in Federal awards and have previously assigned cognizant agencies for audit, the requirements of this paragraph are not effective until fiscal years beginning after June 30, 2000.)

Following is effective for fiscal years ending after December 31, 2003: The determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 2004, 2009, 2014, and every fifth year thereafter. For example, audit cognizance for periods ending in 2006 through 2010 will be determined based on Federal awards expended in 2004. (However, for 2001 through 2005, the cognizant agency for audit is determined based on the predominant amount of direct Federal awards expended in the recipient's fiscal year ending in 2000).

Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency for audit. Within 30 days after any reassignment, both the old and the new cognizant agency for audit shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency for audit shall:

- (1) Provide technical audit advice and liaison to auditees and auditors.
- (2) Consider auditee requests for extensions to the report

submission due date required by § ____.320(a). The cognizant agency for audit may grant extensions for good cause.

(3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, 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 direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.

(5) Advise the auditor and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit shall notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon audits performed in accordance with this part.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(9) For biennial audits permitted under § ____.220, consider auditee requests to qualify as a low-risk auditee under § ____.530(a).

(b) Oversight agency for audit responsibilities. An auditee which does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § ____.105. The oversight agency for audit:

(1) Shall provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) Federal awarding agency responsibilities. The Federal awarding agency shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each recipient of the CFDA title and number, award name and number, award year, and if the award is for R&D. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.

(2) Advise recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements.

(3) Ensure that audits are completed and reports are received

in a timely manner and in accordance with the requirements of this part.

(4) Provide technical advice and counsel to auditees and auditors as requested.

(5) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(6) Assign a person responsible for providing annual updates of the compliance supplement to OMB.

(d) Pass-through entity responsibilities. A pass-through entity shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.

(2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

(3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that subrecipients expending \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

(7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

§ __.405 Management decision.

(a) General. The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

(b) Federal agency. As provided in § __.400(a)(7), the cognizant agency for audit shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency.

As provided in § __.400(c)(5), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

(c) Pass-through entity. As provided in § __.400(d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) Time requirements. The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should be initiated within six months after receipt of the audit report and proceed as rapidly as possible.

(e) Reference numbers. Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with § __.510(c).

Subpart E--Auditors

§ __.500 Scope of audit.

(a) General. The audit shall be conducted in accordance with GAGAS. The audit shall cover the entire operations of the auditee; or, at the option of the auditee, such audit shall include a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered Federal awards during such fiscal year, provided that each such audit shall encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which shall be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards shall be for the same fiscal year.

(b) Financial statements. The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) Internal control. (1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(2)(i) of this section.

(3) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(2) of this section are not required for those compliance requirements. However, the auditor shall report a **significant deficiency** (including whether any such condition is a material weakness) in accordance with § __.510, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective

internal control.

(d) Compliance. (1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should use the types of compliance requirements contained in the compliance supplement as guidance for identifying the types of compliance requirements to test, and determine the requirements governing the Federal program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements.

(4) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance.

(e) Audit follow-up. The auditor shall follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with **§ __.315(b)**, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor shall perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) Data Collection Form. As required in **§ __.320(b)(3)**, the auditor shall complete and sign specified sections of the data collection form.

§ __.505 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) A report on internal control related to the financial statements and major programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph **(d)** of this section.

(c) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements. This report shall also include

an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which shall include the following three components:

(1) A summary of the auditor's results which shall include:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement that **significant deficiencies** in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses;

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee;

(iv) Where applicable, a statement that **significant deficiencies** in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses;

(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings which the auditor is required to report under **§ __.510(a)**;

(vii) An identification of major programs;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in **§ __.520(b)**; and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under **§ __.530**.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which shall include audit findings as defined in **§ __.510(a)**.

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings which relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

§ __.510 Audit findings.

(a) Audit findings reported. The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) **Significant deficiencies** in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a **significant deficiency** for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement. The auditor shall identify **significant deficiencies** which are individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements related to a major program. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement.

(3) Known questioned costs which are greater than \$10,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than \$10,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs which are greater than \$10,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program which is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program which is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$10,000, then the auditor shall report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for major programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to make an additional reporting when the auditor confirms that the fraud was reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § .315(b) materially misrepresents the status of any prior audit finding.

(b) Audit finding detail. Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information shall be

included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award number, is not available, the auditor shall provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) Identification of questioned costs and how they were computed.

(5) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.

(6) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.

(7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.

(c) Reference numbers. Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

§ __.515 Audit working papers.

(a) Retention of working papers. The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, or pass-through entity to extend the retention period. When the auditor is aware that the Federal awarding agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) Access to working papers. Audit working papers shall be made available upon request to the cognizant or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to working papers includes the right of Federal agencies to obtain copies of working papers, as is reasonable and necessary.

§ __.520 Major program determination.

(a) **General.** The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (i) of this section shall be followed.

(b) **Step 1.** (1) The auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the larger of:

(i) \$300,000 or three percent (.03) of total Federal awards expended in the case of an auditee for which total Federal awards expended equal or exceed \$300,000 but are less than or equal to \$100 million.

(ii) \$3 million or three-tenths of one percent (.003) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$100 million but are less than or equal to \$10 billion.

(iii) \$30 million or 15 hundredths of one percent (.0015) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$10 billion.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section shall be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as Type A programs. When a Federal program providing loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

(4) For biennial audits permitted under § __.220, the determination of Type A and Type B programs shall be based upon the Federal awards expended during the two-year period.

(c) **Step 2.** (1) The auditor shall identify Type A programs which are low-risk. For a Type A program to be considered low-risk, it shall have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, it shall have had no audit findings under § __.510(a). However, the auditor may use judgment and consider that audit findings from questioned costs under § __.510(a)(3) and § __.510(a)(4), fraud under § __.510(a)(6), and audit follow-up for the summary schedule of prior audit findings under § __.510(a)(7) do not preclude the Type A program from being low-risk. The auditor shall consider: the criteria in § __.525(c), § __.525(d)(1), § __.525(d)(2), and § __.525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a Type A program have significantly increased risk; and apply professional judgment in determining whether a Type A program is low-risk.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program at certain recipients may not be considered low-risk. For example, it may be necessary for a large Type A program to be audited as major each year at particular recipients to allow the Federal agency to comply with the Government Management Reform Act of 1994 (31 U.S.C. 3515). The Federal agency shall notify the recipient and, if known, the auditor at least 180 days prior to the

end of the fiscal year to be audited of OMB's approval.

(d) Step 3. (1) The auditor shall identify Type B programs which are high-risk using professional judgment and the criteria in § .525. However, should the auditor select Option 2 under Step 4 (paragraph **(e)(2)(i)(B)** of this section), the auditor is not required to identify more high-risk Type B programs than the number of low-risk Type A programs. Except for known **significant deficiencies** in internal control or compliance problems as discussed in § .525(b)(1), § .525(b)(2), and § .525(c)(1), a single criteria in § .525 would seldom cause a Type B program to be considered high-risk.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed the larger of:

(i) \$100,000 or three-tenths of one percent (.003) of total Federal awards expended when the auditee has less than or equal to \$100 million in total Federal awards expended.

(ii) \$300,000 or three-hundredths of one percent (.0003) of total Federal awards expended when the auditee has more than \$100 million in total Federal awards expended.

(e) Step 4. At a minimum, the auditor shall audit all of the following as major programs:

(1) All Type A programs, except the auditor may exclude any Type A programs identified as low-risk under Step 2 (paragraph **(c)(1)** of this section).

(2) (i) High-risk Type B programs as identified under either of the following two options:

(A) Option 1. At least one half of the Type B programs identified as high-risk under Step 3 (paragraph **(d)** of this section), except this paragraph **(e)(2)(i)(A)** does not require the auditor to audit more high-risk Type B programs than the number of low-risk Type A programs identified as low-risk under Step 2.

(B) Option 2. One high-risk Type B program for each Type A program identified as low-risk under Step 2.

(ii) When identifying which high-risk Type B programs to audit as major under either Option 1 or 2 in paragraph **(e)(2)(i)(A)** or **(B)**, the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph **(f)** of this section.

This paragraph **(e)(3)** may require the auditor to audit more programs as major than the number of Type A programs.

(f) Percentage of coverage rule. The auditor shall audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 50 percent of total Federal awards expended. If the auditee meets the criteria in § .530 for a low-risk auditee, the auditor need only audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 25 percent of total Federal awards expended.

(g) Documentation of risk. The auditor shall document in the working

papers the risk analysis process used in determining major programs.

(h) Auditor's judgment. When the major program determination was performed and documented in accordance with this part, the auditor's judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-through entities shall only be for clearly improper use of the guidance in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

(i) Deviation from use of risk criteria. For first-year audits, the auditor may elect to determine major programs as all Type A programs plus any Type B programs as necessary to meet the percentage of coverage rule discussed in paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

(1) A first-year audit is the first year the entity is audited under this part or the first year of a change of auditors.

(2) To ensure that a frequent change of auditors would not preclude audit of high-risk Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

§ __.525 Criteria for Federal program risk.

(a) General. The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. The auditor shall use auditor judgment and consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) Current and prior audit experience. (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(iii) The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs

may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) Oversight exercised by Federal agencies and pass-through entities.

(1) Oversight exercised by Federal agencies or pass-through entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs which are higher risk. OMB plans to provide this identification in the compliance supplement.

(d) Inherent risk of the Federal program. (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, laws, regulations, or the provisions of contracts or grant agreements may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§ __.530 Criteria for a low-risk auditee.

An auditee which meets all of the following conditions for each of the preceding two years (or, in the case of biennial audits, preceding two audit periods) shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § __.520:

(a) Single audits were performed on an annual basis in accordance with the provisions of this part. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee, unless agreed to in advance by the cognizant or oversight agency for audit.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of Federal awards were unqualified. However, the cognizant or oversight agency for audit may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS. However, the cognizant or oversight agency for audit may judge that any identified material weaknesses do not affect the management of Federal awards and provide a waiver.

(d) None of the Federal programs had audit findings from any of the following in either of the preceding two years (or, in the case of biennial audits, preceding two audit periods) in which they were classified as Type A programs:

(1) Internal control deficiencies which were identified as material weaknesses;

(2) Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the Type A program; or

(3) Known or likely questioned costs that exceed five percent of the total Federal awards expended for a Type A program during the year.

Appendix A to Part ___ - Data Collection Form (Form SF-SAC)
[insert [SF-SAC](#) after finalized]

Forms can now be submitted electronically at <http://harvester.census.gov/fac/>.

Appendix B to Part ___ - Circular A-133 Compliance Supplement

Note: Provisional OMB Circular A-133 Compliance Supplement is available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503.

[OMB Circular A-133 Compliance Supplement 2011](#)

Other Assistance Agreement Forms

EPA 190-F-04-001 U.S. EPA Payment Request

<http://www.epa.gov/ogd/forms/adobe/EPA%20190-F-004-001.pdf>

U.S. EPA PAYMENT REQUEST

Recipient Name:		Contact Person:		
Fax #:		Phone #:		
		Email address:		
ACH #	Request #	Cash on Hand:		
Assistance Agreement	Account No/Activity Code (Superfund Site Specific)	\$ Amount	Mark (X) if Credit	For EPA Internal Use Only
TOTAL AMOUNT REQUESTED \$				

I certify that to the best of my knowledge and belief the data above are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.

APPROVALS:

Recipient Approving Official's Signature

Date Approved

EPA Certifying Officer Approval

Date Approved

\$ _____
EPA APPROVED AMOUNT
For EPA Use Only

EPA 190-F-04-001
Revised 1/22/13

EPA Form 5700-53 Lobbying and Litigation Certification for Grants and Cooperative Agreements

http://www.epa.gov/ogd/forms/adobe/5700-53_sec.pdf (EPA no longer requires this form)

Form Approved OMB NO. 2030-0020 Approval Expires 04/2012



LOBBYING AND LITIGATION CERTIFICATION FOR GRANTS AND COOPERATIVE AGREEMENTS *

INSTRUCTIONS:

*At project completion, complete this form pursuant to the 2001 Department of Veterans Affairs and Housing and Urban Development, and Independent Appropriations Act, Public Law 106-377, Section 424 and 2000 Department of Veterans Affairs and Housing and Urban Development, and Independent Appropriations Act, Public Law 106-74, Section 426 and any other subsequent Appropriation Act requirements.

Please mail this form to your EPA Grant Specialist within 90 days of project completion. DO NOT send this information to the Office of Management & Budget.

Assistance Agreement Number(s):

I hereby 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.

Signature of the Chief Executive Officer

Date

Print Name

Burden Statement - The annual public reporting and record keeping burden for this collection of information is estimated to average 5 minutes per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Regulatory Information Division, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Mail Code 3213A, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, N.W., Washington, DC 20503, Attention: Desk Officer for EPA. Include the EPA ICR number and OMB control number in any correspondence.

EPA Form 5700-53 (Rev. 04/2012)

EPA Form 5700-54 Key Contacts Form

<http://www.epa.gov/ogd/forms/adobe/5700-542.pdf>

Print Form

Form Approved OMB No:2030-0020 Approval Expires 07/31/09



ADDITIONAL KEY CONTACTS

(Use as many sheets as needed.)

Major Co-Investigators: *Individual responsible for the completion of major portions of the proposed work.*

Name: _____
Title: _____
Mailing Address: _____

Phone Number: _____
FAX Number: _____
E-Mail Address: _____
Web URL: _____

Major Co-Investigators: *Individual responsible for the completion of major portions of the proposed work.*

Name: _____
Title: _____
Mailing Address: _____

Phone Number: _____
FAX Number: _____
E-Mail Address: _____
Web URL: _____

Major Co-Investigators: *Individual responsible for the completion of major portions of the proposed work.*

Name: _____
Title: _____
Mailing Address: _____

Phone Number: _____
FAX Number: _____
E-Mail Address: _____
Web URL: _____

SF 425 Federal Financial Report

Download this from at

http://www.whitehouse.gov/sites/default/files/omb/assets/grants_forms/SF-425.pdf

Reset Form

FEDERAL FINANCIAL REPORT

(Follow form instructions)

1. Federal Agency and Organizational Element to Which Report is Submitted		2. Federal Grant or Other Identifying Number Assigned by Federal Agency (To report multiple grants, use FFR Attachment)		Page 1	of pages		
3. Recipient Organization (Name and complete address including Zip code)							
4a. DUNS Number	4b. EIN	5. Recipient Account Number or Identifying Number (To report multiple grants, use FFR Attachment)		6. Report Type <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi-Annual <input type="checkbox"/> Annual <input type="checkbox"/> Final			
				7. Basis of Accounting <input type="checkbox"/> Cash <input type="checkbox"/> Accrual			
8. Project/Grant Period From: (Month, Day, Year)			To: (Month, Day, Year)	9. Reporting Period End Date (Month, Day, Year)			
10. Transactions					Cumulative		
<i>(Use lines a-c for single or multiple grant reporting)</i>							
Federal Cash (To report multiple grants, also use FFR Attachment):							
a. Cash Receipts							
b. Cash Disbursements							
c. Cash on Hand (line a minus b)							
<i>(Use lines d-o for single grant reporting)</i>							
Federal Expenditures and Unobligated Balance:							
d. Total Federal funds authorized							
e. Federal share of expenditures							
f. Federal share of unliquidated obligations							
g. Total Federal share (sum of lines e and f)							
h. Unobligated balance of Federal funds (line d minus g)							
Recipient Share:							
i. Total recipient share required							
j. Recipient share of expenditures							
k. Remaining recipient share to be provided (line i minus j)							
Program Income:							
l. Total Federal program income earned							
m. Program income expended in accordance with the deduction alternative							
n. Program income expended in accordance with the addition alternative							
o. Unexpended program income (line l minus line m or line n)							
11. Indirect Expense	a. Type	b. Rate	c. Period From	Period To	d. Base	e. Amount Charged	f. Federal Share
				g. Totals:			
12. Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation:							
13. Certification: By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and intent set forth in the award documents. I am aware that any false, fictitious, or fraudulent information may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 18, Section 1001)							
a. Typed or Printed Name and Title of Authorized Certifying Official				c. Telephone (Area code, number and extension)			
				d. Email address			
b. Signature of Authorized Certifying Official				e. Date Report Submitted (Month, Day, Year)			
14. Agency use only:							

Standard Form 425 - Revised 8/28/2010
OMB Approval Number: 0348-0061
Expiration Date: 10/31/2011

Paperwork Burden Statement

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is 0348-0061. Public reporting burden for this collection of information is estimated to average 1.5 hours 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 (0348-0061), Washington, DC 20503.

Download these instructions at

http://www.whitehouse.gov/sites/default/files/omb/grants/standard_forms/SF-425_instructions.pdf

Federal Financial Report Instructions

Report Submissions

- 1) Recipients will be instructed by Federal agencies to submit the *Federal Financial Report (FFR)* to a single location, except when an automated payment management reporting system is utilized. In this case, a second submission location may be required by the agency.
- 2) If recipients need more space to support their *FFRs*, or *FFR Attachments*, they should provide supplemental pages. These additional pages must indicate the following information at the top of each page: Federal grant or other identifying number (if reporting on a single award), recipient organization, Data Universal Numbering System (DUNS) number, Employer Identification Number (EIN), and period covered by the report.

Reporting Requirements

- 1) The submission of interim *FFRs* will be on a quarterly, semi-annual, or annual basis, as directed by the Federal agency. A final *FFR* shall be submitted at the completion of the award agreement. The following reporting period end dates shall be used for interim reports: 3/31, 6/30, 9/30, or 12/31. For final *FFRs*, the reporting period end date shall be the end date of the project or grant period.
- 2) Quarterly and semi-annual interim reports shall be submitted no later than 30 days after the end of each reporting period. Annual reports shall be submitted no later than 90 days after the end of each reporting period. Final reports shall be submitted no later than 90 days after the project or grant period end date.

Note: For single award reporting:

- 1) Federal agencies may require both cash management information on lines 10(a) through 10(c) and financial status information lines 10(d) through 10(o).
- 2) 10(b) and 10(e) may not be the same until the final report.

Line Item Instructions for the Federal Financial Report

FFR Number	Reporting Item	Instructions
Cover Information		
1	Federal Agency and Organizational Element to Which Report is Submitted	Enter the name of the Federal agency and organizational element identified in the award document or as instructed by the agency.
2	Federal Grant or Other Identifying Number Assigned by Federal Agency	For a single award, enter the grant number assigned to the award by the Federal agency. For multiple awards, report this information on the <i>FFR Attachment</i> . <i>Do not complete this box if reporting on multiple awards.</i>
3	Recipient Organization	Enter the name and complete address of the recipient organization including zip code.
4a	DUNS Number	Enter the recipient organization's Data Universal Numbering System (DUNS) number or Central Contract Registry extended DUNS number.
4b	EIN	Enter the recipient organization's Employer Identification Number (EIN).
5	Recipient Account Number or Identifying Number	Enter the account number or any other identifying number assigned by the recipient to the award. This number is for the recipient's use only and is not required by the Federal agency. For multiple awards, report this

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FFR Number	Reporting Item	Instructions
		information on the <i>FFR</i> Attachment. <i>Do not complete this box if reporting on multiple awards.</i>
6	Report Type	Mark appropriate box. <i>Do not complete this box if reporting on multiple awards.</i>
7	Basis of Accounting (Cash/Accrual)	Specify whether a cash or accrual basis was used for recording transactions related to the award(s) and for preparing this <i>FFR</i> . Accrual basis of accounting refers to the accounting method in which expenses are recorded when incurred. For cash basis accounting, expenses are recorded when they are paid.
8	Project/Grant Period, From: (Month, Day, Year)	Indicate the period established in the award document during which Federal sponsorship begins and ends. Note: Some agencies award multi-year grants for a project period that is funded in increments or budget periods (typically annual increments). Throughout the project period, agencies often require cumulative reporting for consecutive budget periods. Under these circumstances, enter the beginning and ending dates of the project period not the budget period. <i>Do not complete this line if reporting on multiple awards.</i>
	Project/Grant Period, To: (Month, Day, Year)	See the above instructions for "Project/Grant Period, From: (Month, Day, Year)."
9	Reporting Period End Date: (Month, Day, Year)	Enter the ending date of the reporting period. For quarterly, semi-annual, and annual interim reports, use the following reporting period end dates: 3/31, 6/30, 9/30, or 12/31. For final <i>FFRs</i> , the reporting period end date shall be the end date of the project or grant period.
10	Transactions Enter cumulative amounts from date of the inception of the award through the end date of the reporting period specified in line 9. Use Lines 10a through 10c, Lines 10d through 10o, or Lines 10a through 10o, as specified by the Federal agency, when reporting on single grants. Use Line 12, Remarks, to provide any information deemed necessary to support or explain <i>FFR</i> data.	
Federal Cash (To report multiple grants, also use <i>FFR</i> Attachment)		
10a	Cash Receipts	Enter the cumulative amount of actual cash received from the Federal agency as of the reporting period end date.
10b	Cash Disbursements	Enter the cumulative amount of Federal fund disbursements (such as cash or checks) as of the reporting period end date. Disbursements are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expenses charged to the award, and the amount of cash advances and payments made to subrecipients and contractors. For multiple grants, report each grant separately on the <i>FFR</i> Attachment. The sum of the cumulative cash disbursements on the <i>FFR</i> Attachment must equal the amount entered on Line 10b, <i>FFR</i> .
10c	Cash On Hand (Line 10a Minus Line 10b)	Enter the amount of Line 10a minus Line 10b. This amount represents immediate cash needs. If more than three business days of cash are on hand, the Federal agency may require an explanation

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FFR Number	Reporting Item	Instructions
		on Line 12, Remarks, explaining why the drawdown was made prematurely or other reasons for the excess cash.
Federal Expenditures and Unobligated Balance: Do not complete this section if reporting on multiple awards.		
10d	Total Federal Funds Authorized	Enter the total Federal funds authorized as of the reporting period end date.
10e	Federal Share of Expenditures	Enter the amount of Federal fund expenditures. For reports prepared on a cash basis, expenditures are the sum of cash disbursements for direct charges for property and services; the amount of indirect expense charged; and the amount of cash advance payments and payments made to subrecipients. For reports prepared on an accrual basis, expenditures are the sum of cash disbursements for direct charges for property and services; the amount of indirect expense incurred; and the net increase or decrease in the amounts owed by the recipient for (1) goods and other property received; (2) services performed by employees, contractors, subrecipients, and other payees; and (3) programs for which no current services or performance are required. Do not include program income expended in accordance with the deduction alternative, rebates, refunds, or other credits. (Program income expended in accordance with the deduction alternative should be reported separately on Line 10o.)
10f	Federal Share of Unliquidated Obligations	Unliquidated obligations on a cash basis are obligations incurred, but not yet paid. On an accrual basis, they are obligations incurred, but for which an expenditure has not yet been recorded. Enter the Federal portion of unliquidated obligations. Those obligations include direct and indirect expenses incurred but not yet paid or charged to the award, including amounts due to subrecipients and contractors. On the final report, this line should be zero unless the awarding agency has provided other instructions. <i>Do not include any amount in Line 10f that has been reported in Line 10e. Do not include any amount in Line 10f for a future commitment of funds (such as a long-term contract) for which an obligation or expense has not been incurred.</i>
10g	Total Federal Share (Sum of Lines 10e and 10f)	Enter the sum of Lines 10e and 10f.
10h	Unobligated Balance of Federal Funds (Line 10d Minus Line 10g)	Enter the amount of Line 10d minus Line 10g.
Recipient Share: Do not complete this section if reporting on multiple awards.		
10i	Total Recipient Share Required	Enter the total required recipient share for reporting period specified in line 9. The required recipient share should include all matching and cost sharing provided by recipients and third-party providers to meet the level required by the Federal agency. This amount should not include cost sharing and match amounts in excess of the amount required by the Federal agency (for example, cost overruns for which the recipient incurs additional expenses and, therefore, contributes a greater level of cost

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FFR Number	Reporting Item	Instructions
		sharing or match than the level required by the Federal agency).
10j	Recipient Share of Expenditures	Enter the recipient share of actual cash disbursements or outlays (less any rebates, refunds, or other credits) including payments to subrecipients and contractors. This amount may include the value of allowable third party in-kind contributions and recipient share of program income used to finance the non-Federal share of the project or program. Note: On the final report this line should be equal to or greater than the amount of Line 10i.
10k	Remaining Recipient Share to be Provided (Line 10i Minus Line 10j)	Enter the amount of Line 10i minus Line 10j. If recipient share in Line 10j is greater than the required match amount in Line 10i, enter zero.
Program Income: Do not complete this section if reporting on multiple awards.		
10l	Total Federal Program Income Earned	Enter the amount of Federal program income earned. Do not report any program income here that is being allocated as part of the recipient's cost sharing amount included in Line 10j.
10m	Program Income Expended in Accordance With the Deduction Alternative	Enter the amount of program income that was used to reduce the Federal share of the total project costs.
10n	Program Income Expended in Accordance With the Addition Alternative	Enter the amount of program income that was added to funds committed to the total project costs and expended to further eligible project or program activities.
10o	Unexpended Program Income (Line 10l Minus Line 10m or Line 10n)	Enter the amount of Line 10l minus Line 10m or Line 10n. This amount equals the program income that has been earned but not expended, as of the reporting period end date.
11	Indirect Expense: Complete this information only if required by the awarding agency. Enter cumulative amounts from date of the inception of the award through the end date of the reporting period specified in line 9.	
11a	Type of Rate(s)	State whether indirect cost rate(s) is Provisional, Predetermined, Final, or Fixed.
11b	Rate	Enter the indirect cost rate(s) in effect during the reporting period.
11c	Period From; Period To	Enter the beginning and ending effective dates for the rate(s).
11d	Base	Enter the amount of the base against which the rate(s) was applied.
11e	Amount Charged	Enter the amount of indirect costs charged during the time period specified. (Multiply 11b. x 11d.)
11f	Federal Share	Enter the Federal share of the amount in 11e.
11g	Totals	Enter the totals for columns 11d, 11e, and 11f.
Remarks, Certification, and Agency Use Only		
12	Remarks	Enter any explanations or additional information required by the Federal sponsoring agency including excess cash as stated in line 10c.
13a	Typed or Printed Name and Title of Authorized Certifying Official	Enter the name and title of the authorized certifying official.
13b	Signature of Authorized Certifying Official	The authorized certifying official must sign here.
13c	Telephone (Area Code, Number and Extension)	Enter the telephone number (including area code and extension) of the individual listed in Line 13a.
13d	E-mail Address	Enter the e-mail address of the individual listed in Line 13a.

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FFR Number	Reporting Item	Instructions
13e	Date Report Submitted (Month, Day, Year)	Enter the date the <i>FFR</i> is submitted to the Federal agency using the month, day, year format.
14	Agency Use Only	This section is reserved for Federal agency use.

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Line Item Instructions for the Federal Financial Report Attachment

(To be completed if reporting on cash management activity for multiple grants.)

Box Number	Reporting Item	Instructions
1	Federal Agency and Organizational Element to Which Report is Submitted	Enter the name of the Federal agency and organizational element identified in the award document or otherwise instructed by the agency. (This information should be identical to that entered in Box 1, <i>FFR</i> .)
2	Recipient Organization	Enter the name and complete address of the recipient organization including zip code. (Same information as entered in Box 3, <i>FFR</i> .)
3a	DUNS Number	Enter the recipient organization's Data Universal Numbering System (DUNS) number or Central Contract Registry extended DUNS number. (Same information as entered in Box 4a, <i>FFR</i> .)
3b	EIN	Enter the recipient organization's Employer Identification Number (EIN). (Same information as entered in Box 4b, <i>FFR</i> .)
4	Reporting Period End Date: (Month, Day, Year)	Enter the ending date of the reporting period of this report. (Same information as entered in Box 9, <i>FFR</i> .)
5	Federal Grant Number	Enter the grant number assigned to each award by the Federal agency.
	Recipient Account Number	Enter the account number or any other identifying number assigned by the recipient to each award. This number is for the recipient's use only and is not required by the Federal agency.
	Cumulative Federal Cash Disbursement	Enter the cumulative amount of the Federal share of cash disbursed for each award. Cash disbursements are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expenses charged to the award, and the amount of cash advances and payments made to subrecipients and contractors.
	Total	Enter the total for the Cumulative Cash Disbursement. This column should equal the amount reported on Line 10b, <i>FFR</i> .

SF 3881 Vendor/Miscellaneous Payment Enrollment Form

<http://www.epa.gov/ogd/forms/adobe/SF3881.pdf>

Pointers for Completing SF 3881 Form

To answer some of questions that vendors and agencies have raised when completing the vendor enrollment form and prevent some of the mistakes that have occurred, the FMS is presenting these additional pointers.

1. The Federal agency initiates the SF 3881 form to enroll its vendors to receive payment by electronic funds transfer.
2. A vendor must complete a separate enrollment form (SF 3881) for each agency with which it does business.
3. In the Agency Information Section, the term “AGENCY IDENTIFIER” means the acronym by which the agency is known. For example, the “AGENCY IDENTIFIER” for the Financial Management Service is FMS.
4. In the Payee/Company Information Section, it should be noted that the “TAXPAYER ID NO.” may be used by the Government to collect and report on any delinquent amounts arising out of the offerer’s relationship with the Government (31 U.S.C. 7701 (c) (3)).
5. The financial institution and the vendor should each keep a copy of the completed form.
6. The vendor should return the completed SF 3881 to the agency that initiated the form.

**ACH VENDOR/MISCELLANEOUS PAYMENT
ENROLLMENT FORM**

OMB No. 1510-0056

This form is used for Automated Clearing House (ACH) payments with an addendum record that contains payment-related information processed through the Vendor Express Program. Recipients of these payments should bring this information to the attention of their financial institution when presenting this form for completion. See reverse for additional instructions.

PRIVACY ACT STATEMENT
The following information is provided to comply with the Privacy Act of 1974 (P.L. 93-579). All information collected on this form is required under the provisions of 31 U.S.C. 3322 and 31 CFR 210. This information will be used by the Treasury Department to transmit payment data, by electronic means to vendor's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Automated Clearing House Payment System.

AGENCY INFORMATION		
FEDERAL PROGRAM AGENCY U.S. Environmental Protection Agency		
AGENCY IDENTIFIER: LVFC	AGENCY LOCATION CODE (ALC): 68128933	ACH FORMAT: <input checked="" type="checkbox"/> CCD+ <input type="checkbox"/> CTX
ADDRESS: PO Box 98515		
Las Vegas, NV 89193-8515		
CONTACT PERSON NAME:		TELEPHONE NUMBER: (702) 798-2485
ADDITIONAL INFORMATION: FAX Number: (702) 798-2423		

PAYEE/COMPANY INFORMATION	
NAME	SSN NO. OR TAXPAYER ID NO.
ADDRESS	
CONTACT PERSON NAME:	TELEPHONE NUMBER: ()

FINANCIAL INSTITUTION INFORMATION	
NAME:	
ADDRESS:	
ACH COORDINATOR NAME:	TELEPHONE NUMBER: ()
NINE-DIGIT ROUTING TRANSIT NUMBER: _____	
DEPOSITOR ACCOUNT TITLE:	
DEPOSITOR ACCOUNT NUMBER:	LOCKBOX NUMBER:
TYPE OF ACCOUNT: <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS <input type="checkbox"/> LOCKBOX	
SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL: (Could be the same as ACH Coordinator)	TELEPHONE NUMBER: ()

AUTHORIZED FOR LOCAL REPRODUCTION

SF 3881 (Rev. 2/2003)
Prescribed by Department of Treasury
31 U.S.C. 3322; 31 CFR 210

Instructions for Completing SF 3881 Form

Make three copies of form after completing. Copy 1 is the Agency Copy; copy 2 is the Payee/Company Copy; and copy 3 is the Financial Institution Copy.

1. Agency Information Section - Federal agency prints or types the name and address of the Federal program agency originating the vendor/miscellaneous payment, agency identifier, agency location code, contact person name and telephone number of the agency. Also, the appropriate box for ACH format is checked.
2. Payee/Company Information Section - Payee prints or types the name of the payee/company and address that will receive ACH vendor/miscellaneous payments, social security or taxpayer ID number, and contact person name and telephone number of the payee/company. Payee also verifies depositor account number, account title, and type of account entered by your financial institution in the Financial Institution Information Section.
3. Financial Institution Information Section - Financial institution prints or types the name and address of the payee/company's financial institution who will receive the ACH payment, ACH coordinator name and telephone number, nine-digit routing transit number, depositor (payee/company) account title and account number. Also, the box for type of account is checked, and the signature, title, and telephone number of the appropriate financial institution official are included.

Burden Estimate Statement

The estimated average burden associated with this collection of information is 15 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Management Service, Facilities Management Division, Property and Supply Branch, Room B-101, 3700 East West Highway, Hyattsville, MD 20782 and the Office of Management and Budget, Paperwork Reduction Project (1510-0056), Washington, DC 20503.

Planning Calendar

Replace text with personnel, deliverables, and dates required by your award. Keep in a handy yet confidential location.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<i>Jen</i>			<i>Biannual Report to EPA 03/01/09</i>						<i>Biannual Report to EPA 09/01/09</i>			
<i>Joe</i>	<i>Indirect Cost Report to Council 01/01/09</i>				<i>Indirect Cost Report to Council 05/01/09</i>				<i>Indirect Cost Report to Council 09/01/09</i>			

Purchasing Supplies, Equipment, and Services Under EPA Grants to Local Governments

<http://www.epa.gov/ogd/grants/nonprofit/supply.htm>

CHAPTER 1 – GRANT RECIPIENT PURCHASING REQUIREMENTS

As a recipient of EPA grants and cooperative agreements, you will likely need to buy supplies, equipment, and services to complete your project. This guidance will help you meet EPA requirements when making such necessary purchases.

This guidance is not intended for State governments. Only certain portions of EPA's regulations (40 CFR 31.36) apply to States which should review that regulation to determine the applicable EPA requirements.

The Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (40 CFR Part 31) applies to EPA grants and cooperative agreements to State, local, and Tribal governments. (From now on, the term "grants" will be used to refer to both types of assistance agreements.) If you receive assistance under the "Cooperative Agreements and Superfund State Contracts for Superfund Response Actions" regulation (40 CFR Part 35, Subpart O), you will be required to follow requirements which differ from or supplement the provisions of 40 CFR Part 31. The Subpart O requirements are not described in this guidance.

Most of this guidance is devoted to the acquisition procedures § 31.36 prescribes for local governments. The rule requires that when States acquire property and services with grant funds, they must follow the same policies and procedures they use when making purchases with non-Federal funds. In addition, States must include in every grant-supported purchase order or contract all clauses required by Federal statute and executive orders.

EPA often calls purchasing under grants "procurement", but in this guidance we use the term "purchasing".

This guidance does not apply to obtaining the services of individual consultants. A consultant is a person who has expertise in a particular field (specialized skills) and who serves solely in an advisory capacity and is paid at a daily or hourly rate. A consultant primarily provides views or opinions on problems or questions you present. The term includes experts or persons with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field. If you obtain the services of a contractor and the terms of the contract provide you with the 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 identified individual is likely a consultant.

EPA has limits on its participation in payments for consultants, so if you have questions as to whether a particular individual is a consultant, you should contact your project officer or grants specialist for assistance.

This guidance also does not apply to subgrants. A subgrant is an award of financial assistance in the form of money, or property in lieu of money, which you make to an eligible subrecipient. The term "subgrant" does not encompass recipient purchases. EPA has other guidance applicable to subgrants. Contact your project officer or grants specialist for that guidance. (You cannot make a subgrant to a profit-making organization.)

BASIC REQUIREMENTS FOR PURCHASING SYSTEMS

It is unlikely you will purchase the supplies, equipment, and services you need for your grant at an auction, but EPA's purchasing guidance and requirements are designed to ensure that what you buy you get at a reasonable price in a fair and openly competitive way. Many EPA grant recipients have their own purchasing requirements and systems. If you have your own system and it meets the minimum standards of the EPA regulations as explained in this guidance, you may use that system. If your system does not comply, you may modify your system or make adjustments as needed so that your grant-supported purchases are made in accordance with the minimum EPA requirements.

The following sections of this guidance are based on and provide cross-references to the applicable regulations and can help ensure you have a strong purchasing system which will ensure you make sound purchasing decisions.

RESPONSIBILITY

You are responsible for the settlement and satisfaction of all contractual and administrative issues arising out of contracts under your grant. Your purchasing system should establish procedures you will follow if disputes, claims, protests of award, source evaluation or other matters of a contractual nature arise. EPA will not substitute its judgment for yours unless the matter is primarily a Federal concern. You must refer violations of law to the Federal, State or local authority with jurisdiction (31.36(b)(11) and (12)). If you receive a bid protest, you must also notify EPA (40 CFR 31.36(b)(12)).

You must ensure you do not purchase unnecessary things under your grant.

You must evaluate whether it is most economical to lease rather than purchase equipment and supplies. (40 CFR 31.36(b)(4)). Equipment is tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. You may use your own definition of equipment provided that such definition would at least include all equipment defined above.

Also, EPA may disallow the costs of some activities or purchases you make under the grant, even though the activities and purchases were identified in your application. If, at any time, EPA finds that an activity or purchase is not necessary or does not comply with EPA regulations, EPA may disallow the cost. For example, if your approved grant application indicated you would be using the services of a contractor, but EPA later determines you did not obtain the contractor's services in accordance with EPA's minimum standards, EPA may disallow the cost.

CODE OF CONDUCT

You must have written standards of conduct which apply to employees involved in the award and administration of contracts for supplies, equipment, and services. (40 CFR 31.36(b)(3)). The code must ensure that:

- Your employee, officer or agent (employee) does not participate in the selection, award, or administration of a contract under an EPA grant if the employee, any of the employee's family members or partners, or an organization which employs or is about to employ any of these persons, has a financial or other interest in the organization selected for the contract. This would be an inappropriate conflict of interest.
- Your employee does not solicit or accept gratuities, favors, or anything of monetary value from your contractors. You may, however, set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
- If any of your employees violate the code, the code must make them subject to disciplinary action.

COMPETITION

You must, to the extent possible, provide full and open competition in your purchasing (40 CFR 31.36(c)(1)). Some situations that are indicators of unnecessarily restricted competition include:

- Imposing unreasonable requirements on firms in order for them to compete for your business.
- Requiring unnecessary experience and excessive bonding.
- Allowing noncompetitive pricing practices between firms or between affiliated companies.
- Making noncompetitive awards to consultants that are on retainer contracts.
- Permitting organizational conflicts of interest.
- 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.
- Taking any arbitrary action during the purchasing process.

COST AND PRICE REVIEW

Your purchasing system must ensure the cost or price of your supplies, equipment, and services is reasonable (40 CFR 31.36(f)). You do this by conducting a cost or price analysis for each procurement action. This analysis must be documented in your files.

- Price analysis includes the comparison of price quotations submitted, market prices, bid prices for firm fixed price contracts or similar information.
- Cost analysis is the review and evaluation of each element of cost to determine reasonableness.

You must determine the method and depth review based on the facts surrounding your particular situation. As a starting point, you must make independent estimates of expected prices or costs before receiving bids or proposals. Appendix A to this guidance explains the type of reviews you must do in various situations.

DISADVANTAGED BUSINESS OPPORTUNITY

You must make positive efforts to use disadvantaged businesses, including small businesses, minority-owned firms, women's business enterprises, and firms in labor surplus areas, whenever possible (40 CFR 31.36(e)). Actions you must take to accomplish this include:

- Ensuring that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable by including them on solicitation lists.
- Assuring that small businesses, minority-owned firms, and women's business enterprises are solicited whenever they are potential sources.
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small businesses, minority-owned firms, and women's business enterprises.
- Establishing delivery schedules, where this is possible based on the timing of the need for the work, which encourage participation by small businesses, minority-owned firms, and women's business enterprises.
- Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- Requiring the prime contractor, if subcontracts are to be let, to take the same step as those listed above.

DEBARMENT AND SUSPENSION

You must ensure you do not award a contract to any person (organization or individual) debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs (40 CFR 31.35). You must also ensure your contractor does not award a subcontract to any person debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs.

You can find the list of debarred, suspended, and excluded persons at:

www.sam.gov [EXIT Disclaimer](#)

When searching this site, search by the name of the contractor, not by agency, to ensure all debarred, suspended or otherwise excluded contractors are found. Some debarred contractors are ineligible under only certain programs. You must check the cause and treatment code to determine the circumstances related to each contractor. It may be necessary to contact the agency which imposed the suspension, debarment or exclusion to determine the effect of the action.

RECORDS

You must maintain records that detail the history of each purchase (40CFR 31.36(b)(9)). These records must include the rationale for the method of procurement, the reason you selected the contract type, your justification for lack of competition when competitive bids or offers are not obtained, the reasons for contractor selection or rejection, and the basis for the contract price, including documentation of required price and cost analyses (Appendix A).

CONTRACT PROVISIONS

You must ensure your contracts are sound and complete under applicable state and local law. Your contracts must also reflect the provisions listed in Appendix B. If your standard contracts meet the requirements of Appendix B, the clauses need not be repeated.

If you suspect or you receive reports that a contractor violated the EPA required contract provisions you must report those violations to your EPA project officer.

If EPA awards you a grant involving construction contracts in excess of \$2000, the Federal statute for the program under which the grant is awarded may require compliance with the Davis-Bacon Act. The Davis-Bacon Act requires contractors to pay wages to laborers and mechanics at least equal to minimum wages specified in wage determinations made by the Secretary of Labor. In such cases you must require your contractors to pay wages to laborers and mechanics at least equal to minimum wages specified in a wage determination made by the Secretary of Labor, you must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation, and you must condition your award of a contract on the acceptance of the wage determination. You must report all suspected or reported violations of Davis-Bacon Act requirements to the EPA project officer.

CONTRACT TYPES

You must decide which contract type is appropriate given the circumstances of each purchase. You may use your standard contract types for contracts under your EPA grant. Contract types include:

- Fixed price contracts. Fixed price contracts are used when there is a complete product description or specifications. The contractor must furnish the goods or services for the fixed price, and so assumes significant risk. Profit is not stated or negotiated separately. A fixed price contract generally is not appropriate if the work involves significant technical or engineering unknowns. Purchase orders and credit-card purchases, typically used for low-dollar transactions, are examples of fixed-price contracts.
- Cost reimbursement contracts. You should use a cost reimbursement contract only when it is not feasible to award a fixed price contract. The contractor's cost and fees must be separately stated in the contract. Cost reimbursement contracts can be riskier because you must pay the contractor's reasonable costs fees even if the project is not successfully completed before the contract expires. To minimize the risk of unacceptable cost growth, you may be able to negotiate contractual ceilings on the total cost and/or on indirect costs.
- Cost Plus Type Contracts Prohibited. Percentage of construction cost and cost plus a percentage-of- cost contracts provide an incentive for the contractor to increase costs in order to increase profit. These contract types must not be used.

CONSTRUCTION CONTRACT BONDS

You must ensure EPA's interest in construction or facility improvement contracts under grants is adequately protected. Construction bid and bond requirements are listed in [Appendix C](#).

CHAPTER 2 – GRANT RECIPIENT PURCHASING METHODS

You must determine the purchasing method (examples below) and contract type that best fits your needs and circumstances.

SMALL PURCHASE METHOD

Small purchase is a relatively simple and informal method for purchasing supplies, equipment, and services that do not cost more than \$100,000. (40 CFR 1.36(d)). (Your organization may have lower small purchase limits in its procedures. If so, follow those limits.)

Generally, you should review catalogs or obtain price quotes from three or four vendors who can meet your needs. You should select the lowest priced item or service which meets your requirements. You must, of course ensure:

- The employee selecting the offer does not have a conflict of interest with any of the organizations contacted.
- You make it possible for and encourage disadvantaged businesses to provide offers, to the extent possible.
- The offer is not from a debarred or suspended person.
- If you selected other than the lowest priced supply, equipment, or service, keep a written record explaining why.
- You keep files of the purchase, including the list of vendors contacted and the prices of each.
- You do not need to obtain bid or performance bonds for small purchases.

SEALED BID OR FORMALLY ADVERTISED PURCHASING METHOD

For purchases with an estimated price of more than \$100,000, the sealed bid purchasing method is generally preferable to other methods if the successful bid can be determined based mostly on price. Under this method, you must advertise for firm-fixed-price proposals or bids from capable vendors. The bids are opened at a previously announced time and place, and may be attended by any member of the public (including the bidders). The contract (lump sum or unit price) must be awarded to the responsible bidder whose bid conforms to the terms and conditions of the solicitation and is the lowest in price.

Sealed bidding is feasible if:

- You have a complete, adequate, and realistic specification or purchase description.
- It is likely there are two or more responsible bidders willing and able to compete for the contract.
- The purchase will result in a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If you use the sealed bidding method, you must:

- Publicly advertise an invitation for bids allowing potential bidders sufficient time to prepare bids before the public bid opening. The advertisement must make clear that any or all bids may be rejected if there is a sound documented reason. The advertisement must contain:
 - A clear, accurate description of the technical requirements for the supplies, equipment or service to be purchased.
 - Requirements which the bidder must meet and all other factors you will use to evaluate bids.
 - 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.
 - The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

- Take steps to involve disadvantaged businesses (see section on Disadvantaged Business Utilization in Chapter 1), including sending known firms the advertisement requesting bids.
- Include specifications and attachments which define the item or supplies, equipment, or service to be purchased in the advertisement. If the specifications are voluminous, they may be referenced, along with an instruction specifying when and where they may be examined, copied, or purchased.
- Publicly open bids at the time and place announced in the advertisement.
- Select the responsible bidder whose bid is the lowest priced responsive bid.
 - Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs may be considered in determining which bid price is the lowest.
 - If you decide to award the contract to other than the lowest-price bid, notify the EPA project officer to allow for the project officer's EPA review, if requested. (See Section on EPA pre-purchase review below.)
 - Before awarding a contract, ensure the selected bidder is not debarred, suspended, or otherwise excluded. (See the Debarment and Suspension section in Chapter 1 for instructions on determining whether a bidder is debarred or suspended.) If the selected bidder is debarred or suspended, reject that bidder's bid and select the next best bidder, if the price is reasonable.
- Include in the signed contract the appropriate contract provisions (See [Appendix B](#)).
- If the contract is for construction work, require the contractor to provide appropriate bid, performance, and payment bonds when the contract is signed. (See [Appendix C](#)).

If you award a fixed-price contract award to the lowest-priced bidder who competed against at least one other bidder, no further price or cost review is required.

COMPETITIVE PROPOSAL PURCHASING METHOD

When it is not appropriate to use the sealed bidding method (i.e., the award cannot be made based primarily on price) for purchases exceeding \$100,000, the next most preferred method is generally called the competitive proposal method. Under this method, you will evaluate factors such as the offeror's capability, the likelihood that the offeror's proposed management and technical approaches will meet your needs, the qualifications of the offeror's proposed project staff, the availability of necessary resources, the offeror's past performance record, and whether the offeror's proposed cost or price is reasonable. This method can be used for either a fixed price or a cost reimbursement type contract.

If you use the competitive proposal method, you must:

- Publicly advertise your request for proposals (RFP) identifying the nature of supplies, equipment, or services needed, the evaluation factors and their relative importance, a preference.
- Take steps to involve disadvantaged businesses (see section on Disadvantaged Business Utilization in Chapter 1), including sending known firms the advertisement requesting offers.
- Develop a system for conducting technical and cost/price evaluations of the proposals to select the successful offeror.

- Use the evaluation system and the RFP criteria to select the responsible firm whose proposal is most advantageous, recording the selection decision in a document which summarizes the results of the evaluation of all timely proposals and explains why the selected proposal is most advantageous.
- Include the appropriate contract provisions in the signed contract. (See [Appendix B.](#))
- If the contract is for construction work, require the contractor to provide appropriate bid, performance, and payment bonds when the contract is signed.
- If offerors are required to submit the elements of their proposed cost, you must conduct a cost analysis to determine whether their proposed costs are reasonable. Offerors must set forth their proposed fees or profit separately. (See [Appendix A.](#))

To obtain architectural/engineering (A/E) professional services, you may use a qualifications-based form of the competitive proposal method. This method allows you to select the most qualified competitor based on the technical evaluation, subject to negotiation of fair and reasonable compensation. If you cannot reach agreement on price with that A/E firm, you can open price negotiations with the next most qualified firm. Before awarding the contract, you must conduct a cost analysis and include it in the procurement/contract file. (See [Appendix A.](#))

NON-COMPETITIVE OR SOLE SOURCE PURCHASING METHOD

The noncompetitive purchasing method is authorized whenever one of the following occurs:

- You determine the item or service is available from only one source.
- You determine public exigency or emergency will not permit a delay resulting from competition.
- You request and obtain EPA approval to use the noncompetitive proposal method for some other reason.
- Only one bidder or offeror responds to a solicitation issued to several sources.

You must conduct a cost analysis of noncompetitive proposals. (See [Appendix A.](#))

You must notify the EPA project officer before using the non-competitive proposal purchasing method. The project officer will likely instruct you to submit the proposed contract, and related information, including cost information provided by the bidder and your justification for the non-competitive method, for EPA review.

CHAPTER 3 – EPA REVIEW OF GRANT RECIPIENT PURCHASES

EPA and other Federal agency staff may review your purchasing activities before or after award. EPA's approval of your grant does not mean that the allowability of the costs of the proposed activities and purchases identified in your application will never be questioned. If, at any time, EPA finds that an activity or purchase was not necessary or did not comply with EPA regulations, EPA may disallow the cost (40 CFR 31.43(a)(2)). For example, if your grant application indicated you would be using the services of a contractor, but you obtain the contractor's services in a way that does not comply with EPA's minimum standards, EPA may disallow the entire contract cost.

EPA PRE-PURCHASE REVIEW

You must give the EPA project officer the opportunity to review information related to your purchases before you sign contracts if (40 CFR 31.36(g)(1) and (2):

- Your purchasing procedures or operation fail to comply with the standards in EPA regulations.
- Your purchase is expected to exceed \$100,000 and is to be awarded without competition or you receive only one bid or offer which exceeds \$100,000 in response to a solicitation.
- Your purchase exceeds \$100,000 and specifies a "brand name" product.
- Your proposed contract exceeds \$100,000 and is to be awarded to other than the apparent low bidder under a sealed bid procurement.
- You propose a contract modification which changes the scope of your contract or increases the contract amount by more than the \$100,000.

You must contact your EPA project officer for guidance as soon as you are aware of any of these situations.

If you are a new recipient of an EPA award or if you have had purchasing problems under previous EPA grants or reviews, EPA's project officer or grants specialist may review your procurement system before approving an award. EPA will contact you in such cases.

EPA POST-PURCHASE REVIEW

EPA may also review your purchases after they are made. EPA staff may review your management systems for compliance with EPA requirements. We may conduct a desk review, in which case we will review any information we have in our files, find on the internet, or request and receive from you. This may include information related to particular purchases. We may also conduct a review at your location (on-site review). The reviewers will evaluate much the same information as under a desk review. EPA staff will contact you to arrange on-site reviews so they are as convenient as possible for you. Our review will evaluate your compliance with EPA requirements, including Disadvantaged Business Utilization, contract clauses, record keeping, cost and price review, as well as your purchasing methods.

SINGLE AND EPA AUDIT

If you spend \$500,000 for fiscal years ending after December 31, 2003 or more in a year in Federal (not just EPA) grant funds, you must obtain a single or program-specific audit in accordance with the requirements of OMB Circular A-133. You can find the Circular at: http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf

[EXIT Disclaimer](#)

If you receive only one federal grant and elect to do a program specific audit, it is likely your auditor will review your purchasing practices under EPA's grant. If you elect to have you auditor conduct a single audit, the auditor may review your EPA grant purchases.

Also, EPA's Office of Inspector General or the General Accounting Office (GAO) may conduct an audit of your EPA grants. EPA and GAO auditors are likely to review your purchasing system as well as your purchases. These audits will be planned and performed in such a way as to build upon work performed by your auditors.

APPENDIX A

CONDUCTING PRICE AND COST ANALYSES

EPA regulations require you to conduct a price or cost review for each purchase and for each contract modification you make to support you grant (40 CFR 31.36(f)).

PRICE ANALYSIS

A "price analysis" is an evaluation of a proposed price, without regard to the contractor's separate cost elements and proposed profit, to determine the price is reasonable. Before completing a purchase, you must conduct a price analysis for each small purchase (\$100,000 or less) and for each fixed price contract. The following guide will assist you in completing required price reviews.

Cost Estimate – Develop an independent cost estimate for the supplies, equipment, or service you will be purchasing. This estimate may be based on such things as you and your staff's experience with similar purchases, a review of catalog or off-the-shelf prices, or other relevant information. Typically, the persons who develop the detailed plans and specifications for a fixed price contract will develop a detailed price estimate.

Comparison of Prices – Compare prices obtained from catalogs, suppliers, or bidders to your independent estimate.

Price Reasonableness –

A. If the offeror or bidder's price appears reasonable based on your independent estimate and other appropriate information, purchase the supply, equipment, or service.

B. If the offeror or bidder's price is significantly higher than your independent estimate, review your requirements to determine whether unnecessary, overly restrictive, or complex requirements caused the higher than expected price. (Even if the price is significantly lower than expected, you should review the stated requirement or plans and specifications to ensure they are complete and will result in the supply, equipment, or service you need.) If legally permissible, it may help, in making your determination, to talk to those providing quotes or bids; otherwise, you should consider cancelling the solicitation, make any necessary revisions/corrections, and resoliciting offers or bids. You may wish to consult your attorney to determine if such discussions are allowed.

COST ANALYSIS

A "cost analysis" is the evaluation of each major contract cost category to determine reasonableness of each category and of the total cost of a contract or change order. You must perform a cost analysis if you require offerors to specify the elements (e.g., personnel, fringe benefits, travel, subcontracting, indirect costs, profit) of their proposed total contract cost. A cost analysis is also necessary whenever competition is lacking, and for sole source procurements, contract modifications, and change orders.

To obtain the information you need to conduct a cost analysis, you must instruct offerors to provide cost data with their offers. EPA does not prescribe a form for this cost data, so unless you have a standard form, offerors may submit their cost data in any appropriate format. If legally authorized, you should require offerors to certify that the cost information they submit is complete, current, and accurate. You should consult your attorney to determine if you can require a certification.

The following is a general list of cost categories under which contractors will submit cost information, and guidance on how you should evaluate each category:

Personnel Costs – Costs for labor directly related to the contract.

For Example the offeror will likely provide information that looks like this :

I Category	Estimated Hours		Hourly Rate		
Professional	300	x	\$30.00	=	\$ 9,000
Nonprofessional	2000	x	25.00	=	50,000
Clerical	800	x	15.00	=	12,000
Total Direct Personnel Cost					\$71,000

Consider:

A. Whether the level of effort or the total amount of time proposed is consistent with the effort required to complete the contract.

B. The labor mix or the labor categories proposed to ensure they are consistent with the difficulty and technical nature of the work - professional versus nonprofessional versus clerical.

C. The proposed salaries, including reasonable escalation factors to ensure they are consistent with the offerors' actual pay scales. Generally, the conversion of annual salaries into hourly rates is accomplished by dividing the annual salary by 2,087 hours (assuming an 8 hour work day).

Fringe Benefits – Personnel costs other than employees' direct salary or pay (i.e., employer's portion of FICA insurance, retirement, sick leave, holiday pay, and vacation cost. While these costs are normally accumulated in a pool and allocated using percentages as shown below, offerors may calculate actual fringe benefit costs for each employee who will work on your job. Either method is acceptable if applied consistently.

Example:

Category	Estimated Fringe Benefit Rate		Total Hourly Pay		Fringe Benefit Amount
Professional	10%	x	\$9,000	=	\$ 900
Nonprofessional	10%	x	50,000	=	5,000
Clerical	10%	x	12,000	=	1,200
Total Fringe Benefit Cost					\$7,100

Consider:

A. Whether the fringe benefit rate applied to the direct labor base corresponds to fringe benefits available to each of the proposed labor categories and are consistent with the offeror's established benefits package.

B. Whether the offeror's FICA and unemployment insurance are applied only up to the maximum salary limits established by statute, if any.

Indirect Costs – Indirect costs are costs which cannot be charged to a project specific activity. Indirect costs often include office space, equipment depreciation, and personnel costs for clerical pools, executive salaries, and administrative support. Each organization determines the costs it will include in its indirect cost pool, and the organization must treat the costs the same in all cases. Indirect costs are allocated to the particular contracts based on a fair method of approximation, generally a percentage of a specific set of direct costs under the contract. Indirect costs are also referred to as overhead or burden costs.

Indirect costs should be logically grouped and compared to some part or all of the organization's direct costs (the base). The most popular base is direct labor; however, there are instances where an equitable allocation cannot be made using this base.

Example:

I Category	Rate	x	Direct Labor Base	=	Cost
Indirect Cost	50%		\$71,000		\$35,000
Total Indirect Cost					\$35,000

Consider:

- A. Whether the allocation base is an equitable basis for distribution.
- B. Confirm that the proposed overhead rate is the same the offeror uses in other contracts.

Travel and per Diem Costs – Travel costs include transportation, per diem or subsistence, and other reasonable travel costs directly related to the contract.

Example:

Transportation	Number of Miles		Rate per Mile		Amount
Private Vehicle—Office to job site and return	50	x	\$.30	=	\$15.00
Private Vehicle—Office to EPA and return	20	x	.30	=	\$6.00
Transportation	Origin		Dest		
Flight to attend contract related meeting	Dallas		Waco		\$210.00
Per Diem	Number of Days		Rate per Day		
	10	x	\$75.00	=	\$750.00
Total Travel and Per Diem Cost					\$991.00

Consider:

- A. Whether the proposed travel is necessary.
- B. Whether all people traveling on a trip are necessary.
- C. The cost per trip is reasonable.
- D. Whether the per diem or subsistence allowance is the same for other travel by the offeror's personnel.

Supply, Material and Equipment Costs – Offerors will often have costs for supplies, material, and equipment (tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit), material, and supplies directly related to the contract.

Example:

Item	Quantity		Cost per Item		Cost
Recording Barometers	5	x	\$ 455	=	\$ 2,275
Wind Turbine Generator	1	x	6,370	=	6,370
Incremental Water Quality Samplers	5	x	1,600	=	8,000
Aluminum Tubing	1500 ft.	x	.70 ft.	=	1,050
Miscellaneous Supplies					2,105
Total Equipment, Materials, Supply Cost					\$19,800

Consider:

A. Whether the proposed equipment is needed to complete the contract Equipment is tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. You may use your own definition of equipment provided that such definition would at least include all equipment defined above.)

B. Whether leasing or renting the equipment would be less costly than purchasing it.

C. Whether the proposed materials and supplies are needed, and the estimated costs appear reasonable.

Subcontract Costs – Subcontracts are contracts awarded by your contractor.

Example:

	Cost				
Total Subcontract Costs (Should be broken down among categories if subcontract exceeds \$100,000.)	\$100,000				
Profit	10,000				
Total Cost					\$110,000

Consider:

- A. If the contractor awards subcontracts based on a firm-fixed price, you will only have the lump sum bid amount for the subcontractor. Assure the bid is reasonable based on estimates or catalogs or other information you have available.
- B. If the subcontractor provides cost data, you must conduct a cost review of those subcontracts in excess of \$100,000 in the same manner as for prime contracts.
- C. For subcontracts of \$100,000 or less, you may conduct an abbreviated review, evaluating only the cost and profit of each subcontract. (Profit for offerors and subcontractors should be evaluated based on the profit section below.)

Profit – Profit is the amount paid to a contractor above the total cost of the contract.

You should ensure that cost-reimbursement contractors get paid a profit which is fair and reasonable. Although there are no hard and fast rules for reviewing proposed fees or profits, you should consider such things as complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work..

Example:

	Price				
Total Direct & Indirect Costs	\$100,000				
Fees	10,000				
Total Cost					\$110,000

Consider:

A. The offeror's risk. Generally, the greater the risk the contractor assumes, the higher the rate of profit. Contractors assume greater risks on fixed-price contracts involving complex or difficult tasks as opposed to cost reimbursement contracts.

B. Fees may also be higher if the contractor incurs significant capital costs, exercises considerable ingenuity, or does independent developmental work.

C. Percentage of construction cost and cost plus a percentage cost contracts provide an incentive for the contractor to increase costs in order to increase profit. These contract types must not be used.

Cost Analysis Findings

After you complete a cost analysis, you must determine whether the proposed contract cost is reasonable. If the individual items are reasonable, the total cost is reasonable. You should award the contract.

A. If you find an individual cost is not reasonable, you should discuss the cost with the contractor. If, based on the contractor's justification, you and the contractor reach agreement that the cost is reasonable, accept the cost. If you and the contractor agree the cost is excessive, negotiate a reduction to a reasonable amount and accept the cost.

B. If you cannot agree with the contractor concerning the reasonableness of proposed costs, reject that contractor's offer. If the next highest ranked offer meets your requirements, you should review proposed cost information for that contractor. Follow the same review and negotiation process as above for the new contractor's proposed costs.

Documentation

Document all actions in conducting each price or cost analysis. Ensure all price and cost analyses are described and retained in your records in accordance with your record retention requirements or EPA's.

APPENDIX B

CONTRACT PROVISIONS

You must ensure your contracts are sound and complete under applicable state and local law. Your contracts must also reflect the provisions required by federal law and EPA regulations which are listed below (40 CFR 31.36(i)). To the extent these requirements are met by provisions in your standard contracts, they need not be repeated.

1. Remedies – Contracts must include administrative, contractual, and legal remedies for use in cases in which contractors violate or breach contract terms. The contract must also make clear the remedial actions which you may take.
2. Termination – Contracts in excess of \$10,000 must explain the conditions under which you may terminate them for cause or for your convenience, including the process for bringing about the termination and the basis for settlement.
3. Equal Employment Opportunity – Construction contracts in excess of \$10,000 must require 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."

You can find information on Equal Employment Opportunity at the Department of Labor website: <http://library.dol.gov/dol/compliance/comp-eeo.htm> EXIT Disclaimer

4. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) – Construction contracts must require 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 prohibits contractors 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.

You can find information on the Copeland "Anti-Kickback" Act at the Department of Labor web-site: <http://www.dol.gov/dol/compliance/comp-copeland.htm> EXIT Disclaimer

5. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) – Some EPA statutes authorizing grants require that construction contracts which exceed \$2,000 to comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7), 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 must 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 must pay wages not less than once a week.

You can find information about the Davis-Bacon Act, including prevailing wage rates, on the Department of Labor web-site: <http://www.dol.gov/dol/compliance/comp-dbra.htm> EXIT Disclaimer

6. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) – (a) Construction contracts which exceed \$2,000 or other contracts that involve the employment of mechanics or laborers which exceed \$2,500 must require 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). Section 102 of the Act requires that the wages of every mechanic and laborer be computed on the basis of a standard 40 hour work week. A mechanic or laborer must be paid at a rate of not less than one and ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

(b) Construction contracts which exceed \$100,000 must provide that no laborer or mechanic may be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. (This requirement does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.)

You can find information on the Contract Work Hours and Safety Standards Act on the Department of Labor web-site: <http://library.dol.gov/dol/compliance/comp-cwhssa.htm> EXIT Disclaimer

7. Rights to Inventions, copyrights, and rights in data – Your contracts must contain a notice of EPA's requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed by the contractor, and to copyrights and rights in data. Your contract must reference the license, described in 40 CFR 31.34, EPA reserves in any work you or your contractor develop or acquire with EPA financial assistance.

8. Records – Your contracts must allow you, EPA, the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers and records of the contractor directly pertinent to your contract for the purpose of making audits,

examinations, excerpts and transcriptions (40 CFR 31.42(e)). In addition, your contracts must require the contractor to retain all contract-related records for three years after the contractor receives final payment. Some EPA program regulations (e.g., 40 CFR Part 35, Subpart O) prescribe longer record retention periods which apply to you and to your contractors.

9. Debarment and Suspension – Contracts must prohibit contractors from awarding any subcontract expected to equal or exceed \$25,000 to persons (individuals or organizations) listed on the Excluded Parties List System (EPLS) which is available at: <http://www.sam.gov/> EXIT Disclaimer

The list contains the names of persons debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549.

10. Energy and Environmental Conservation. – Contracts must require contractors to comply with 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).

11. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Contractors who apply or bid for an contract of more than \$100,000 must file a certification that it will not and has not used Federally 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 your grant. The contract must also require that any subcontractor who applies or bids for subcontract in excess of \$100,000 must provide a similar certification to the next higher tier contractor or subcontractor. Contractor and subcontractors must also disclose any lobbying with non-Federal funds in connection with obtaining the grant. Each contractor or subcontractor must forward any disclosures from tier to tier up to the recipient.

APPENDIX C

CONSTRUCTION CONTRACT BONDS

You must ensure EPA's interest in construction or facility improvement contracts under grants is adequately protected. You must at least meet the following minimum standards (40 CFR 31.36(h)).

1. For construction or facility improvements contracts which are \$100,000 or less, unless your grant indicates otherwise, you may follow your own requirements relating to bid guarantees, performance bonds, and payment bonds. The grant will include a term and condition advising you of any additional EPA requirements if required by statute.

2. For construction or facility improvements contracts which exceed \$100,000, unless EPA authorizes different limits or requirements, you must require:

- Bidders to provide a bid guarantee equivalent to five percent of the bid price. The bid guarantee may be a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure the bidder will accept award of a contract if you accept the bidder's bid.
- Successful bidders to provide a performance bond for 100 percent of the contract price to ensure fulfillment of the contractor's obligations under the contract.
- Successful bidders to provide a payment bond for 100 percent of the contract price. A payment bond ensures payment as required by law to all persons supplying labor and material under the contract.

Samples and Examples

Administrative Checklist

(sample)

REGION 9

OPTIONAL GUIDELINES FOR 40 CFR TRIBAL GRANT RECIPIENTS

Pilot -Checklist for Tribes - Review of Financial/Administrative Systems (Customize - as needed)

In response to Tribal requests for assistance in reviewing their Administrative/Financial systems and determining whether they meet federal grants requirements, the attached checklist may be of help.

5/25/00

Item	Yes	No	Guidance	Comments
FILES and RECORDS				
Do you keep a copy of or know where to find the current EPA grant regulations and OMB circulars?			-40 Code of Federal Regulations (CFR)- current year -Office Of Management and Budget (OMB) Circular A-87 (amended 8/29/97) - Internet: http://www.epa.gov/ogd	
Who in your office keeps copies of: - Grant application (SF-424A form) (including work plan) - Grant award (SF-5700-20A form) and any amendments - Rebudget requests - Workplan progress reports - Payment requests (SF-270 form) - Financial Status reports (SF-269A form) - Contracts under grant - Indirect cost rate agreement				

REGION 9 OPTIONAL GUIDELINES: Pilot -Checklist for Tribes - Review of Financial/Administrative Systems

Item	Yes	No	Guidance	Comments
Do you have written procedures for how long you retain grant records and documents? - Types of records to be kept - Length of time			40 CFR- Part 31.42 - Retention and Access requirements for records - 31.42(a) - 31.42(b) and (c)	
ACCOUNTING				
Do you keep the basic books of accounts (electronically or otherwise)? - General ledger - Cash receipts journal - Cash disbursement journal - Payroll journal - Income journal - Purchase journal - General journal			40 CFR- Part 31.20 (b)- Standards for Financial Management Systems	
Does your accounting system provide for tracking and recording non-federal share (match) costs? - How are costs identified? - How are they charged to the grant? - Who keeps the source documents for the match costs?			40 CFR- Part 31.24- Matching or Cost sharing	

REGION 9 OPTIONAL GUIDELINES: Pilot -Checklist for Tribes - Review of Financial/Administrative Systems

Item	Yes	No	Guidance	Comments
<p>Do you have written accounting procedures?</p> <ul style="list-style-type: none"> - Accounting records - Internal Control - Budget Control - Cash Management - Allowable Cost - Source documentation 			<p>40 CFR- Part 31.20 (b)- Standards for Financial Management Systems</p> <ul style="list-style-type: none"> - 31.20 (b)(2) - 31.20(b)(3) - 31.20(b)(4) - 31.20(b) (7) - 31.20 (b)(5) and also OMB Circular A-87 - 31.20 (b)(6) and also OMB-A-87 - Attachment B - #11 (personnel records) 	
<p><u>ACCOUNTING (cont'd)</u></p> <p>Do you track the budgeted grant expenses versus the actual grant expenses?</p> <ul style="list-style-type: none"> - How? - How often? - Who does it? - Provide a sample of your tracking document. 			40 CFR - Part 31.20 (b)(4) Budget Control	
<p>Is your organization subject to the single audit requirement?</p> <ul style="list-style-type: none"> - If yes, when was the last audit performed? - If yes, how do you calculate the amount of costs charged to the grants? 			<p>OMB Circular A-133</p> <ul style="list-style-type: none"> - Organizations that spend more than \$300,000 of federal funds in one year. - OMB Circular A-87, Attachment B- #5 (Audit Services) 	

REGION 9 OPTIONAL GUIDELINES: Pilot -Checklist for Tribes - Review of Financial/Administrative Systems

Item	Yes	No	Guidance	Comments
<p><u>PERSONNEL</u></p> <p>Do you have written personnel procedures and/or a policy?</p> <ul style="list-style-type: none"> - Personnel salary ranges - Personnel position duties/responsibilities - Holiday/vacation/sick/other leave - Fringe benefits 			<ul style="list-style-type: none"> - OMB Circular A-87 - Attachment A, C. (Basic Guidelines) - Attachment B #11 (Compensation for Personnel Services) 	
<p>Do staff working part-time or full-time on EPA grants or other activities have time sheets?</p> <ul style="list-style-type: none"> - Provide copy of signed time sheet. 			OMB-87 Circular- Attachment B - #11 Compensation for Personnel Costs.	
<p><u>TRAVEL</u></p> <p>Do you have written travel procedures or policies?</p> <ul style="list-style-type: none"> - Actual or per diem costs - Established mileage rates - Travel requests/authorization/approval requirements - How travel is charged to proper activities? 			<p>40 CFR, Part 31.20 (a)(2) and (5) and (6)- Standards for Financial Management, Accounting records, Allowable cost, source documentation</p> <ul style="list-style-type: none"> - See also OMB-87 Circular - Attachment B #41 - Travel Costs 	

REGION 9 OPTIONAL GUIDELINES: Pilot -Checklist for Tribes - Review of Financial/Administrative Systems

Item	Yes	No	Guidance	Comments
<p><u>EQUIPMENT</u></p> <p>Do you maintain written records for all property/equipment purchased under grants?</p> <ul style="list-style-type: none"> - description - serial number - source of property - location of property - title - purchase date - cost - % of Federal funds - location of property - condition - disposition data- requirements 			40 CFR - Part 31.32 (c)(d) - Equipment - Management Requirements	
<p><u>INVENTORY</u></p> <p>Do you conduct an inventory of all property/equipment every two years?</p>			40 CFR - Part 31.32 (c)(d) - Equipment - Management Requirements	

REGION 9 OPTIONAL GUIDELINES: Pilot -Checklist for Tribes - Review of Financial/Administrative Systems

Item	Yes	No	Guidance	Comments
<p><u>PROCUREMENT</u> (Contracts for services or equipment, purchases of equipment/ supplies)</p> <p>Do you have written procurement procedures?</p> <ul style="list-style-type: none"> - written code of standards for your employees who award or administer contracts/purchases, etc. - review process to avoid duplicative/unnecessary purchases - lease vs. purchase alternatives - selection procedures for contractors - system for settling contract issues - maintain history of procurement including: <ul style="list-style-type: none"> * reason for method of procurement * selection of contract type * reason for selection/rejection of contractor * basis for contract price, etc. 			<p>40 CFR Part 31.36 (b) Procurement standards</p> <ul style="list-style-type: none"> -31.36(b)(3)-Employee written standards - 31.36(b)(4)- Review of proposed procurements - 31.36(b)(8)- Responsible contractors - 31.36(b)(11) -Settlement of contract issues - 31.36(b) (9) - Maintain procurement records 	
<p>Do you have written selection procedures for all procurements:</p> <ul style="list-style-type: none"> - full and open competition 			<p>31.36 (c)(1) - Competition</p> <p>31.36 (c)(3) - Written selection procedures</p>	


REGION 9 OPTIONAL GUIDELINES: Pilot -Checklist for Tribes - Review of Financial/Administrative Systems

Item	Yes	No	Guidance	Comments
<p><u>PROCUREMENT (cont'd)</u></p> <p>Do you have written procedures and dollar thresholds for using/choosing the following methods of procurement:</p> <p>1) Small purchases</p> <p>2) Sealed bids</p> <p>3) Competitive proposals</p> <p>4) Noncompetitive proposals -sole source</p>			<p>31.36 (c)(1) - Competition 31.36 (c)(3) - Written selection procedures</p> <p>31.36(d)(1) - Small purchase-less than \$100,000 31.36(d)(1) - Formal advertising -preferred for construction 31.36(d)(1) - When sealed bids are not appropriate; price and other factors can be considered 31.36(d) (4) - Use only when award is infeasible under above <u>AND one of following apply:</u> - item available from only a single source; - public emergency will not permit delay resulting from competitive solicitation -awarding agency authorizes noncompetitive proposals</p> <p>Offer solicitation from number of sources, competition is inadequate</p>	

Assistance Agreement Award Examples

Cooperative Agreement

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	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	ASSISTANCE ID NO.			DATE OF AWARD 02/28/2012
		PROGRAM	DOCUMENT ID	AMENDMENT#	
		WD-	83381701-	0	
		TYPE OF ACTION New			MAILING DATE 03/06/2012
PAYMENT METHOD: ACH			ACH# pend		
RECIPIENT TYPE: Indian Tribe		Send Payment Request to: Las Vegas Finance Center			
RECIPIENT: Tribe 1234 Rural Route 2 Somewhere, ST 12345 EIN: 12-3456789		PAYEE: Executive Director			
PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST			
Jane Doe Tribe E-Mail: jdoo@tribe.org Phone: 555-666-9898 FAX 555-666-9899	Myra Price 1200 Pennsylvania Ave, NW, 4501T Washington, DC 20460 E-Mail: Price.Myra@epa.gov Phone: 202-566-1225	Philip Schindel 1200 Pennsylvania Ave., NW, 3903R Washington, DC 20460 E-Mail: Schindel.Philip@epamail.epa.gov Phone: 202-564-5293			
PROJECT TITLE AND DESCRIPTION					
Restoration and Enhancement/National Wetlands Mapper					
The recipient proposes to assist states with high resolution wetlands restoration data in transferring their data into National Wetland Inventory maps and facilitate the creation of an additional layer of information supported by the Wetlands master Geodatabase and online Wetlands Mapper that would show wetlands restoration projects that have been completed. This project would assist states in adhering to the National Wetlands Mapping Standard, as well as developing a new layer of information available to the public on wetlands restoration.					
BUDGET PERIOD 01/07/2012 – 02/02/2014	PROJECT PERIOD 01/07/2012 – 02/02/2014	TOTAL BUDGET PERIOD COST \$162,919.00	TOTAL PROJECT PERIOD COST \$162,919.00		
NOTICE OF AWARD					
Based on your application dated 11/08/2011, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$112,656. EPA agrees to cost-share <u>70.00%</u> of all approved budget period costs incurred, up to and not exceeding total federal funding of \$112,656. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.					
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE		
ORGANIZATION / ADDRESS			ORGANIZATION / ADDRESS		
Grants and Interagency Agreement Management Division 1200 Pennsylvania Ave., NW Mail code 3903R Washington, DC 20460			Environmental Protection Agency Office of Water 1200 Pennsylvania Ave., NW Washington, DC 20460		
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY					
SIGNATURE OF AWARD OFFICIAL Digital signature applied by EPA Award Official		TYPED NAME AND TITLE Denise A. Polk, chief Grants Management Branch B		DATE 02/28/2012	
AFFIRMATION OF AWARD ** (please see special note, below)					
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION					
SIGNATURE <i>Jane Doe</i>		TYPED NAME AND TITLE Jane Doe, Project Manager		DATE 03/17/2012	

EPA Funding Information

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action		\$112,656	\$112,656
EPA In-Kind Amount		\$0	\$0
Unexpended Prior Year Balance		\$0	\$0
Other Federal Funds		\$0	\$0
Recipient Contribution		\$50,263	\$50,263
State Contribution		\$0	\$0
Local Contribution		\$0	\$0
Other Contribution		\$0	\$0
Allowable Project Cost		\$162,919	\$162,919

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.462– National Wetland Program Development Grants	Clean Water Act: Sec. 104(b)(3)	40 CFR Part 30

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site / Project	Cost Organization	Obligation / Deobligation
Somewhere	0887JP8004	08	E1C	87EJ	403B07D	4183	-	-	\$112,656
									112,656

Budget Summary Page

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Table A – Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$49,115
2. Fringe Benefits	\$14,243
3. Travel	\$4,250
4. Equipment	\$0
5. Supplies	\$1,500
6. Contractual	\$0
7. Construction	\$0
8. Other	\$79,976
9. Total Direct Charges	\$149,084
10. Indirect Costs: % Base <u>See Terms and Conditions</u>	\$13,835
11. Total (Share: Recipient <u>30.00%</u> Federal <u>70.00%</u>)	\$162,919
12. Total Approved Assistance Amount	\$112,656
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$112,656
15. Total EPA Amount Awarded To Date	\$112,656

**** SPECIAL NOTE: For NEW awards and amendments after November 1, 2012:**

- Recipient signature no longer requested or required.
- Recipient accepts terms of award by:
 1. Drawing down funds within 21 days after the EPA award or amendment; or
 2. Not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award mailing date.

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 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.

3. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

Pursuant to 40 CFR, Section 33.412, Tribal and Insular Area recipients are not required to negotiate a fair share goal until 3 years from the effective date of the DBE Rule. After that 3-year phase-in period has expired, Tribal and Insular Area recipients are required to adhere to the full requirements of 40 CFR, Part 33, Subpart D, as applicable.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained.

- (a) Require DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reports must be submitted **semiannually** for the periods ending March 31st and September 30th for:

Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and

All other recipients not identified as annual reporters (40 CFR Part 30 and 40 CFR Part 35, Subpart A and Subpart B recipients are annual reporters).

The reports are due within 30 days of the end of the semiannual reporting periods (April 30th and October 30th). Reports should be sent to ENTER APPROPRIATE REGIONAL INFORMATION. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at www.epa.gov/osbp.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

4. In accordance with EPA regulations (40 C.F.R. 31.40 for State, local, and tribal governments; 40 C.F.R. 30.51 for other recipients), the recipient agrees to submit quarterly progress reports to the EPA Project Officer within 30 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.

In addition, the report shall include 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; 3) other pertinent information, including, when appropriate, analysis and explanation of cost overruns or high unit costs. 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.

5. 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 Recipients Manual for additional information.)

(b) Provide timely reporting of cash disbursements and balances in accordance with the EPA-ACH Payment System Recipients 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.

6. In accordance with EPA regulations (40 C.F.R. 31.40 for State, local and tribal governments; 40 C.F.R. 30.51 for other recipients), 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 include 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. 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.

7. Pursuant to 40 CFR 30.52(a)(1) and 30.71(a), EPA recipients shall submit a final Financial Status Report—also called the SF269—to EPA’s Las Vegas Finance Center (LVFC), within ninety (90) days after the expiration of the budget period end date. Completed SF269s must be faxed to 702-798-2423 or mailed to the following address: US EPA LVFC, P.O. Box 98515, Las Vegas, NV 89193-8515. The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Financial Status Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 30.62 if the recipient does not comply with this term and condition.

8. HOTEL-MOTEL FIRE SAFETY

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act(PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/to> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

9. The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

10. 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.

11. Recipients shall fully comply with Subpart C of 2 CFR Part 180 entitled, “Responsibilities of Participants Regarding Transactions Doing Business With Other Persons,” as implemented and supplemented by 2 CFR Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, 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 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipients may access suspension and debarment information at <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

12. The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=0e898f356b7deb1f1dfb3ea7eac14ead&rgn=div5&view=text&node=2:1.1.1.8.17&idno=2>

13 a. The recipient agrees to:

- (1) Establish all subaward agreements in writing;
- (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
- (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
- (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
- (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
- (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
- (7) Obtain EPA’s consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
- (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient’s EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and http://www.whitehouse.gov/omb/financial_fin_single_audit.

c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

14. Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term “management fees or similar charges” refers to expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charge may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

15. The recipient acknowledges that two employees of this recipient organization must complete the mandatory online training, “EPA Grant Management Training for Non-Profit Applicants and Recipients.” One person must be the project manager, or equivalent, for this assistance agreement. The training must be completed by both employees prior to the return of the award document to EPA and the receipt of any grant funds. The course can be accessed at:

<http://www.epa.gov/ogd>

At the end of the course the recipient must print out, sign and return the certificate of completion with the affirmation of acceptance to the appropriate grants office. The training certification will expire 3 years from the last training date. No funds will be released to the recipient by EPA until the required training is completed.

16. EPA’s financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

17. a. If the recipient does not have a previously established indirect cost rate, and is not approved for use of the 10% flat IDC rate, it agrees to prepare and submit its indirect costs rate proposal in accordance with 2 CFR 225, “Cost Principles for State, Local, and Indian Tribal Governments”.

The recipient must send its proposal to the U.S. Department of the Interior within ninety (90) days from the effective date of the award of this assistance agreement to:

National Business Center
Indirect Cost Services
U.S. Department of the Interior
2180 Harvard Street, Suite 430
Sacramento, CA 95815-3317

The recipient must copy this EPA office with its proposal via email at OGD_IndirectCost@EPA.GOV.

b. Recipients may not draw down indirect costs unless they: i) have a current rate agreement; ii) have been approved for a flat 10% rate; or iii) have submitted, within 90 days of award, an indirect cost rate proposal to the U.S. Department of the Interior for review and approval and a final rate has been determined.

c. Recipients are responsible for maintaining an approved indirect cost rate. Recipients with differences between their provisional rates and final rates are not entitled to more than the amount identified in the award for indirect costs without EPA approval.

18. Trafficking in persons.

a. *Provisions applicable to a recipient that is a private entity.*

1. You as the recipient, your employees, subrecipients under this award, and subrecipients’ employees may not—

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- ii. Procure a commercial sex act during the period of time that the award is in effect; or
- iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

- i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
- ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our Agency at 2 CFR 1532.

- b. *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR 1532
- c. *Provisions applicable to any recipient.*
1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- d. *Definitions.* For purposes of this award term:
1. “Employee” means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 3. “Private entity”:
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
 4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

19.

- I. Reporting Subawards and Executive Compensation.
 - a. Reporting of first-tier subawards.
 1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).
 2. Where and when to report.
 - i. You must report each obligating action described in paragraph a.1. of this award term to www.fsr.gov.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if --

- i. the total Federal funding authorized to date under this award is \$25,000 or more;
- ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

- i. As part of your Central Contractor Registration/System for Award Management profile, available at www.sam.gov.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

- i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
- ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. subawards,

- and
- ii. the total compensation of the five most highly compensated executives of any subrecipient.
- e. Definitions. For purposes of this award term:
- 1. Entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
 - 2. Executive means officers, managing partners, or any other employees in management positions.
 - 3. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
 - 4. Subrecipient means an entity that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
 - 5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient’s or subrecipient’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. *Salary and bonus.*
 - ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
 - v. *Above-market earnings on deferred compensation which is not tax-qualified.*
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

20. Central Contractor Registration/System for Award Management and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR)/System for Award Management. Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site <http://www.sam.gov>.

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-

Federal entity.

4. Subaward:


- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

21. This award is subject to the provisions contained in the Department of Interior, Environment, and Related Agencies Appropriations Act, 2012, HR 2055, Division E, Sections 433 and 434 (sections 433 and 434) regarding unpaid federal tax liabilities and federal felony convictions. Accordingly, by accepting this award the recipient acknowledges that it: (1) is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal conviction under any Federal law within 24 months preceding the award, unless EPA has considered suspension or debarment of the corporation, or such officer or agent, based on these tax liabilities or convictions and determined that such action is not necessary to protect the Government's interests. If the recipient fails to comply with these provisions, EPA will annul this agreement and may recover any funds the recipient has expended in violation of sections 433 and 434.

Grant Agreement Non-construction

	U.S. ENVIRONMENTAL PROTECTION AGENCY Grant Agreement	ASSISTANCE ID NO.			DATE OF AWARD 9/11/2011	
		PROGRAM	DOCUMENT ID	AMENDMENT#		
		US-	12345678-	0		
		TYPE OF ACTION			MAILING DATE 9/18/2011	
New						
PAYMENT METHOD:			ACH#			
RECIPIENT TYPE: Indian Tribe		Send Payment Request to: EPA Finance Unit, OMP-123 FAX #555-666-7878				
RECIPIENT:		PAYEE:				
Tribe 1234 Rural Route 2 Somewhere, ST 12345 EIN: 12-3456789		EPA Regional Office 25 9876 Urban Drive Somewhere, ST 98765				
PROJECT MANAGER		EPA PROJECT OFFICER		EPA GRANT SPECIALIST		
Jane Doe Tribe E-Mail: jdoe@tribe.org Phone: 555-666-9898, FAX 555-666-9899		Sandra Vine 222 North 89 th St. Somewhere, ST 98765 E-Mail: svine@epa.gov Phone: 555-666-7878 ext. 123		Dean Mulberry 333 South 67 th St. Somewhere, ST 98765 E-Mail: dmulberry@epa.gov Phone: 555-666-4545 ext. 678		
PROJECT TITLE AND DESCRIPTION						
Indian General Assistance Program						
Build Non-existent Tribe's environmental capacity; improve ability to communicate about environmental issues; represent Tribes on statewide environmental panels; aid state and federal agencies in their relationships with Tribes; increase communication between Tribes and agencies, and assist Tribes to better protect their environments.						
BUDGET PERIOD		PROJECT PERIOD		TOTAL BUDGET PERIOD COST		
10/01/2011 – 09/30/2012		10/01/2011 – 09/30/2012		\$320,000.00		
				TOTAL PROJECT PERIOD COST		
				\$320,000.00		
NOTE: The agreement must be completed in duplicate and the original returned to the appropriate Grants Management Office listed below within three (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 <u>Tribe</u> for 100% of all approved costs incurred up to and not exceeding <u>\$320,000</u> for the support of approved budget period effort described in application (including all application modifications) cited in the Project Title and Description above, signed <u>04/30/2011</u> included herein by reference.						
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE			
ORGANIZATION / ADDRESS			ORGANIZATION / ADDRESS			
EPA Region 25 Mail Code, OMP-123 900 Elm Avenue Somewhere, ST 98765			EPA Region 25 Office of the Executive 900 Elm Avenue Somewhere, ST 98765			
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY						
SIGNATURE OF AWARD OFFICIAL			TYPED NAME AND TITLE		DATE	
<i>Johnny Bean</i>			Johnny Bean, Regional Administrator		09/11/2011	
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 s/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 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						
SIGNATURE		TYPED NAME AND TITLE		DATE		
<i>Jane Doe</i>		Jane Doe, Project Manager		10/02/2011		

EPA Funding Information

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action			\$320,000
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			\$320,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.926 – Indian Environmental General Assistance Program	Indian Environmental General Assistance Program Act 1992	40 CFR Parts 31 and 35 Subpart B

Fiscal									
Site Name	DCN	FY	Appropriation Code	Budget Organization	PRC	Object Class	Site / Project	Cost Organization	Obligation / Deobligation
Somewhere	Y1G040	2012	E1	10YT	407XXB 15	4183	-	-	\$320,000
									\$320,000

Budget Summary

Table A – Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
16. Personnel	\$173,225
17. Fringe Benefits	\$39,845
18. Travel	\$13,570
19. Equipment	\$0
20. Supplies	\$5,647
21. Contractual	\$11,500
22. Construction	\$0
23. Other	\$76,213
24. Total Direct Charges	\$320,000
25. Indirect Costs: % Base	\$0
26. Total (Share: Recipient <u>0.00%</u> Federal <u>100.00%</u>)	\$320,000
27. Total Approved Assistance Amount	\$320,000
28. Program Income	\$0

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Standard Form 424C (Rev. 7-97)
Prescribed by OMB Circular A-102

Administrative Conditions

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1. Payment Information

a. Electronic Funds Transfer (EFT) systems: There are two EFT payment systems available to recipients, whereby payments are sent directly to the recipient's financial institution within 3-5 business days. Recipients may use either EPA's EFT-IFMS system or ASAP, as follows:

Under EPA's EFT-IFMS your payment request must be made on the EPA Region 25 EFT-Payment Request Form.

Under the Automated Standard Application for Payment (ASAP) the recipient follows Department of Treasury ASAP instructions.

To enroll in either system (if not currently enrolled), or if you have questions, please call Norma Buttons at 555-666-3434.

b. Treasury check by mail: Recipients not receiving electronic funds transfer payments will be paid by Treasury check. Recipients must submit a "Request for Advance or Reimbursement Standard Form 270, via FAX to EPA Region 25 Finance Unit at FAX 555-666-7878 OR mail to EPA Region 25 Finance Unit, OMP-123, Somewhere, ST 98765. Recipients will normally receive payment within 30 days of EPA's receipt of a correct SF 270.

Under any of the above payment mechanisms, recipients may request/draw down advances for their immediate cash needs, provided the recipient meets the requirements of 40 CFR 30.22(b) or 40 CFR 31.21(c) as applicable. Additionally, recipients must liquidate all obligations incurred within 90 calendar days of the project period end date. Therefore, recipients must submit the final request for payment, and refund to EPA any balance of unobligated cash advanced within 90 calendar days after the end of the project period.

2. Cost Principles/Indirect Costs Not Included (All Organizations)

The cost principles of OMB Circular A-21 (educational institutions), A-87 (state, local, or Indian Tribal governments), or A-122 (non-profit organizations) are applicable, as appropriate, to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

3. Quarterly Performance Reports

The recipient shall submit quarterly performance reports, which are due 30 calendar days after the end of each federal fiscal quarter. (Federal fiscal quarters end the last day of March, June, September, and December.) Reports shall be submitted to the EPA Project Officer and may be provided electronically. The reports shall generally contain brief information on each of the following:

- (a) A comparison of actual accomplishments with the goals and objectives established for the reporting period
- (b) Reasons for slippages or why established goals were not met, if appropriate
- (c) Other pertinent information on the project

In addition to the quarterly performance reports, the recipient shall immediately notify the EPA Project Officer 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.

Administrative Conditions

4. Final Performance Report

In addition to the periodic performance reports, the recipient shall submit a final performance report, which is due 90 calendar days after the expiration or termination of the award. The report shall be submitted to the EPA Project Officer and may be provided electronically. The report shall generally contain the same information as in the periodic reports, but should cover the entire project period. If appropriate, the EPA Project Officer may waive the requirement for a final performance report after completion of the project.

5. Financial Status Reports (FSRs) – Yearly

The Financial Status Report (FSR) Standard Form 269 for this award shall be submitted to the Grants Administration Unit, OMP-123 within 90 days after the end of the budget period. If the budget period is longer than one year, or if the agreement is revised to extend the budget period beyond one year, the recipient must submit an annual FSR within 90 days after the end of each anniversary of the agreement.

6. Audit Requirements

The recipient agrees to comply with the requirements of OMB Circular A-133 “Audits of States, Local Governments, and Non-Profit Organizations.”

7. Hotel and Motel Fire Safety Act

Effective October 1, 1994 the recipient agrees to ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the Hotel and Motel Fire Safety Act of 1990.

8. Recycled Paper

Pursuant to EPA Order 1000.25 dated January 24, 1990, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to the Agency. This requirement does not apply to Standard Forms. These forms are printed on recycled paper as available through the General Services Administration.

9. Lobbying and Litigation

The recipient agrees to provide EPA Form 5700-53 “Lobbying and Litigation Certificate” as mandated by EPA’s annual Appropriations act. The Chief Executive Officer of any entity receiving assistance funds must 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 to your EPA grants specialist within 90 days after the end of the project period.

10. Small and Disadvantaged Business Utilization Requirements (Indian Tribes)

The recipient agrees to follow the six affirmative steps stated in 40 CFR 31.36(e), 35.3145(d), or 35.6580, as appropriate, and to require its prime contractor to follow these affirmative steps if it awards subcontracts. The recipient also agrees to retain records documenting compliance.

Administrative Conditions

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The recipient agrees to submit an EPA Form 5700-52A "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the federal fiscal year quarter the recipient receives the award and continuing until the project is completed. These reports must be submitted within 30 days of the end of the federal fiscal quarter (January 30, April 30, July 30, and October 30). For assistance awards for continuing environmental programs, the recipient agrees to submit an EPA Form 5700-52A by October 30 each year. All reports should be submitted to the Office for Civil Rights and Environmental Justice, CEJ-987, 4343 Main St., Somewhere, ST 98765.

In accordance with Section 129 of Public Law 100-590, the Small Business Administration and Reauthorization and Amendment Act of 1988, the recipient agrees to utilize and to encourage any prime contractors under the assistance agreement to utilize small businesses located in rural areas to the maximum extent possible through the use of the six affirmative steps.

11. Consultant Services

EPA participation in the salary rate (excluding overhead) paid to individual consultants is limited to the maximum daily rate for a Level IV of the Executive Schedule, which is currently \$483.20. Contracts with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation. The recipient may refer to 40 CFR 30.27 or 40 CFR 31.36(j), as applicable, for additional information.

12. Prior Approval

The recipient's work plan and/or budget identified items that require prior approval of the awarding agency, in accordance with the Cost Principles. This award provides approval for proposal preparation costs.

Programmatic Conditions


1. Consortium Requirements

The recipient shall comply with 40 CFR 35.504, which discusses the eligibility of Intertribal Consortia to apply for and receive assistance agreements under 40 CFR 35 Subpart B.

In addition, the recipient must ensure, through adequate accounting controls that only Consortium members that meet the eligibility requirements to receive a grant under the Indian Environmental General Assistance Program Act will: (1) benefit directly from the grant project and (2) receive and manage grant funds.

END OF ASSISTANCE AGREEMENT US-12345678-0

Grant Agreement with Construction

	U.S. ENVIRONMENTAL PROTECTION AGENCY Grant Agreement	ASSISTANCE ID NO.			DATE OF AWARD 9/11/2011	
		PROGRAM	DOCUMENT ID	AMENDMENT#		
		US-	12345678-	0		
		TYPE OF ACTION New			MAILING DATE 9/18/2011	
PAYMENT METHOD: ACH			ACH# pend			
RECIPIENT TYPE: Indian Tribe		Send Payment Request to: Las Vegas Finance Center				
RECIPIENT: Tribe 1234 Rural Route 2 Somewhere, ST 12345 EIN: 12-3456789		PAYEE: President				
PROJECT MANAGER Jane Doe Tribe E-Mail: jdoe@tribe.org Phone: 555-666-9898; FAX: 555-666-9899		EPA PROJECT OFFICER Sandra Vine 222 North 89 th St. Somewhere, ST 98765 E-Mail: svine@epa.gov Phone: 555-666-7878 ext. 123		EPA GRANT SPECIALIST Dean Mulberry 333 South 67 th St. Somewhere, ST 98765 E-Mail: dmulberry@epa.gov Phone: 555-666-4545 ext. 678		
PROJECT TITLE AND DESCRIPTION Indian General Assistance Program Build Tribe's environmental capacity; improve ability to communicate about environmental issues; represent Tribes on statewide environmental panels; aid state and federal agencies in their relationships with Tribes; increase communication between Tribes and agencies, and assist Tribes to better protect their environments.						
BUDGET PERIOD 10/01/2011 – 09/30/2013		PROJECT PERIOD 10/01/2011 – 09/30/2013		TOTAL BUDGET PERIOD COST \$12,220,429	TOTAL PROJECT PERIOD COST \$12,220,429	
NOTICE OF AWARD						
Based on your application dated 07/08/2011, including all modifications and amendments, the United States, acting by and through the U.S. Environmental Protection Agency (EPA), hereby awards \$2,000,000. EPA agrees to cost-share 55.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$2,000,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.						
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE			
ORGANIZATION / ADDRESS			ORGANIZATION / ADDRESS			
EPA Region 25 Mail Code, OMP-123 900 Elm Avenue Somewhere, ST 98765			EPA Region 25 Office of the Executive 900 Elm Avenue Somewhere, ST 98765			
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY						
SIGNATURE OF AWARD OFFICIAL <i>Johnny Bean</i>			TYPED NAME AND TITLE Johnny Bean, Regional Administrator		DATE 09/11/2011	
AFFIRMATION OF AWARD						
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION						
SIGNATURE <i>James Stone</i>		TYPED NAME AND TITLE James Stone, President, Tribal Leader's Council			DATE 10/02/2011	

EPA Funding Information

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action			\$2,000,000
EPA In-Kind Amount			\$0
Unexpended Prior Year Balance			\$0
Other Federal Funds			\$0
Recipient Contribution			\$220,429
State Contribution			\$2,000,000
Local Contribution			\$0
Other Contribution			\$0
Allowable Project Cost			\$12,220,429

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.418 – Construction Grants for Waste Water Treatment Works	Clean Water Act: Sec. 518(c)	40 CFR Parts 31 and 35 Subpart I

Fiscal									
Site Name	DCN	FY	Appropriation Code	Budget Organization	PRC	Object Class	Site / Project	Cost organization	Obligation / Deobligation
Somewhere Nation	-	2012	GH1	104	GH5	4111	-	-	\$2,000,000
									\$2,000,000

BUDGET INFORMATION – Construction Programs			OMB Approval No. 0348-0041
Certain federal assistance programs require additional computations to arrive at the federal share of project costs eligible for participation. If such is the case, you will be notified.			
Program Element Classification (Construction)	a. Total Costs	b. Costs Not Allowable for Participation	Total Allowable Costs (Columns a minus b)
1. Administrative and legal expenses	\$0	\$0	\$0
2. Land Structures, right of way, appraisals, etc.	\$180,978	\$180,978	\$0
3. Relocation expenses and payments	\$0	\$0	\$0
4. Architectural Engineering Basic Fees	\$1,783,913	\$1,783,913	\$0
5. Other Architectural Engineering Fees	\$465,194	\$465,194	\$0
6. Project inspection fees:			
a. Force Account – KCWTD (includes 40% for benefits)	\$1,703,247	\$1,703,247	\$0
7. Site work	\$0	\$0	\$0
8. Demolition and Removal	\$0	\$0	\$0
9. Construction:			
a. Wastewater Treatment Plant Contract	\$7,794,651	\$0	\$7,794,651
b. Outfall Contract	\$222,446	\$222,446	\$0
10. Equipment	\$20,000	\$20,000	\$0
11. Miscellaneous	\$50,000	\$50,000	\$0
12. Subtotal (Lines 1 thru 11)	\$12,220,429	\$4,425,778	\$7,794,651
13. Contingencies	\$611,021	\$221,289	\$389,733
14. Subtotal (Lines 12 thru 13)	\$12,831,450	\$4,647,067	\$8,184,384
15. Project/Program Income	\$0	\$0	\$0
16. TOTAL PROJECT COSTS (Lines 15 minus 14)	\$12,831,450	\$4,647,067	\$8,184,384
FEDERAL FUNDING			
Federal assistance requested, calculate as follows: (Consult Federal agency for Federal percentage share.) Enter the resulting Federal share.	Enter eligible costs from line 16 Multiply X 55%		\$4,501,411

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Standard Form 424C (Rev. 7-97)
Prescribed by OMB Circular A-102

Administrative Conditions

1. Payment Information

a. Electronic Funds Transfer (EFT) systems: There are two EFT payment systems available to recipients, whereby payments are sent directly to the recipient's financial institution within 3-5 business days. Recipients may use either EPA's EFT-IFMS system or ASAP, as follows:

Under EPA's EFT-IFMS your payment request must be made on the EPA Region 25 EFT-Payment Request Form.

Under the Automated Standard Application for Payment (ASAP) the recipient follows Department of Treasury ASAP instructions.

To enroll in either system (if not currently enrolled), or if you have questions, please call Norma Buttons at 555-666-3434.

b. Treasury check by mail: Recipients not receiving electronic funds transfer payments will be paid by Treasury check. Recipients must submit a "Request for Advance or Reimbursement" Standard Form 270, via FAX to EPA Region 25 Finance Unit at FAX 555-666-7878 OR mail to EPA Region 25 Finance Unit, OMP-123, Somewhere, ST 98765. Recipients will normally receive payment within 30 days of EPA's receipt of a correct SF 270.

Under any of the above payment mechanisms, recipients may request/draw down advances for their immediate cash needs, provided the recipient meets the requirements of 40 CFR 30.22(b) or 40 CFR 31.21(c) as applicable. Additionally, recipients must liquidate all obligations incurred within 90 calendar days of the project period end date. Therefore, recipients must submit the final request for payment, and refund to EPA any balance of unobligated cash advanced within 90 calendar days after the end of the project period.

2. Cost Principles/Indirect Costs Not Included (All Organizations)

The cost principles of OMB Circular A-21 (educational institutions), A-87 (state, local, or Indian Tribal governments), or A-122 (non-profit organizations) are applicable, as appropriate, to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

3. Financial Status Reports (FSRs) – Yearly

The Financial Status Report (FSR) Standard Form 269 for this award shall be submitted to the Grants Administration Unit, OMP-123 within 90 days after the end of the budget period. If the budget period is longer than one year, or if the agreement is revised to extend the budget period beyond one year, the recipient must submit an annual FSR within 90 days after the end of each anniversary of the agreement.

4. Audit Requirements

The recipient agrees to comply with the requirements of OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

5. Hotel and Motel Fire Safety Act

Effective October 1, 1994 the recipient agrees to ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the Hotel and Motel Fire Safety Act of 1990.

6. Recycled Paper

ALL APPLICANTS:

Pursuant to EPA Order 1000.25 dated January 24, 1990, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to the Agency. This requirement does not apply to Standard Forms. These forms are printed on recycled paper as available through the General Services Administration.

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 5002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 require 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 to the purchase of recycled products.

7. Lobbying

ALL APPLICANTS:

The recipient agrees to comply with Title 40 CFR Part 34 "New Restrictions on Lobbying". The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000 and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

PART 30 RECIPIENTS:

All contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix of Title 40 CFR Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient affirms that it is not a non-profit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a non-profit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

Administrative Conditions

8. Lobbying and Litigation

ALL APPLICANTS:

The recipient agrees to provide EPA Form 5700-53 "Lobbying and Litigation Certificate" as mandated by EPA's annual Appropriations Act. The Chief Executive Officer of any entity receiving assistance funds must 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 to your EPA grants specialist within 90 days after the end of the project period.

Recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal funds for litigation against the United States. Any Part 30 recipient shall abide by its respective OMB Circular (A-21 or A-122), which prohibits the use of federal grant funds to participate in various forms of lobbying or other political activities.

9. Suspension and Debarment

Recipients shall fully comply with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by 2 CFR Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, 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 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipients may access suspension and debarment information at <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

10. Small and Disadvantaged Business Utilization Requirements (Non-SRF Recipients)

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Disadvantaged Business Enterprises in procurement under assistance agreements:

- (a) The recipient accepts the applicable Disadvantaged Business Enterprise (DBE) "fair share" objectives negotiated with EPA by your organization.
- (b) The recipient agrees to ensure, to the fullest extent possible, that at least the applicable "fair share" objectives of federal funds for prime contracts or subcontracts for supplies, construction, equipment, or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women, and Historically Black Colleges and Universities.
- (c) The recipient agrees to include in its bid documents the applicable "fair share" objectives and require all of its prime contractors to include in their bid documents for subcontracts the negotiated "fair share" percentages.
- (d) The recipient agrees to follow the six affirmative steps stated in 40 CFR 30.44(b), 31.36(e), 35.3145(d), or 35.6580, as appropriate, and retain records documenting compliance.

Administrative Conditions

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(e) The recipient agrees to submit an EPA Form 5700-52A "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" as follows:

For grants awarded under 40 CFR Part 35, Subpart A (refer to the Regulatory Authority box shown in the middle of Page 2 of this Assistance Agreement/Amendment). Reports are due annually by October 30 of each year (covers the federal fiscal year October 1 thru September 30).

For Assistance Agreements/Amendments with institutions of higher education, hospitals, and other non-profit organizations awarded under the Regulatory Authority of 40 CFR Part 30, reports are due annually by October 30 of each year (covers the federal fiscal year October 1 thru September 30).

Grants awarded under any other Regulatory Authority are due quarterly. These reports are due beginning with the federal fiscal year quarter the recipient receives the award and continuing until the project is completed. These reports must be submitted within 30 days of the end of the federal fiscal quarter (January 30, April 30, July 30, and October 30).

All reports must be submitted to the Office for Civil Rights and Environmental Justice, CEJ-987, 4343 Main St., Somewhere, ST 98765. For further information, please contact your DBE Coordinator, Linda Forest, at 555.987.6543, FAX 555.987.6565.

(f) If race and/or gender neutral efforts prove inadequate to achieve a "fair share" objective, the recipient agrees to notify EPA in advance of conscious action it plans to take to more closely achieve the "fair share" objective. EPA may take corrective action under 40 CFR Parts 30, 31, and 35, as appropriate, if the recipient fails to comply with these terms and conditions.

11. Small Business in Rural Areas (SBRA)

In accordance with Section 129 of Public Law 100-590, the Small Business Administration and Reauthorization and Amendment Act of 1988, the recipient agrees to utilize and to encourage any prime contractors under the assistance agreement to utilize small businesses located in rural areas to the maximum extent possible through the use of the six affirmative steps.

If a contract is awarded under this assistance agreement, the recipient is also required to utilize the following affirmative steps:

- (a) Place SBRA on solicitation lists.
- (b) Make sure that SBRA are solicited whenever there are potential sources.
- (c) Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by SBRA.
- (d) Establish delivery schedules, where the requirements of work permit, to encourage participation by SBRA.
- (e) Use the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate.
- (f) Require the prime contractor to comply with the affirmative steps outlined above.
- (g) The recipient also agrees to retain records documenting compliance.

Administrative Conditions

For assistance awards for continuing environmental programs, the recipient agrees to submit an EPA Form 5700-52A by October 30 each year. All reports should be submitted to the Office for Civil Rights and Environmental Justice, CEJ-987, 4343 Main St., Somewhere, ST 98765.

12. Availability of Funds

The recipient understands that additional funds may be awarded under this assistance agreement, subject to availability of additional appropriated funds. EPA's approval of the work plan, budget, and project/budget periods does not constitute an EPA commitment to provide funds in excess of the amount currently funded in this agreement.

13. Payment to Consultants

EPA participation in the salary rate (excluding overhead) paid to individual consultants is limited to the maximum daily rate for a Level IV of the Executive Schedule, 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. The consultant rate is currently \$483.20. This rate does not include overhead or travel costs and the recipient may pay these in accordance with its normal travel practices.

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, as applicable, are not affected by this limitation unless 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 recipient may refer to 40 CFR 30.27 or 40 CFR 31.36(j)(2), as applicable, for additional information.

NOTE: For future years' limits, the recipient may find the annual salary for Level IV of the Executive Schedule on the Internet site: <http://www.opm.gov/oca>. Select "Salary and Wages" then "Executive Schedule". The annual salary is divided by 2087 hours to determine the maximum hourly rate, which is then multiplied by 8 to determine the maximum daily rate.

14. Executive Order 13202 Preservation of Open Competition

The assistance recipient agrees to comply with Executive Order 13202 (February 22, 2001, 66 Federal Regulation 11225, entitled "Preservation of Open Competition and Government neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects") as amended by Executive Order 13208 (April 11, 2001, 66 Federal Regulation 18717 entitled "Amendment to Executive Order 13202, "Preservation of Open Competition and Government neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects").

15. Recipient Contribution/Share amounts – For Information ONLY

The share percentages currently shown in the Table A budgets and page one of this agreement are calculated based on the current EPA funding amount and total project cost. The percentage will change if and when additional funding is provided by assistance amendment.

Programmatic Conditions

1. Quarterly Performance Reports

The recipient shall submit quarterly performance reports, which are due 30 calendar days after the end of each federal fiscal quarter. (Federal fiscal quarters end the last day of March, June, September, and December.) Reports shall be submitted to the EPA Project Officer and may be provided electronically.

In accordance with 40 CFR Part 30.51(d) and 31.40, as appropriate, the recipient agrees to submit performance reports that include brief information on each of the following areas:

- (a) A comparison of actual accomplishments with the goals and objectives (outputs/outcomes) established for the reporting period
- (b) Reasons for slippages or why established goals (outputs/outcomes) were not met
- (c) Other pertinent information, including when appropriate analysis and information of cost overruns or high unit costs

In addition to the quarterly performance reports, the recipient shall immediately notify the EPA Project Officer of developments that have a significant impact on the award-supported activities. In accordance with 40 CFR Part 30.51(f) and 31.40(d), as appropriate, the recipient agrees to inform the EPA Project Officer as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the objectives (outputs/outcomes) specified in the assistance agreement work plan. This notification shall include a statement of the action taken or contemplated and any assistance needed to resolve the situation.

2. Final Performance Report

In addition to the periodic performance reports, the recipient shall submit a final performance report, which is due 90 calendar days after the expiration or termination of the award. The report shall be submitted to the EPA Project Officer and may be provided electronically. The report shall generally contain the same information as in the periodic reports, but should cover the entire project period. If appropriate, the EPA Project Officer may waive the requirement for a final performance report after completion of the project, if the EPA Project Officer deems such a report is inappropriate or unnecessary.

3. Submissions

The grantee agrees to submit the following to the EPA Project Officer:


(a) Quarterly Reports updating the status of the Title II construction grants to be closed. Reports are due October 31, January 31, April 30, and July 31 of each year. Each report shall include:

- A listing of the grants to be closed
- The activities remaining
- The estimate dates for submitting the administration completion packages or audit resolution work to EPA
- A listing of the FTEs charged against the 205(g) grants

(b) An annual Closeout Strategy, due in August of each year, in accordance with EPA guidance.

END OF ASSISTANCE AGREEMENT US-12345678-0

Assistance Amendment

	U.S. ENVIRONMENTAL PROTECTION AGENCY Assistance Amendment		ASSISTANCE ID NO.			DATE OF AWARD		
			PRG	DOC ID	AMEND#		08/08/2006	
			GA - 97423101 - 2			TYPE OF ACTION		MAILING DATE
						Revision: Scope & Increase		08/15/2006
			PAYMENT METHOD:			ACH#		
						X0368		
RECIPIENT TYPE: Indian Tribe			Send Payment Request to: Las Vegas Finance Center FAX # 702-798-2423					
RECIPIENT:			PAYEE:					
Native Village of Raven 149 Raven St. Raven, AK 99532 EIN: 92-0068781			Native Village of Raven 149 Raven St. Raven, AK 99532					
PROJECT MANAGER		EPA PROJECT OFFICER		EPA GRANT SPECIALIST				
Edith Smith 149 Raven St., Raven, AK 99532 E-Mail: edith@yahoo.com Phone: 907-243-3334		Adrienne Fleek 222 W. 7th Avenue, #19, AOO/A Anchorage, AK 99513 E-Mail: Fleek.Adrienne@epa.gov Phone: 907-271-6558		Tony Fournier 1200 Sixth Avenue, OMP-145 Seattle WA 98101 E-Mail: Fournier.Tony@epa.gov Phone: 206-553-1838				
PROJECT TITLE AND EXPLANATION OF CHANGES								
Indian General Assistance Program - Capacity Building								
This amendment changes the agreement as follows: Adds \$110,000 of EPA funding, extends the project/budget period to 09/30/2007, approves the revised workplan submitted with the application signed on 05/22/2006, revises administrative conditions 2 and 3, renumbers programmatic conditions and adds programmatic condition 3.								
BUDGET PERIOD		PROJECT PERIOD		TOTAL BUDGET PERIOD COST		TOTAL PROJECT PERIOD COST		
10/01/2005 - 09/30/2007		10/01/2005 - 09/30/2007		\$220,000.00		\$220,000.00		
NOTICE OF AWARD								
Based on your application dated 03/31/2005, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$110,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$220,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.								
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)				AWARD APPROVAL OFFICE				
ORGANIZATION / ADDRESS				ORGANIZATION / ADDRESS				
EPA Region 10 Mail Code: OMP-145 1200 Sixth Avenue Seattle, WA 98101				U.S. EPA, Region 10 Office of Ecosystems Tribal and Public Affairs 1200 Sixth Avenue Seattle, WA 98101				
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY								
SIGNATURE OF AWARD OFFICIAL		TYPED NAME AND TITLE			DATE			
		Richard Parkin, Actg Director, Office of Ecosystems Tribal and Public Affairs			08/08/2006			
AFFIRMATION OF AWARD								
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION								
SIGNATURE		TYPED NAME AND TITLE			DATE			
		Raymond Oney, Tribal Administrator			09/13/2006			

Administrative Conditions

1. Payment Information

All recipients must be enrolled to receive funds electronically via the EPA-EFT Payment Process. This electronic funds transfer process was initiated by EPA in response to the Debt Collection Improvement Act of 1996, P.L. 104-134 that requires all federal payments be made via Direct Deposit/Electronic Funds Transfer (DD/EFT). By signing the assistance agreement you are agreeing to receive payment electronically.

In order to receive payments electronically, the ACH Vendor/Miscellaneous Payment Enrollment Form (SF3881) must be completed and faxed to Marge Pumphrey at (702) 798-2423.

After reviewing and processing the SF3881, the Las Vegas Finance Center (LVFC) will send you a letter assigning you an EFT Control Number, an EPA-EFT Recipient's Manual, and the necessary forms for requesting funds and reporting purposes.

If you need further assistance regarding enrollment, please contact Marge Pumphrey at (702) 798-2492 or by e-mail to: pumphrey.margaret@epa.gov.

Any recipient currently using the Automated Standard Application for Payments (ASAP) system with another government agency should contact Marge Pumphrey at (702) 798-2492 or e-mail to: pumphrey.margaret@epa.gov.

Under any of the above payment mechanisms, recipients may request/draw down advances for their immediate cash needs, provided the recipient meets the requirements of 40 CFR 30.22(b) or 40 CFR 31.21(c), as applicable. Additionally, recipients must liquidate all obligations incurred within 90 calendar days of the project period end date. Therefore, recipients must submit the final request for payment, and refund to EPA any balance of unobligated cash advanced within 90 calendar days after the end of the project period.

2. Cost Principles/Indirect Costs Not Included (All Organizations)

The cost principles of OMB Circular A-21 (Educational Institutions), A-87 (State, Local or Indian Tribal Governments), or A-122 (Non-Profit Organizations) are applicable, as appropriate, to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

Cost Principles/Indirect Costs for Indian Tribal Governments

The cost principles of OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," relocated to 2 CFR Part 225, is applicable, as appropriate, to this award.

If the recipient does not have a previously established indirect cost rate, the recipient must submit their indirect cost rate proposals to:

National Business Center
Indirect Cost Services
U.S. Department of the Interior
2180 Harvard Street, Suite 430
Sacramento, CA 95815-3317

For proposal preparation, the recipient may use the Native American Government checklists located at: <http://www.nbc.gov/icstools.html#checklists>.

Recipients are entitled to reimbursement of indirect costs, subject to any statutory or regulatory administrative cost limitations, if they have a current rate agreement or have submitted an indirect cost rate proposal to their cognizant federal agency for review and approval. Recipients are responsible for maintaining an approved indirect cost rate throughout the life of the award. Recipients are responsible for submitting any subsequent rate proposals to the appropriate cognizant agency no later than 180 days after the end of the recipient's fiscal year. Recipients may draw down grant funds once a rate has been approved, and only for indirect costs incurred during the period specified in the rate agreement. Recipients are not entitled to indirect costs for any period in which the rate has expired. Recipients may not draw down grant funds for any indirect costs which were not incurred during the period of the approved rate agreement.

3. Financial Status Report (FSR) and Federal Cash Transactions Reports

FINAL FSR

The Financial Status Report (FSR), Standard Form 269A (or Standard Form 269 if program income is generated), for this award is due to EPA no later than 90 days after the budget period expires.

For agreements with multiple budget activities, separate FSRs must be provided for each of the activities, sites, or budgets, as applicable.

FEDERAL CASH TRANSACTIONS REPORTS

The recipient will provide timely reporting of cash disbursements and balances through annual submission (within fifteen (15) working days following December 31 of any given calendar year) of a Federal Cash Transactions Report (SF-272).

The Final FSR and Federal Cash Transactions Reports may be faxed to (702) 798-2423 or mailed to:

US Environmental Protection Agency
Las Vegas Finance Center
P.O. Box 98515
Las Vegas, NV 89193-8515

For additional information, please contact Marge Pumphrey at (702) 798-2492 or email: Pumphrey.Margaret@epa.gov.

EPA may take enforcement actions in accordance with 40 CFR 30.62 or 40 CFR 31.43 if the recipient does not comply with this term and condition.

4. Audit Requirements

The recipient agrees to comply with the requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

5. Hotel and Motel Fire Safety Act

Effective October 1, 1994, the recipient agrees to ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds, complies with the Hotel and Motel Fire Safety Act of 1990.

6. Recycled Paper

ALL APPLICANTS:

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.

7. Lobbying

ALL RECIPIENTS:

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

8. Lobbying and Litigation

ALL RECIPIENTS:

Pursuant to EPA's annual Appropriations Act, the chief executive officer of this recipient agency shall require 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. As mandated by this Act, the recipient agrees to provide certification to the award official via EPA Form 5700-53, *Lobbying and Litigation Certificate*, within 90 days after the end of project period.

Recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States.

9. Suspension and Debarment

Recipient 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.

Recipient may access the Excluded Parties List System at <http://www.epls.gov>. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

10. Small and Disadvantaged Business Utilization Requirements (Indian Tribes)

The recipient agrees to follow the six affirmative steps stated in 40 CFR 31.36(e), 35.3145(d) or 35.6580, as appropriate, and to require its prime contractor to follow these affirmative steps if it awards subcontracts; the recipient also agrees to retain records documenting compliance.

The six affirmative steps contained in 40 CFR 31.36(e) are as follows:

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- (e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- (f) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

The recipient agrees to submit an EPA form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" as follows:

For grants awarded under 40 CFR Part 35, Subpart B (refer to the Regulatory Authority box shown in the middle of Page 2 of the Assistance Agreement/Amendment), reports are due annually by October 30 of each year (covers the Federal Fiscal Year October 1 - September 30).

(Continued)

Grants awarded under any other Regulatory Authority are due Quarterly. These reports are due beginning with the Federal Fiscal Year quarter the recipient receives the award and continuing until the project period ends. These reports must be submitted within 30 days of the end of the Federal Fiscal Quarter (due dates are January 30, April 30, July 30, and October 30).

All reports must be submitted to the Grants Administration Unit, OMP-145, 1200 Sixth Avenue, Seattle, WA 98101. For further information, please contact Valerie Badon at (206) 553-1141, email: Badon.Valerie@epa.gov.

In accordance with Section 129 of Public Law 100-590, the Small Business Administration and Reauthorization and Amendment Act of 1988, the recipient agrees to utilize and to encourage any prime contractors under the assistance agreement to utilize small businesses located in rural areas to the maximum extent possible through the use of the six affirmative steps.

11. 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 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, 2008, the limit is \$571.15 per day \$71.39 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 Parts 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 30.27(b) or 40 CFR 31.36(j), as applicable, for additional information.

NOTE: For future years' limits, the recipient may find the annual salary for Level IV of the Executive Schedule on the following Internet site: <http://www.opm.gov/oca>. Select "Salary and Wages", and select "Executive Schedule". The annual salary is divided by 2087 hours to determine the maximum hourly rate, which is then multiplied by 8 to determine the maximum daily rate.

12. Tribal Council Costs

With regard to payments to members of the Tribal Council, OMB Circular A-87, Attachment B, paragraph 19, provides that general costs of government are unallowable, and subparagraph 19(a)(2) specifically includes in this prohibition salaries and expenses of tribal councils whether incurred for purposes of legislation or executive direction. At the same time, however, A-87 includes other provisions which may or may not allow payment of grant funds to Council members:

(a) Paragraph 2 provides that costs incurred by advisory councils are allowable where authorized in advance by the awarding agency.

(b) Paragraph 32 provides that costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the governmental unit, are allowable.

(c) Paragraph 27 provides that meetings and conferences, where the primary purpose is the dissemination of technical information, are allowable.

(d) Paragraph 19b. provides that for federally-recognized Indian tribal governments, the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable.

Any costs pertaining to the Tribal Council must be in accordance with OMB Circular A-87. The recipient should refer to the entire paragraphs cited above and A-87 in its entirety because the above are excerpts only, and other provisions could affect the allowability of costs. Documentation must be kept in your records as to how any of those costs charged to this grant fit with the above mentioned paragraphs and how the costs relate to the work plan components.

Detailed Itemized Budget

GUIDE TO PREPARING BUDGET DETAIL

Budget information should be supported in at least the level of detail described below.

- **Personnel** - List all staff positions by title. Give annual salary, percentage of time assigned to the project, and total cost for the budget period.
- **Fringe Benefits** - Identify the percentage used, the basis for its computation, and the types of benefits included.
- **Travel** - Specify the mileage, per diem, estimated number of trips in-State and out-of-State, and other costs for each type of travel.
- **Equipment** - Identify each item to be purchased which has an estimated acquisition cost of \$5,000 or more per unit and a useful life of more than one year. Items with a unit cost of less than \$5,000 are deemed to be supplies, pursuant to 40 CFR 31.3 and 30.2.
- **Supplies** - “Supplies” means all tangible personal property other than “equipment”. The budget detail should identify categories of supplies to be procured (e.g., laboratory supplies or office supplies).
- **Contractual** - Identify each proposed contract and specify its purpose and estimated cost.
- **Other** - List each item in sufficient detail for EPA to determine the reasonableness and allowability of its cost.
- **Indirect Charges** - If indirect charges are budgeted, indicate the approved rate and base.

Sample Budget Detail

Budget Detail - Page 1

Personnel

<u>Position/Title</u>	<u>Annual Salary</u>	<u>Percent of Time Assigned to Project</u>	<u>Amount</u>	<u>Total</u>
Project Manager	\$70,000	50%	\$ 35,000	
Env. Specialist	\$60,000	100%	60,000	
Env. Health Tech	\$45,000	100%	45,000	
Accountant	\$50,000	50%	<u>25,000</u>	
Total Personnel				\$165,000

<u>Fringe Benefits</u>	- 20.0% of Basic Salary - Includes Retirement, Health Benefits, Annual & Sick Leave, and Life Insurance		\$ 33,000	33,000
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Travel

<u>In-State Travel</u>				
	Travel for meeting and inspections: 100 miles per trip @\$.25 per mile, 40 trips		\$ 1,000	
<u>Out of State Travel -</u>				
	Travel for EPA meetings			
	- Per Diem - 4 people x \$100 per night x 2 nights		\$ 800	
	- Airfare - 4 x \$500 round trip		2,000	
	- Incidental - 4 x \$50		<u>200</u>	
			\$ 3,000	
Total Travel				4,000

<u>Equipment</u>	- Level A Protective Clothing and Respirator Apparatus (2 @ \$5,000)		\$ 10,000	10,000
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<u>Supplies</u>	- Office Supplies		\$ 2,000	
	- Laboratory Supplies (solvents, glassware reagents, rubber gloves,)		<u>3,000</u>	
Total Supplies				5,000

Financial Status Report Example

FINANCIAL STATUS REPORT

(Short Form)

Public reporting burden for this collection of information is estimated to average 90 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 (0348-0038), 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.

Please type or print legibly. The following general instructions explain how to use the form itself. You may need additional information to complete certain items correctly, or to decide whether a specific item is applicable to this award. Usually, such information will be found in the Federal agency's grant regulations or in the terms and conditions of the award. You may also contact the Federal agency directly.

Item	Entry	Item	Entry
1, 2 and 3.	Self-explanatory.		
4.	Enter the Employer Identification Number (EIN) assigned by the U.S. Internal Revenue Service.		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, subgrantees and other payees, and other amounts becoming owed under programs for which no current services or performances are required, such as annuities, insurance claims, and other benefit payments.
5.	Space reserved for an account number or other identifying number assigned by the recipient.		
6.	Check yes only if this is the last report for the period shown in item 8.	10b.	Self-explanatory.
7.	Self-explanatory.	10c.	Self-explanatory.
8.	Unless you have received other instructions from the awarding agency, enter the beginning and ending dates of the current funding period. If this is a multi-year program, the Federal agency might require cumulative reporting through consecutive funding periods. In that case, enter the beginning and ending dates of the grant period, and in the rest of these instructions, substitute the term "grant period" for "funding period."	10d.	Enter the total amount of unliquidated obligations, including unliquidated obligations to subgrantees and contractors. Unliquidated obligations on a cash basis are obligations incurred, but not yet paid. On an accrual basis, they are obligations incurred, but for which an outlay has not yet been recorded. Do not include any amounts on line 10d that have been included on lines 10a, b, or c. On the final report, line 10d must be zero.
9.	Self-explanatory.		
10.	The purpose of columns I, II, and III is to show the effect of this reporting period's transactions on cumulative financial status. The amounts entered in column I will normally be the same as those in column III of the previous report in <i>the same funding period</i> . If this is the first or only report of the funding period, leave columns I and II blank. If you need to adjust amounts entered on previous reports, footnote the column I entry on this report and attach an explanation.	10e.	f, g, h, h and i. Self-explanatory.
10a.	Enter total program outlays less any rebates, refunds, or other credits. For reports prepared on a cash basis, outlays are the sum of actual cash disbursements for direct costs for goods and services, the amount of indirect expense charged, the value of 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 actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred,	11a.	Self-explanatory.
		11b.	Enter the indirect cost rate in effect during the reporting period.
		11c.	Enter the amount of the base against which the rate was applied.
		11d.	Enter the total amount of indirect costs charged during the report period.
		11e.	Enter the Federal share of the amount in 11d.
		Note:	If more than one rate was in effect during the period shown in item 8, attach a schedule showing the bases against which the different rates were applied, the respective rates, the calendar periods they were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date.

FINANCIAL STATUS REPORT

(Short Form)

(Follow instructions on the back)

1. Federal Agency and Organizational Element to Which Report is Submitted U.S. EPA	2. Federal Grant or Other Identifying Number Assigned By Federal Agency GA-9600001	OMB Approval No. 0348-0038	Page of 1 1 pages
3. Recipient Organization (Name and complete address, including ZIP code) Raven Village, P.O. Box 222, Raven, AK 99222			
4. Employer Identification Number 91-1112222	5. Recipient Account Number or Identifying Number	6. Final Report <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	7. Basis <input type="checkbox"/> Cash <input checked="" type="checkbox"/> Accrual
8. Funding/Grant Period (See instructions) From: (Month, Day, Year) 10/1/2006	To: (Month, Day, Year) 9/30/2008	9. Period Covered by this Report From: (Month, Day, Year) 10/1/2006	To: (Month, Day, Year) 9/30/2008
10. Transactions:	I Previously Reported	II This Period	III Cumulative
a. Total outlays	110,000.00	110,000.00	220,000.00
b. Recipient share of outlays			0.00
c. Federal share of outlays	110,000.00	110,000.00	220,000.00
d. Total unliquidated obligations			
e. Recipient share of unliquidated obligations			
f. Federal share of unliquidated obligations			
g. Total Federal share(Sum of lines c and f)			220,000.00
h. Total Federal funds authorized for this funding period			220,000.00
i. Unobligated balance of Federal funds(Line h minus line g)			0.00
11. Indirect Expense	a. Type of Rate(Place "X" in appropriate box) <input type="checkbox"/> Provisional <input type="checkbox"/> Predetermined <input checked="" type="checkbox"/> Final <input type="checkbox"/> Fixed		
	b. Rate see below	c. Base	d. Total Amount
			e. Federal Share
12. Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation. indirect rates: 2006 - 37.74% for 21,958 2007 - 24.22% for 15,334 2008 - 20.39% for 15,839			
13. Certification: I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.			
Typed or Printed Name and Title Victor Miller, Chairman		Telephone (Area code, number and extension) 907-222-2222	
Signature of Authorized Certifying Official		Date Report Submitted October 24, 2008	

NSN 7540-01-218-4387

269-202

Standard Form 269A (Rev. 7-97)
Prescribed by OMB Circulars A-102 and A-110

Key Contacts List

Form can be found at: <http://www.epa.gov/ogd/forms/adobe/5700-54.pdf>

KEY CONTACTS

AUTHORIZED REPRESENTATIVE - This is the individual who has the authority to sign the application for Federal Assistance (SF-424) and execute the Agreement on behalf of the applicant.

Circle One (Mr. Mrs. Ms.)

NAME: _____

TITLE: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

PROGRAM/PROJECT MANAGER - This is the individual who is responsible for the management of the Project for the applicant.

Circle One (Mr. Mrs. Ms.)

NAME: _____

TITLE: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

FINANCIAL REPRESENTATIVE - This is the individual who has been assigned responsibility for the maintenance of the accounting and financial management system for the applicant.

Circle One (Mr. Mrs. Ms.)

NAME: _____

TITLE: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

PAYEE ADDRESS - If different than recipient address:

NAME: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

optional



ADDITIONAL KEY CONTACTS

(Use as many sheets as needed.)

Major Co-Investigators: *Individual responsible for the completion of major portions of the proposed work.*

Name: _____
 Title: _____
 Mailing Address: _____

 Phone Number: _____
 FAX Number: _____
 E-Mail Address: _____
 Web URL: _____

Major Co-Investigators: *Individual responsible for the completion of major portions of the proposed work.*

Name: _____
 Title: _____
 Mailing Address: _____

 Phone Number: _____
 FAX Number: _____
 E-Mail Address: _____
 Web URL: _____

Major Co-Investigators: *Individual responsible for the completion of major portions of the proposed work.*

Name: _____
 Title: _____
 Mailing Address: _____

 Phone Number: _____
 FAX Number: _____
 E-Mail Address: _____
 Web URL: _____

Narrative Statement or Work Plan

WORK PLAN TEMPLATES

Year 1

FY 2007 (October 1, 2007 – September 30, 2008)

General Assistance Program <p style="text-align: center;">WORK PLAN TEMPLATE</p>				
TRIBE/TRIBAL CONSORTIA: Raven Village Tribe of King Cove				
Work Plan Project/Budget Period Begin: October 1, 2007 End: September 30, 2008				
WORK PLAN COMPONENT 1:		Begin sampling PSP levels in the local subsistence clams.		
PERSONNEL: PRIMARY CAPACITY AREA DEVELOPED (check one): Legal ___ Enforcement/Compliance ___ Technical <input checked="" type="checkbox"/> Communication ___ Administrative ___ Solid/Hazardous Waste Implementation ___				
ENVIRONMENTAL OUTCOME(S):		<ul style="list-style-type: none"> ▪ Human health risks will be minimized substantially. 		
INTERMEDIATE OUTCOME(S): (this work plan period)		<ul style="list-style-type: none"> ▪ We will have accurate test results indicating PSP levels in the subsistence clams on a monthly basis. ▪ The public will be informed of the risks associated with consuming local clams each month. ▪ Our staff, along with local residents will have a greater understanding of what PSP is and how it can affect us if consumed. ▪ The test results will be a valuable long-term resource. They can be used as a comparator against future sample results to establish a long range pattern. 		
ESTIMATED COMPONENT COST: \$12469.36		ESTIMATED WORK YEARS: 1.2		
COMMITMENTS		CAPACITY AREA DEVELOPED	END DATE	Outputs and Deliverables
1.1	The IGAP Staff will gather all of the information that they can find about PSP in clams.	Technical	12/1/07	~ Informative documents

1.2	The IGAP Staff will create educational materials to distribute through-out the community to educate residents and visitors about PSP in clams.	Communications	10/5/07	~ Educational pamphlet
1.3	The IGAP Coordinator will contact the Alaska Department of Environmental Conservation (ADEC) to set up the details for monthly testing of the clams and order the necessary shipping materials	Administrative	10/5/07	~ Testing Schedule
1.4	The IGAP Staff will dig the necessary amount of clams each month, prepare them as directed by ADEC, and ship them out for testing.	Compliance/ Non- Administrative	9/30/08	~ Clams to send to ADEC for testing.
1.5	The IGAP Staff will create a sign which will be located near the clam bed to inform the public of the monthly PSP levels and if the clams are safe to consume.	Communications	10/30/07	~ Informational sign
1.6	The IGAP Coordinator will ensure that an electronic copy of the results is created and that a hard copy is available for public viewing.	Technical/ Administrative	9/30/08	~ PSP results for one year

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2007 – 2008 EPA Strategic Plan

Goal X:

Objective X.X:

Sub-objective X.X.X:

General Assistance Program

WORK PLAN TEMPLATE

TRIBE/TRIBAL CONSORTIA: Raven Village Tribe of King Cove

Work Plan Project/Budget Period Begin: October 1, 2007 End: September 30, 2008

**WORK PLAN
COMPONENT 2:**

Look for funding to help upgrade the local landfill with a burn-box.

PERSONNEL:				
PRIMARY CAPACITY AREA DEVELOPED (check one):				
Legal ___ Enforcement/Compliance ___ Technical ___ Communication ___ Administrative ___ <input checked="" type="checkbox"/> Solid/Hazardous Waste Implementation ___				
ENVIRONMENTAL OUTCOME(S):		<ul style="list-style-type: none"> ▪ A burn-box will help to extend the life of the landfill, thus delaying the need to destroy new land to build a new one. ▪ Less raw trash will be entering the cells, which will minimize the amount of leachate created, thus minimizing the threat leachate poses to the surrounding land and water, as well as animal and human health. 		
INTERMEDIATE OUTCOME(S): (this work plan period)		<ul style="list-style-type: none"> ▪ The landfill will be cleaner ▪ The local Landfill Operator will have a better understanding of landfill operation, which will allow for him to take better care of the landfill. ▪ We will be taking the first steps in complying with the States new regulation which requires that all burning be above ground and contained. 		
ESTIMATED COMPONENT COST: \$38713.96		ESTIMATED WORK YEARS: 1.00		
COMMITMENTS		CAPACITY AREA DEVELOPED	END DATE	Outputs and Deliverables
1.1	The IGAP Staff will gather information about types of burn-boxes that are available, their costs, and what other Alaska communities are using.	Compliance/ Non-Administrative	12/15/07	~ A list that outlines the pros and cons of various burn-boxes
1.2	The IGAP Coordinator will present their research to the City of King Cove Mayor and Public Works Director, at which time we will determine what type of burn-box would be best suited for our community. We will also estimate how much money we are going to need to come up with.	Administrative	10/5/07	~ Meeting notes ~ We will know what burn-box we want ~ An estimated total cost

1.3	The IGAP Coordinator, with assistance from the City of King Cove Manager, will locate possible grant funding, choose a grant to pursue, begin drafting the grant, submit it/them, and wait for feedback.	Administrative	6/30/08	~ A list of funding sources ~ Grant notes, outlines, attachments, and final draft(s)
1.5	If successful in obtaining funding for a new burn-box, the IGAP Staff will create an educational flier to inform residence about the new burn-box and how to properly separate their trash, which will be distributed to them in their City utility bills.	Communications	9/30/08	~ Information about the new burn-box ~ An informational flier
1.6	Whether the burn-box funding is successful or not, the IGAP Coordinator will ask the City Public Works Director if he would be interested in sending his Landfill Operator to training. If so, the Coordinator will locate a landfill operator training and set up the arrangements.	Technical/ Administrative	9/30/08	~ Training schedule ~ A certificate of completion from the training. ~ Resources gathered from the training

EPA Use Only

2007 – 2008 EPA Strategic Plan

Goal X:

Objective X.X:

Sub-objective X.X.X:

General Assistance Program

WORK PLAN TEMPLATE

TRIBE/TRIBAL CONSORTIA: Raven Village

Work Plan Project/Budget Period Begin: October 1, 2007 End: September 30, 2008

WORK PLAN COMPONENT 3:	Site specific community clean-ups and a continuation of waste education campaign efforts
-------------------------------	--

PERSONNEL:

PRIMARY CAPACITY AREA DEVELOPED (check one):

Legal ___ Enforcement/Compliance ___ Technical ___ Communication X Administrative ___
 ___ Solid/Hazardous Waste Implementation X

ENVIRONMENTAL OUTCOME(S):	<ul style="list-style-type: none"> ▪ Litter in common and/or public areas in the community will be greatly reduced. ▪ Residents will be more aware of the health and physical risks associated with hazardous and solid waste pollution. 		
INTERMEDIATE OUTCOME(S): (this work plan period)	<ul style="list-style-type: none"> ▪ Important areas in the community will be cleaner. ▪ We will see a reduction in recyclable materials entering the landfill. ▪ Community members will be more aware of the negative effects that solid and hazardous waste has on the environment and their health. ▪ People will change their disposal methods. 		
ESTIMATED COMPONENT COST: \$15449.08		ESTIMATED WORK YEARS: .04	
COMMITMENTS		CAPACITY AREA DEVELOPED	END DATE Outputs and Deliverables
1.1	The IGAP Staff will gather information from the internet pertaining to the risks associated with improper disposal of solid and hazardous materials. They will also gather information on clean-up efforts and educational ideas that have been successful in other communities through-out the world.	Technical	11/30/07 ~ Informational materials ~ A list of communities and their solid / hazardous waste clean-up efforts.
1.2	The IGAP Staff will create a list of public and common areas in the community that attract litter and inventory the types that typically found there. They will brainstorm ideas about how to prevent people from improperly disposing of their trash in that area in the future.	Technical	12/31/07 ~ An outline profiling public areas in the community that are affected by litter. ~ A litter inventory. ~ A list of ideas for addressing problem areas in town and preventing them from getting that way in the future.
1.3	The IGAP Staff will use materials that were previously created in the department as well as new resources to educate and work local officials, local business, residents, and the school to teach them about the importance of keeping the community clean.	Communications – Solid Waste	9/30/08 ~ educational pamphlets and posters

1.4	The IGAP Staff will determine if trash receptacles are needed for various affected areas. If receptacles are necessary, the staff will determine the types needed based on litter common to the area and order according.	Administrative - Technical	3/31/08	~ A list of internet sites that sell various types of receptacles. ~ A list of receptacle price comparisons. ~ Litter receptacles.
1.5	The IGAP Staff will solicit volunteers, clean-up affected areas, place receptacles where appropriate. They will also create appropriate educational signage and post in the area.	Technical – Communications – Solid Waste	9/30/08	~ Receptacles in common local areas. ~ Educational signage. ~ Local volunteers.
1.6	The IGAP Staff will create an educational newsletter to distribute in the community. The newsletter will include information about various environmental projects, with an emphasis on solid waste activities. This will be distributed on a quarterly basis.	Communications	9/30/08	~ Quarterly environmental newsletters.

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2007 – 2008 EPA Strategic Plan

Goal X:

Objective X.X:

Sub-objective X.X.X:

General Assistance Program

WORK PLAN TEMPLATE

TRIBE/TRIBAL CONSORTIA: Raven Village Tribe of King Cove

Work Plan Project/Budget Period Begin: October 1, 2007 End: September 30, 2008

WORK PLAN Conduct baseline water quality sampling

COMPONENT 4:

PERSONNEL:

PRIMARY CAPACITY AREA DEVELOPED (check one):

Legal ___ Enforcement/Compliance ___ Technical X Communication ___ Administrative ___ Solid/Hazardous Waste Implementation ___

ENVIRONMENTAL OUTCOME(S):

- **Threats to local water resources will be identified.**
-

INTERMEDIATE OUTCOME(S): (this work plan period)	<ul style="list-style-type: none"> ▪ The IGAP staff will have the knowledge and ability to begin managing local water resources. ▪ A year's worth of data will be collected which can be used in the future to detect changes. 			
ESTIMATED COMPONENT COST: \$22768.80		ESTIMATED WORK YEARS: 1.2		
COMMITMENTS		CAPACITY AREA DEVELOPED	END DATE	Outputs and Deliverables
1.1	The IGAP Staff will work with the EPA to finalize the draft QAPP submitted in FY07.	Administrative	1/15/08	~ An approved QAPP for water quality data collection.
1.2	The IGAP Staff will contact the Yukon River Inter-tribal Watershed Council and others to see if they are offering any baseline water quality training and attend.	Administrative	11/1/07	~ A list of organizations and trainings being offered for water quality.
1.3	The IGAP Staff will seek funding from the USGS and other sources to help sustain the program.	Administrative	9/30/08	~ Grant proposal for additional funding.
1.4	The IGAP Staff will work with the local school science department to arrange education and a cycle of baseline testing with the students for educational purposes. This education will benefit the students as well as the IGAP staff.	Communication - Technical	5/1/08	~ Age appropriate educational materials.
1.5	Once the approved QAPP arrives, The IGAP Staff will order necessary supplies and begin collecting baseline data from various fresh water sites and inter-tidal areas.	Administrative - Technical	9/1/08	~ A years worth of baseline water quality data from the King Cove Watershed.
1.6	The IGAP Staff will store all original data collected in a fire-proof safe, enter it electronically, report it in the appropriate EPA database (ex. STORET system), and report it in a local community newsletter.	Communication - Administrative	9/30/08	~ Data entered in the EPA Water Database. ~ Community newsletter explaining data. ~ Historical data set.
1.7	If it is determined that blind testing for data accuracy or lab analysis is necessary, the IGAP Coordinator will determine costs and make the arrangements.	Administrative - Technical	9/30/08	~ Spiked samples to ensure data accuracy. ~ Laboratory data.
EPA Use Only				
2007 – 2008 EPA Strategic Plan				

Goal X:
Objective X.X:
Sub-objective X.X.X:

General Assistance Program

WORK PLAN TEMPLATE

TRIBE/TRIBAL CONSORTIA: Raven Village Tribe of King Cove

Work Plan Project/Budget Period Begin: October 1, 2007 End: September 30, 2008

WORK PLAN COMPONENT 5:	Educate the Community about the quality of their City plumbed drinking water.
-------------------------------	---

PERSONNEL:

PRIMARY CAPACITY AREA DEVELOPED (check one):

Legal ___ Enforcement/Compliance X Technical ___ Communication X
 Administrative ___ Solid/Hazardous Waste Implementation ___

ENVIRONMENTAL OUTCOME(S):	<ul style="list-style-type: none"> Residents will be reassured that the drinking water is safe for their health.
----------------------------------	---

INTERMEDIATE OUTCOME(S): (this work plan period)	<ul style="list-style-type: none"> With the home testing kits, the residents will be more reassured that their drinking water is safe. Although the City does release an annual drinking water quality report, it is difficult for the average person to understand. Our flier will provide residents with important information about their water in an easy to understand way.
---	--

ESTIMATED COMPONENT COST: \$20598.80 **ESTIMATED WORK YEARS: .10**

COMMITMENTS		CAPACITY AREA DEVELOPED	END DATE	Outputs and Deliverables
1.1	The IGAP Staff will obtain copies of the State of Alaska drinking water standards	Technical	2/28/08	~ A printed copy of the State's drinking water standards
1.2	The IGAP Coordinator will arrange a tour of the local water plant for IGAP employees.	Administrative	3/15/08	~ Tour notes that explain where our drinking water comes from, the process it needs to go through before it reaches our homes.

1.3	The IGAP Staff will work with the City of King Cove Water Treatment staff to develop an easy to understand flier to distribute to residents that explains to them the water treatment process. It will also include test results of samples the City sends in for testing.	Communication	4/30/08	~ An educational Flier
1.4	The IGAP Coordinator will order home test kits for educational purposes.	Enforcement - Compliance	5/30/06	~ Home test kits

EPA Use Only				
2007 – 2008 EPA Strategic Plan				
Goal X:				
Objective X.X:				
Sub-objective X.X.X:				

Survey of Recipient's Management Systems

Survey of Recipient's Management Systems

Applicants for assistance under EPA agreements are required to have an adequate financial management systems and procedures which provide efficient and effective accountability and control of all property, funds, and assets related to the agreement. This survey indicates the accounting standards that EPA considers basic to adequate financial management.

Completion of this survey is optional.

First-time applicants - We request that you complete and submit this survey with your application package to help determine whether their present systems can meet these requirements.

All other applicants - We recommend you complete and submit this survey each time you apply for EPA assistance.

Please mark each of these questions, **YES, NO, or N/A**.

NAME OF APPLICANT: _____

Accounting

- _____ 1) Have project accounting records been established to record the costs applicable to the EPA agreement and other direct activities?
- _____ 2) Are all costs of a project posted to these records? Are the records used as the basis for vouchers and Financial Status Reports submitted to EPA?
- _____ 3) Before posting, are costs reviewed for reasonableness, allowability, and allocability to the project?
- _____ 4) Are project accounts broken into subaccounts by program element or cost objective?
- _____ 5) Is appropriate documentation maintained to support the costs of:
- _____ a) personnel?
- _____ b) fringe benefits?
- _____ c) travel?
- _____ d) purchases of material, supplies, and equipment?
- _____ e) consultants?
- _____ f) other costs?
- _____ 6) Are costs posted in these records reflected on and reconciled with control accounts contained in the general ledger?
- _____ 7) Are accounting records subjected to an independent audit at least every two years?

Personnel

- _____ 8) Do personnel and/or payroll records support the time and attendance, leave, and earnings for all employees?
- _____ 9) Are time distribution records maintained to show the amount of time spent on each project covered under the agreement, as well as time spent on other projects? (These records are required for all personnel spending less than full time on an individual project).
- _____ 10) Are there controls to assure that personnel costs are distributed in accordance with the time distribution records?
- _____ 11) Are there established procedures to govern the charges of personnel time related to partners or principals in closely held corporations?
- _____ 12) Are there formal procedures regarding bonuses, retirement plans, and/or profit sharing?

Travel

- _____ 13) Are there established policies to govern reimbursement for travel?
- _____ 14) Do these policies require travel vouchers to be submitted which:
 - _____ a) show the time and purpose of the travel?
 - _____ b) clearly indicate the nature of expenses being claimed?
 - _____ c) require the submission of supporting documentation?

Procurement

- _____ 15) Are there established procedures to assure that professional services, equipment, material, and/or supplies requested are really needed?
- _____ 16) Are existing supplies or inventories reviewed to assure that requested items are not already available?
- _____ 17) Are there formal procurement procedures to assure that equipment, material, and supplies are obtained on a competitive basis?
- _____ 18) Are there procedures to assure that the type of contract utilized is appropriate for the procurement being undertaken?
- _____ 19) Are there controls to assure that types of contracts unacceptable to the Federal Government are not utilized?
- _____ 20) Are Minority and Women Owned Businesses included in solicitations?
- _____ 21) Are solicitations obtained from several sources to assure that the most qualified party is selected?

- _____ 22) Are quotations reviewed to assure that the proposed price is reasonable to the contractor, the recipient, and EPA?
- _____ 23) Are internal controls utilized to assure that contracts contain all required clauses:
- _____ a) access to records
- _____ b) ownership of data
- _____ c) termination
- _____ d) applicable cost principles
- _____ e) defective pricing

Obligations

- _____ 24) Are there procedures to assure that reported obligations are supported by purchase orders, contracts, etc.?
- _____ 25) Do these procedures require that obligations are periodically reviewed with regard to their validity?
- _____ 26) Do these procedures require the timely liquidations of obligations?

Indirect Costs

If indirect costs are claimed under this agreement:

- _____ 27) If the indirect cost rate is negotiated with a Federal Agency, a copy of the negotiated agreement must be sent to Grants Administration Unit.

Current rate proposal has been approved _____ pending _____.

- _____ 28) If the indirect cost rate is not negotiated with a Federal agency:
- _____ a) Is there a cost allocation plan to indicate which costs are considered direct costs as opposed to indirect costs?
- _____ b) Are unallowable costs separately identified and/or excluded from the indirect cost proposal?
- _____ c) Are items of the same nature which are charged as direct costs excluded from the indirect cost proposal?
- _____ d) Are indirect costs accumulated in more than one pool?

A copy of the cost allocation plan may be requested.

I certify that the answers to these questions accurately reflect the management systems.

Signature

Date

Timesheets

Example Tribe Environmental Protection Program

Employee:
I.D. No.:
Department:
Primary Program:

Pay Period:		
Beginning Date:	11/09/08	(input beginning date)
Ending Date:	11/22/08	

Program/Activity	Sun	Mon	Tue	Wed	Thu	Fri	Sat								Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hours	Payroll Allocation %
	11/9	11/10	11/11	11/12	11/13	11/14	11/15	11/16	11/17	11/18	11/19	11/20	11/21	11/22									
106 WQ		5	8	8	6	8					5		8			48	67%						
Air Pollution					2						8	8			18	25%							
GAP															0	0%							
Pesticides															0	0%							
Non-federal activity 1		3									3				6	8%							
Non-federal activity 2															0	0%							
Indirect activity															0	0%							
Total Regular	0	8	8	8	8	8	0	0	0	8	8	8	8	0	72	100%							
Annual															0								
Sick										8					8								
Comp															0								
Holiday															0								
Admin															0								
School Act.															0								
LWOP															0								

These hours are allocated based on allocation of regular hours.

Travel Authorizations, Vouchering, and Reporting Forms

Trip Request

Tribe Name: _____ -GAP Staff

	AUTHORIZATION FOR OFFICIAL TRAVEL	SSN
TRAVELER'S NAME:	Home Phone: _____	DATE: [Today's Date] _____
TRAVELER'S ADDRESS:	Work Phone: _____	TA _____
TRAVELER'S POSITION:	PROGRAM _____	PO _____
PURPOSE OF TRAVEL:	_____ _____	
TRAVELING FROM:	TO _____	Date _____
TRAVELING FROM:	TO _____	Date _____
TRAVELING FROM:	TO _____	Date _____
TRAVELING FROM:	TO _____	Date _____
TRAVELING FROM:	TO _____	Date _____

Full Per Diem - YES / NO OR **Meals Only - YES / NO**

I request hotel/motel reservations - yes / noto be made at _____ Phone# _____

Lodging
_____ Nights X (City State) Fed Rate of _____ per day = \$ _____

Meals & Incidentals
_____ Days X (City State) Fed Rate of _____ per day = \$ _____

DEPARTMENT MUST HAVE ALL PROPER APPROVALS BEFORE SUBMITTING TO THE TRAVEL COORDINATOR

CAR RENTAL? YES / NO **EXCESS BAGGAGE?** YES / NO
Administrator or President Initials Administrator or President Initials

REQUESTED BY: _____ Date: _____
APPROVED BY: **ADMINISTRATOR** _____ Date: _____
APPROVED BY: **PRESIDENT** _____ Date: _____
APPROVED BY: _____ Date: _____
Tribal Council Member (Optional)

Trip Report

Tribe Name: _____ – GAP Staff

TRIP REPORT CLOSEOUT – Page 1

Name:		Position:	
Mailing Address:			
City/Village:	State:	Zip Code:	
Phone Number:		Fax Number:	
Did your travel arrangements or dates of travel change? [Trip Change? Yes or No]			
Describe the change:			

Final Travel Itinerary (as actually traveled)

Date	From	To	Depart Time	Arrived Time	Airline/Carrier

Taxi Itinerary & Expense

Amount (If \$15+ attach receipts)

From	To	Amount

ACCOUNTING USE ONLY (COMPLETE BACK OF FORM)

TAXI & PARKING TOTAL EXPENSES	\$
TELEPHONE EXPENSES	\$
OTHER APPROVED EXPENSES	\$

Date	Max Fed per diem for lodging	Actual cost of lodging	Lodging Shortfall	Taxi, Parking, Telephone	Totals
Total days per diem allowed this trip: 7			Total Hotel		

Seven		Expense	
(City, State) Fed Per Diem Rate		Total Taxi, Parking, Telephone	
Max Lodging:		Total Allowed Meals & Incidentals	
Meals:		Total Cost of Trip	
Incidentals:		Amount Advanced	
Total \$ per day		Balance Due to Traveler	

Tribe Name: **Nelson Lagoon Tribal Council – GAP Staff**
TRIP REPORT CLOSEOUT – Page 2

Required Documentation Check List

- τ AIRLINE TICKET RECEIPT
- τ HOTEL RECEIPTS
- τ MEETING AGENDA
- τ TAXI & PARKING RECEIPTS FOR \$15 +
- τ CAR RENTAL RECEIPTS (APPROVED IN ADVANCE)
- τ EXCESS BAGGAGE RECEIPTS (APPROVED IN ADVANCE)

Please attach all applicable receipt items to this trip report. Non-documented expenses will not be reimbursed.

PURPOSE OF TRIP: _____

DATES OF MEETING, TRAINING, WORKSHOP, ETC

Do you feel this trip was beneficial to the organization? Yes No

Primary Contacts: _____

Did you encounter any problems? No Yes - Please Explain

Summary of trip: _____

Example Policies and Procedures

This document is provided by Aleutian/Pribilof Islands Association Inc. as an example of policies and procedures for management of federal grants, such as EPA assistance agreement awards.

ALEUTIAN/PRILOF ISLANDS ASSOCIATION INC. **TRIBAL OFFICE MANAGEMENT AND ADMINISTRATION MANUAL**

This document is written for the purpose of providing a set of standard operating policies and procedures to be used as a guide by administrative staff and the Council. It is also intended to clarify roles and responsibilities between administrative staff, as well as between staff and the Council. While providing guidance, this document is not however, intended to be legally binding or to in any way restrict the Council from carrying out its constitutional duties as the elected governing body of the Native Village of TRIBE. Nor is this document intended to replace or take precedence over any provisions of the Native Village Government (NVG) Personnel Policies Manual. If a conflict should arise between the NVG Personnel Policy and this document, the NVG Personnel Policies shall take precedence. The Council remains free to exercise its discretion as to the interpretation or implementation of the policies and procedures set forth, and to revise this document as necessary to ensure the efficient and effective operation of its governmental functions, programs, and services.

This manual is brought to you, graciously funded by an Environmental Protection Agency GAP Grant, to help Tribes build administrative and grant management department capacity throughout the region.

A/PIA's Community Services Department, and in particular, Klaudia Klaudi, and Kathy Lawrence were instrumental in developing this manual. We think this information will be beneficial to all and hope that this manual will help Tribes to have continued success in the management of state and federal grants.

A special thank you to Dan Duame, for his valuable input and additions for this manual. And thank you to Bristol Bay Native Association for contributions from their Office Handbook, to Delores Kochuten of Belkofski Tribal Environment Department, and to Justine Gunderson with Nelson Lagoon Tribal Council for their valuable input as well.

If you have any questions or would like information concerning training, please contact Klaudia Klaudi (email address klaudiak@apiai.org) or call at (907) 276-2700.

About this manual.....

Alaska Tribes are faced with many unique and complex challenges today. Many of these challenges are centered on the lack of training opportunities available in the rural setting. With state and federal funding requirements becoming more complex, Tribes are increasingly in need of assistance to navigate these regulations in a timely and professional manner.

In 2002 Aleutian/Pribilof Islands Association (APIA), with funding from the Environmental Protection Agency (EPA), identified this need and in an attempt to meet that need developed the **Tribal Office Management and Administration Manual**. This manual was designed for the purpose of providing a set of standard operations policies and procedures to be used as a guide by administrative staff, as well as between staff and the Council. While providing guidance, this document is not however, intended to be legally binding or to in any way restrict the Council from carrying out its constitutional duties as the elected governing body of the Native Village of TRIBE. Nor is this document intended to replace or take precedence over any provisions of the Native Village Government (NVG) Personnel Policies Manual. If a conflict should arise between the NVG Personnel Policy and this document, the NVG Personnel Policies shall take precedence. The Council remains free to exercise its discretion as to the interpretation or implementation of the policies and procedures set forth, and to revise this document as necessary to ensure the efficient and effective operation of its governmental functions, programs, and services.

Included in this manual are samples of policies, procedures, and forms that are often used in Tribal offices. A disc is included that contains templates for all policies and procedures included in the manual. If you have any questions or would like information concerning training, please contact Klaudia Klaudi (email address klaudiak@apiai.org) or call APIA at (907) 276-2700.

Acknowledgements

APIA would like to thank all those who have contributed to the creation of this manual, especially the Environmental Protection Agency GAP Grant Program that funded this manual and supports training that builds administrative and grant management capacity in the Tribes of Alaska. A special thanks to the APIA staff, Dan Duame, Klaudia Klaudi, and Kathy Lawrence, who were instrumental in developing this manual. Finally, thanks to Bristol Bay Native Association for contributions from their Office Handbook. APIA hopes that this information is beneficial and that it will help Tribes to have continued success in the management of state and federal grants.

Manual and File Divisions

Administrative

Financial Management

Personnel

Personnel Forms

Tribal Records

ADMINISTRATIVE POLICIES AND PROCEDURES: Table of Contents

REVISED 03/29/06

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NATIVE VILLAGE OF TRIBE
ADMINISTRATIVE POLICIES AND PROCEDURES

(Includes revisions as of: 10/5/03)

Article I. Purpose

This document is written for the purpose of providing a set of standard operating policies and procedures to be used a guide by administrative staff and the Council. It is also intended to clarify roles and responsibilities between administrative staff, as well as between staff and the Council. While providing guidance, this document is not however, intended to be legally binding or to in any way restrict the Council from carrying out its constitutional duties as the elected governing body of the Native Village of TRIBE. Nor is this document intended to replace or take precedence over any provisions of the Native Village Government (NVG) Personnel Policies Manual. If a conflict should arise between the NVG Personnel Policy and this document, the NVG Personnel Policies shall take precedence. The Council remains free to exercise its discretion as to the interpretation or implementation of the policies and procedures set forth below, and to revise this document as necessary to ensure the efficient and effective operation of its governmental functions, programs, and services.

Article II. Council - Staff Communications

Section 1.00 General Statement of Policy

To promote a professional working environment for staff and the Council, it is the policy of TRIBE to maintain and respect proper "chain-of-command" in terms of staff to staff and staff to Council communications. This means that all direct communications with the Council should generally be made by staff through the General Manager (GM) or Administrator. The exception to this may be those communications between the Financial Officer (FO) and the Council President or the Council as a whole sitting in an official meeting, where the FO has been delegated certain duties and responsibilities that require such direct communications, or where the Council has asked to speak with, or receive reports from other particular staff at official meetings. Individual Council members other than the President should refrain from direct communications with staff. Where the President has a need to communicate to staff directly such communications should be made through the General Manager or Administrator where possible, or where not possible or practical, the General Manager should be informed of such communications after the fact. This policy is intended to apply to substantive, business related communications and not merely incidental conversations or communications on a personal level.

Section 1.05 Basic Council, Administrative, & Bookkeeping Roles & Responsibilities

1. *General Statement of Policy.* It is critical to the successful functioning of the tribal government that there be clear lines of authority and a clear understanding of the roles and responsibilities of, and the relationship between, the Council and the Administrator, (Tribal Councils generally employ a lead Administrative staff person) and Bookkeeper.
2. *Council.* As elected governmental officials, a primary function of the Council is to set all overall operational policy for TRIBE operations and governmental functions. This includes administrative, financial, and programmatic policies. Only "elected officials" will serve as the

Authorized Representatives for federal grants, the Administrator, or Bookkeeper to serve as financial representative, and the Administrator or Grant Manager to serve as Program Manager for federal grants. It is also the Council's function to set overall organizational goals and objectives. It is the policy of the Council to allow staff a high level of flexibility and operational authority in regards to Council policy implementation, and for the Council to refrain from direct involvement in most of the day-to-day operations. It is understood however, that Council will be called upon to address important operational issues from time to time. As a rule, however, it is TRIBE policy to place great reliance on the Administrator to run TRIBE operations and to use his/her discretion as to which issues should be elevated for Council consideration and/or action.

3. *Administrators.* Have a primary responsibility to carry out and implement established Council policies, goals and objectives on a day-to-day basis, and to ensure that, under the direct supervision of the President, that the TRIBE administrative and financial functions are operated in the most efficient and effective manner possible. Specific duties and responsibilities include:
 - a. Direct supervisory line authority over all other employees who are not otherwise under the supervision of a program director or coordinator.
 - b. Overall responsibility to ensure that all programs and services are delivered in accordance with grant and contract requirements, including compliance with all grant and contract reporting requirements
 - c. Ensuring that all grant and contract funding awards are drawn down or collected in a timely manner
 - d. Ensuring that the annual budget approved by the Council is implemented or expended within approved amounts
 - e. Signing off on all check requests
 - f. Acting as an ex officio (non-voting) member of the Council, taking the lead in preparing the agenda for all regular Council meetings, in consultation with the President.

4. *Bookkeeper/Accountant.* (In some instances Tribal Government will employ a Bookkeeper, Accountant, or Clerk). Under the overall general direction of the Administrator, the Bookkeeper is responsible for the maintenance of an overall TRIBE financial system, which meets all Generally Accepted Accounting Principles (also known as "GAAP standards"). Those having staff that are closely tracking grants should refer to the Office of Management and Budget (OMB) circular requirements. Additional duties include:
 - a. Primarily responsible for PO's
 - b. Performing the actual draw down of funds for all grant awards
 - c. Preparation of all grant and contract financial reports in a timely manner
 - d. Primary responsibility, in consultation with the Administrator, for the coordination and completion of the annual organization-wide audit
 - e. Primary responsibility, in consultation with the Administrator, for the coordination and completion of the annual indirect cost proposal
 - f. Proper accounting of all funds received and expended by TRIBE
 - g. Ensuring that monthly financial statements are prepared for use and review by the Administrator and the Council

- h. Ensuring that all expenditures are made within approved budgetary line item amounts and within the terms and conditions of all contract and grant awards within Council approved budget limitations
- i. Signing off on all expenditure check requests (which signatory authority may not be withheld where approved funds are available and a determination has been made by Administrator), that the expenditure is allowable

Article III. Delegation of Authorities

Section 2.00 General Manager Delegations.

As indicated above, the GM is intended to be in charge of the overall TRIBE day to day governmental operations and has supervisory authority over all other staff. As such, the Council hereby delegates to the GM the following: (a) check signing authority; (b) in consultation with direct supervisors where appropriate, responsibility to recommend the hiring and firing of all TRIBE staff, with final action to be approved by the Council; (c) in consultation with direct supervisors where appropriate, responsibility to recommend salary levels and merit increases (i.e. raises) of all TRIBE staff, with final action to be approved by the Council; (d) making line item budget modifications within Council approved program budgets up to a limit of \$3,000 per single line item adjustment (line item adjustments in excess of \$3,000 will require Council approval and signature by the President); and (6) making program to program budget modifications of \$500 or less (with those over \$500 requiring council approval). (Note: All hire and fire decisions remain subject to all provisions of the Personnel Policies, including Council review through the appeal process).

Section 2.05 Finance Officer (FO) Delegations.

The FO is responsible for maintaining the overall accounting and finance system for the TRIBE. To fulfill these duties and responsibilities it is necessary that the Council delegate to the FO the following authority: (a) responsibility for the overall policies, procedures, and design of the accounting and financial reporting system; (b) joint approval authority with the GM over all expenditures of TRIBE funds; (c) responsibility to review all budget modifications.

Section 2.10 Appointment of Acting Personnel

The GM and FO are both delegated full authority to appoint individuals to “Act” in their stead when either is unable to attend to their respective duties and responsibilities. It is the responsibility of both the GM and FO to ensure coverage of all required and necessary administrative and management functions during any extended absence from the office.

Article IV. Specific IRA Council Provisions

Section 3.00 Special Meetings.

It is the policy of TRIBE to conduct its business to the greatest extent possible through monthly Council meetings. The GM is expected to carry on the day to day business between meeting and only call for special meetings in exceptional circumstances where business cannot be postponed until the next regularly scheduled meeting.

Section 3.05 Regular Council Meetings.

The agenda shall be prepared by the GM and presented to the President for review and comment prior to the meeting. The GM shall work with staff to ensure that all reports normally presented at the regularly scheduled Council meetings are prepared at least 2 days in advance of the meeting. All efforts should be made to ensure that the final meeting packets are made available to Council members upon request the day prior to the meeting.

Section 3.10 Stipend/Honorarium Policy

Provided that funding is available, Council members shall be entitled to meeting stipends for all regular meetings and special Council meetings. Council members who attend outside board, commission or other similar meetings, or have otherwise been appointed to represent the TRIBE in an official capacity may receive an honorarium or stipend for their service, provided that the sponsoring entity does not provide any similar payment and provided that the Council has specifically approved the appointment as eligible for such stipend or honorarium, including specific amount of the payment. The GM shall keep a log of all appointments for which stipends of honorariums have been approved and the amounts of such payments authorized. The council shall review and update the list on an annual basis.

Article V. Electronic Communication Policies Subject

Section 4.00 Internet/email

Internet/email services is a privilege and is provided to staff primarily for business use. Employees that are utilizing internet services that charge by the minute are required to log time spent when such time exceeds 10 minutes for any single use, and turn such logs in to the GM at the end of each day. Personal use of NVG Internet/email is prohibited during work hours, with the exception that employees may use their work station Internet/email access during regularly scheduled break times provided that the service has free access and does not charge by the minute, or provided that the employees log all time spent and provides accounting with the specific log on-log off details of time spent. Employees who wish to use Internet services will be required to sign an authorization which binds them to compliance with this policy and which authorizes automatic payroll deductions for Internet charges uncured by NVG on their behalf. The General Manager shall be required to keep a log of all employee passwords, if any, to ensure that NVG administrative staff have full access to all electronic files stored on NVG equipment. All electronic files stored on NVG equipment is the property of NVG and NVG retains the right to access such information at any time for any purpose.

Section 5.00 Service Requests

All requests for new or existing telephone or Internet service are to be made through the GM. The secretary shall process such requests after receiving written authorization from the GM. Requests for service to the phone company made by anyone other than the GM or Secretary will be ignored and result in disciplinary action against the employee making the independent request.

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1. Purpose of the GAP Grant
2. Your Contract File
 - Managing your Assistance Agreement*
 - What an Award looks like*
 - Record Keeping Requirements*
3. Applying for a DUNS Number
4. Payment Information
5. Financial Reporting Requirements
6. GAP Guidelines
7. OMB Information
8. Code of Federal Regulations
9. Documentation of Expenditures & Allowable Costs
10. Contracting Tips
11. Evaluation and Desk Review
 - Protocol and Sample Questions*
12. Audits and the Single Audit Process
13. Audit Forms and instructions
14. Sample Forms for GAP Management
15. Tips for GAP Close-out
16. How to request revisions to your Budget & Work plan

Survey of Tribal Office Administrative System

General Organization

1. Is there an Office Policy in place, if so, is it in written form? (Yellow Section)
2. Are important documents stored in labeled file folders?
3. Are files divided into different sections or drawers such as:
 - a. Tribal Government files,
 - b. Tribal Enrollment files,
 - c. Tribal Business Files etc.
4. Does each grant or project have its own file in the Tribal Business files?
5. Are computer manuals and back-up disks easily accessible?
6. Do you have fireproof file cabinets?

Personnel Organization (Green Section)

1. Do personnel and/or payroll records support the time and attendance, leave, and earnings for all employees?
2. Does each current employee have their own personnel file containing? (Blue Section)
 - a. Job description
 - b. Authorization to hire
 - c. Salary scale
 - d. Reference check
 - e. Interview questions
 - f. I-9
 - g. W-4
 - h. Health Questionnaire
 - i. Drug Free Workplace Policy
 - j. Payroll Status Form
 - k. Time Sheets
 - l. Performance Evaluation
 - m. Benefit Eligibility
 - n. Employee Resume, application

Financial Tracking (Red Section)

1. Have separate accounting records for different projects or grants been established independent of the bank reconciliation for the general checking account?
2. Are accounting records subjected to an independent audit at least every two years?
3. Is appropriate documentation maintained to support the costs of:

- a. Travel
 - b. Purchases of supplies, equipment
 - c. Consultants
 - d. Other costs
4. Do you reconcile bank statements monthly?
 5. Is there documentation to substantiate accounts payable and accounts receivable?

Procurement (Red Section, Page 4)

1. Are forms such as check requests or purchase orders used to assure a financial tracking ability of items, supplies, and services purchased?
2. Are there formal procurement procedures to assure that equipment, materials, and supplies are purchased on a competitive basis?
3. Are existing supplies or inventories reviewed to assure that requested items are not already available?
4. Is there an inventory system in place to account for equipment, materials, and supplies purchased?

FINANCIAL MANAGEMENT POLICIES AND PROCEDURES: Table of Content

REVISED 03/29/06

FINANCIAL MANAGEMENT POLICIES AND PROCEDURE

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NATIVE VILLAGE OF TRIBE IRA COUNCIL
FINANCIAL MANAGEMENT POLICIES AND PROCEDURES

Section 1.00 Introduction / Purpose.

The following policies and procedures provide a framework and structure as to how the TRIBE financial accounting system will be managed and operated. The objective of this system is to provide management with reasonable, but not absolute assurances that assets are safeguarded against loss from unauthorized use or disposition; that TRIBE is managing its state and federal programs in compliance with laws and regulations; transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in accordance with generally accepted accounting principles. The system will also provide management and the IRA Council the data necessary to maximize the beneficial use of financial resources available.

It is understood that the efficient operation of the system will require some degree of flexibility, and that the system will evolve and change over time. However, absent modifications which have been approved by the Council, these policies and procedures are to be complied with by all staff whose duties or responsibilities fall within their scope. As a general rule, it is anticipated that the GM will have authority to exercise his/her discretion to make minor modifications to the system, but that any major substantive changes will be approved by the Council prior to implementation. The GM shall also have discretion to delegate duties or responsibilities to the Finance Officer (FO) or other staff as he/she deems necessary and appropriate.

Section 2.00 Contracted Certified Public Accountant (CPA).

The contracted CPA reviews the monthly financial statements from a working disk sent from TRIBE by the Finance Officer. Appropriate month end journal entries are then prepared and faxed to the Finance Officer for entry. Ideally this is completed prior to the monthly Council meeting.

Additional assistance is provided as needed.

Section 3.00 Consultants.

Consultants may be used to provide specialized and expert services beyond the scope of available IRA staff resources when it becomes apparent that their expertise is essential to the well being of organization. When obtaining the services of consultants the purchasing provisions provided below shall generally be followed. The consultant's fee must be appropriate considering the qualifications of the consultant, the consultant's normal fees, and the nature of the services rendered by the consultant. Cost is not the deciding factor, but rather one of several, such as quality, timeliness, location, previous experience, etc.

Section 4.00 Cash Receipts & Deposits.

(A) *IRA.*

Drawdowns for grants are direct deposited into the IRA bank account. The Finance Officer records the deposits when it comes to her attention that a deposit has been made.

All other cash receipts are received, deposited, and recorded by the Finance Officer. Usually for internal control purposes these duties would be split between three people (separation of duties). It is recommended that a receipt book in triplicate be obtained and a receipt written out for each item that is to be deposited. The payee gets the top copy, the second copy would be attached to the deposit slip and check copies, and the third copy would stay in the receipt book until it is completed, at which time it would be filed. Only one cash receipt book should be in use and in the office at any given time. The Finance Officer would prepare the deposit slip and with checks attached have the General Manager count and sign off on the cash receipts. The Finance Officer then makes copies of the deposit and checks (cash is changed into checks - same as above), sends, and records the deposit.

(A) *Bingo.*

All money received by Bingo is counted by two people, recorded daily on a cash receipts sheet, and then initialed by the counters. The money is then placed in a bank bag and put in a safe or locked file cabinet, along with a copy of the count sheet.

Deposits should be made once a week, generally on Thursday. A deposit slip is filled out and cash is changed at the store for a check or at the post office for a money order to deposit. A copy of the count sheets and check(s) are attached to a copy of the deposit slip before sending. The Finance Officer records the deposit, and files the copy in the Bingo bank account folder.

Section 5.00 Computerized Check Register.

The check register is maintained by the Finance Officer using QuickBooks Pro. Each check is entered into the computerized accounting system following standard recording procedures to include date, payee, check number, accounting code and program, and the amount debited or credited. All deposits are recorded in the computerized accounting system with the appropriate accounting code using the approved chart of accounts.

A running balance is maintained in the computerized accounting system. The computerized check register is used to reconcile the bank statements for each bank account monthly. The contract CPA reviews the check register and reconciliation's monthly.

Section 6.00 Check Writing and Supporting Documentation

Upon authorization by the General Manager by use of approved check requests, the Finance Officer prepares checks to pay expenditures. All expenditures of approved budgets are coded using the Chart of Accounts (attached).

For all checks with supporting documentation, the documentation (check request, invoices, statements, receipts) must accompany the check before the check is signed. Checks with supporting documentation attached are then presented by the Finance Officer to the authorized check signers. Check signers for the Bingo and IRA accounts consist of the General Manager and four Council officers. Each check requires two signatures. General staff are not authorized signers.

The original check and one stub are given to the Payee. Supporting documents for checks written are attached to the check copy and filed in reverse chronological order in the vendor file.

If a check is voided, VOID is written across the front of the check and filed in a folder marked "Voided Checks". The check number is entered in the check register and VOID is written as payee.

All blank payroll and regular checks are to be stored in a locked fireproof filing cabinet. Checks are to be used in numerical order.

Section 7.00 Purchasing

(A) *General Policy.*

It is the policy of TRIBE to purchase only those goods and services that are needed and necessary to support approved business operations and programs and which are considered necessary and allowable under all grants and contracts which TRIBE may administer. It is also the policy of TRIBE to maximize program and service delivery by purchasing goods and services at the lowest possible cost.

(B) *Purchasing & Property Management Authority and Responsibility.*

Except where specifically restricted by Council action, all final authority and responsibility relating to requisitioning, procurement and control of goods and services rests with the GM, notwithstanding the delegation of certain authorities and responsibilities to other staff as identified below.

(C) *Method of Purchasing Goods & Services.*

All purchases fall within the category of either goods or services. *All* purchases of goods *and* services shall be accompanied by a properly completed check request. In addition to being fully completed and signed before payment is issued, all check requests shall be accompanied by proper back up documentation (generally an invoice, receipt, or estimate) which shall be attached to the check request. For the purchase of professional, consulting or trade services, proper documentation shall include a properly executed contract agreement.

The check request is completed by the requesting individual and submitted to the General Manager. The check request is reviewed in reference to the requesting program's budget and expenditures to date. If the requesting program has adequate funds available for the purchase, the General Manager will indicate coding and approval by signature on the check request. Upon the General Manager's review and approval/ disapproval, the check request will be forwarded to the Finance Officer for completion of purchase process.

(A) *Contracting authority.*

All contracts or agreements for less than \$5,000 and which have been included in an approved budget line item may be executed by the General Manager. Contracts which exceed \$5,000 shall be executed by the IRA President.

(B) *Required Information:*

Business payment: All payments to a company or business shall require the following information to be recorded on the check request prior to payment being made: (1) company

or business name; (1) copy of business license; (3) tax ID number; and (4) mailing address and phone number.

Individual Payment: All payments to individuals shall require the following information to be recorded on the check request prior to payment being made: (1) individuals name; (2) Social Security number; and (3) mailing address and phone number (if available).

Other Information: All check requests shall also include a description and number of the item(s) being purchased; the date of the request and the due date for requested payment; the dollar amount of the purchase and the program and account coding to which the payment is to be charged. All vendors, subcontractors, contractors, consultants, students, general assistance recipients, Council members and any others receiving payments should fill out a W-9 form which should be held on file by the Accounting Department.

(C) *Miscellaneous Payments / Employee Reimbursements.*

All miscellaneous payments, including payments to reimburse employees for business expenses made out of personal funds (which should be avoided whenever possible), shall all require a check request. Employees should be made aware that any unauthorized purchases made on behalf of the organization are done so at the employee's risk. Any disallowed purchases will be the responsibility of the employee.

(D) *Competitive Bidding Requirements.*

(1) *General Policy.* Except as allowed below by subsection B (Sole Source Buying), it shall be the policy of TRIBE to maximize the use of funds through a competitive bidding process for all purchases, according to the following criteria:

Purchases with costs less than \$1000:

- No competitive bids required (unless required by funding source)
- Approval by Program Coordinator/Director, GM, and FO if included in approved budget line item. (No approval by President required.)

Purchase with costs exceeding \$1000 but less than \$5,000:

- Verbal price quotes from two or more vendors (recorded in writing and attached to the check request)
- Approval by Program Coordinator/Director, FO, and GM if included in approved budget line item. (No approval by President required.)

Purchase with costs exceeding \$5,000:

- Three written formal bids (with selected bid attached to the check request).
- Approval by Program Coordinator/Director, FO, GM & President.

(H) *Sole Source Purchasing.* Sole source purchasing is allowed when it has been determined that only one product/service is available of that particular make or design, or a service provider

has a unique ability to provide a needed product or service. Poor timing is not a legitimate reason for claiming a need for a sole source purchase. The requesting program or individual is responsible for justifying, in writing that a product/service must be purchased from a sole source. The GM shall approve/disapprove the request for the purchase, and if approved, the approval shall be attached to the check request as part of the permanent record of the purchase.

(I) *Bid Award Policy.*

The following factors, applied in combination, will be considered in reviewing bids and awarding contracts or making purchase decisions:

- Price
- Bidders previous record of performance and service for outside entities
- Bidders previous record of performance and service for TRIBE
- Quality and conformance to specifications of RFP
- Alaska Native owned / operated business or producer of required product

Section 8.00 Inventory / Property Management

(A) *General Policy.*

TRIBE keeps an inventory list of equipment with a value of \$5,000 or more or a useful life of one year or more. The information includes the item, date of purchase, value, and funds used. It is updated every time a new item is purchased. When equipment is disposed of, the date is noted on the list and this information may be given to the auditors so they can update their depreciation or use schedule (if any).

(A) *Inventory Control - General Responsibility.*

Responsibility for maintaining an inventory control system shall rest with the Accounting Department. The inventory control system will enable TRIBE to verify actual physical inventories against book inventories. As part of this system, all TRIBE equipment, furniture, and hard supplies with an expected life span of one (1) year or more shall be labeled and recorded in the inventory system. A complete organizational inventory shall be conducted at least annually, the results of which shall be reconciled to the property records.

(B) *Surplus Property.*

All departments and program coordinators are responsible for reporting surplus or excess property to the FO. Once surplus property has been identified, the FO will proceed to dispose of such property under the guidelines provided below in subsection (E).

(C) *Property Disposal.*

- (1) Property disposal decisions are made through several methods. These include:
- A date decided upon at the time the property was acquired;
 - Based upon condition and other factors noted in annual inventory reports;
 - When property is deemed by the FO in consultation with the GM to be

- obsolete;
- When maintenance is no longer cost efficient;
- If the intended use is no longer valid and there is no other application for other TRIBE programs.

1. It is the policy of TRIBE to make every effort to donate equipment or other property that has been deemed by the FO, in consultation with the GM to be surplus to the needs of TRIBE program operations. Such property shall be made available first to other TRIBE based organizations, and in the event that such equipment cannot be donated, will be made available to staff on a lottery basis. The FO and GM may establish a fair market value for items of significant value. Where a price has been placed on the property the payment shall be made by the recipient before the property is turned over and the funds generated deposited into the TRIBE General Fund. In the event that staff do not request such property, it may be made available to the general public by lottery, sealed bid or such other method as the FO and GM may determine is appropriate. With concurrence by the President, such property may be donated directly to a worthy tribal member with a demonstrated need. Electronic equipment deemed surplus will have all TRIBE data removed or deleted prior to disposal. All property will be offered as-is with no express or implied warranty or technical assistance as to use or set-up. In disposing of property, the FO shall be responsible for ensuring that all federal, state, or other contract and grant requirements are complied with.

(D) *Lost or stolen Items.* All lost or stolen items should be reported to the GM & FO by employees immediately upon becoming aware of such loss or theft. The employee reporting such loss or theft shall provide a short memo explaining the circumstances of the lost or stolen property to the best of their knowledge and belief. Upon notification the FO shall take such action as is necessary to account for the missing property, including the adjustment of the property inventory and, if appropriate, the reporting of such loss or theft to the police or agency or entity which provided the funds to purchase the property.

Section 9.00 Payroll Preparation

Pay periods are bi-weekly for all employees, except Bingo floor workers, who shall be paid weekly.

Employees must sign and date their own timesheets (or time cards). Time sheets must include the employee's name, position, hours and dates worked. All personal leave, overtime and holiday pay is included on the time sheet. Timesheets are then checked, approved and signed by the FO & GM, or in the absence of the General Manager or a person acting in his/her behalf, the President, or other Council officer.

Leave slips are signed by the employee's immediate supervisor or General Manager and given to the Finance Officer.

All employees must complete a W-4 and I-9 form at the time of hire. When an employee has a change in job position or pay rate, a payroll authorization form needs to be completed by their supervisor or the General Manager. These forms are filed in the employee's individual payroll record by the Finance Officer.

The Finance Officer is responsible for making timely federal tax deposits after each payroll.

Section 10 Bingo/ Pull Tabs.

(A) *General Policy.*

All gaming activities shall be conducted under the overall supervision of the GM. A Bingo Manager (supervised by the GM) shall be in charge of the day to day gaming operations and shall be responsible for preparing a monthly written gaming report for the Council.

(B) *Distribution of Gaming Net Proceeds (Donations).*

The Council shall be responsible for establishing overall policies and guidelines on the donation of net gaming proceeds, including actual award / donation limits or amounts. Once established, the policy may be implemented by the GM.

Section 11.00 Budgeting Process Program Reporting

(A) *General Statement of Policy Objectives.*

It is the policy of TRIBE to expend program and service funding only upon securing Council approved budgets, and within approved budget limitation. Deficit spending is strongly discouraged. Grant, contract, or bingo expenses may not be incurred until an official award has been made and the funds either received, or an alternate source of reimbursable funding has been approved by the Council.

(B) *Timelines.*

Budgets for programs and services that are provided on the calendar fiscal year (particularly BIA Compact programs) should be approved no later than the December Council meeting of each year, and ideally, no later than November.

(C) *Budgeting Process Roles and Responsibilities.*

(1) *Council:* It is the responsibility of the Council to approve on an annual basis all program and service budgets for both Compact and non-Compact programs. The Council shall also approve budgets for any new contracts or grants added during the year and all budget modifications that exceed \$3,000 per single line item adjustment or as otherwise required by specific grant or contract terms and conditions.

(2) *General Manager:* The GM has the primary responsibility, and the FO secondary responsibility to ensure that all expenditures occur only after a program or project has an approved budget. It is also the responsibility of the GM to review financial reports produced by the FO on a monthly basis to ensure that budget modifications are proposed and put into effect as expeditiously as possible to prevent deficit spending. This requires the GM to project recurring program expenses and work with program directors and coordinators to ensure budget modifications are processed in a timely manner.

(3) *Finance Office:* The FO has the responsibility to review and approve (i.e., sign off

on) all initial budgets and budget modifications. The FO also has the responsibility to review and sign off on all Check Requests to ensure program line items have sufficient funds to cover requested expenditures and that proposed expenses are coded to the proper account.

- (4) *Program Directors and Coordinators:* Program Directors and Coordinators (where there is no Director) will be provided with copies of each monthly financial report for the program(s) for which they have direct service responsibility and shall be responsible for monitoring their budgets and proposing budget modifications as necessary to ensure accountability for funds and for the fulfillment of program goals and objectives. Program staff should also review their budgets at the time each Check Request is generated to ensure adequate funds in the account to which the expense is coded. Routine budget modifications should be proposed by the Program Directors, coordinators and/or GM, and approved and signed off on by the GM and FO, or where over \$3,000, by the President after consultation with the Council.
- (5) Reprogramming between approved programs of \$500 or less may be approved and signed off on by the GM. Reprogramming between approved programs of \$500 or more shall require approval by the Council and signature on the budget modification form by the President.

(B) *Staff Program Narrative Reports.*

In addition to those reports that may be required as part of the terms and conditions of a particular grant or contract, the GM may request such narrative program progress reports as he/she deems is necessary and appropriate for the particular program, or as otherwise requested by the Council.

Section 12.00 Financial Reports.

Financial reports are printed monthly by the Finance Officer for the IRA Council's monthly meeting, or as otherwise requested. Program Directors or staff responsible for managing a program budget will be provided their respective programs budgets on a monthly basis and are responsible for monitoring expenditures as well as assisting the FO as requested in the preparation of program financial reports.

Section 13.00 Reporting Requirements.

It is the policy of the management and the IRA Council of the Native Village of TRIBE to comply with all reporting requirements imposed by funding sources. The General Manager will prepare and send the appropriate programmatic and fiscal reports to the grantors according to their specified time requirements (usually quarterly). If the grantor requires that the IRA Council review the report prior to submission, the General Manager will be responsible to presenting the report to the Board President for approval prior to submission date.

Section 14.00 Audits.

Once a year, an independent audit is performed according to the State and Federal Single Audit requirements. Adjusting entries to TRIBE financial records are made only after they are received in writing from the auditor. Completed audit reports are submitted to the IRA Council and required state and federal agencies.

Section 15.00 Tax Reports.

The Finance Officer is responsible for timely filing of the quarterly Federal 941 payroll reports and State of Alaska Department of Labor reports, along with any payments due. The contract CPA reviews the quarterly reports prior to submission.

The audit firm prepares the annual 990 form and submits it to the General Manager for signature. This report is mailed by the required date.

The Bingo quarterly and annual gaming reports are prepared, signed, and mailed by the Bingo Director. The annual gaming report is reviewed by the contract CPA.

Section 16.00 Indirect Cost Recovery Policies.

- (A) *Submission of indirect cost proposals:* It shall be the policy of TRIBE to submit its annual indirect cost proposal in a timely manner, with submission no later than sixty (60) days after the publication of the annual single audit for each calendar year, or July, whichever shall occur first. Preparation of the proposal shall be considered to be a priority task for both the GM and the Finance Officer. Outside technical assistance may be retained by the GM as necessary to complete the proposal.
- (B) *Recovery / accounting of indirect cost recoveries:* It shall be the responsibility of the FO, working in consultation with the GM, to monitor indirect cost recoveries and to ensure that indirect (i.e., central administrative) costs are fully recovered in each fiscal year. All federal, state, private, and tribal sources of funding shall be required to contribute the required prorata share of costs per the federally negotiated indirect cost rate. No agreement for any grant, contract, or other funding source that becomes available to TRIBE but which does not allow for the full recovery of indirect shall be entered into or accepted by TRIBE until a source of any projected indirect shortfall has clearly been identified and obligated. Within the limits of any budgetary authority established by the Council, the Finance Officer shall propose, and the GM approve such reprogramming or budget modifications as may be necessary to accomplish this objective.

Section 17.00 Petty Cash

The Finance Officer is the custodian of the petty cash box. The amount in petty cash is minimal (generally not to exceed \$100). Money from petty cash is used for office postage and other minor non-routine expenses. The Finance Officer enters the cash receipts and expenses from petty cash into the financial records.

Section 18.00 Travel

A Travel Authorization (TA) must be filled out by all individuals traveling with TRIBE funds to receive payment for travel and per diem. Airline reservations will be made at the lowest possible fare. Receipts are required for all reimbursable expenditures.

Per Diem is paid by the full and half day and is intended to cover lodging and meals while on official TRIBE business. Per Diem amounts are based on federal per diem rates for federal and non-state programs and state rates for state programs. Any expenses incurred without prior approval may not be reimbursed; it is solely at the discretion of the General Manager. Expenses other than lodging and meals may be reimbursed as allowed under federal and state per diem regulations. Such expenses include lodging taxes, taxi, and parking costs, official phone charges, and laundry. A trip report should be required reflecting all reimbursable expenses.

Section 19.00 Retention of Records

TRIBE maintains all financial records at least three years. Payroll records are kept for the duration of an employee's active employment, plus six and a half years after termination. All records are stored in a secure environment to prevent damage or loss.

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**Native Village of TRIBE
PERSONNEL POLICIES AND PROCEDURES MANUAL**

INTRODUCTION

The policies contained in this manual constitute management guidelines only and are in no way to be interpreted as a contract, either express or implied, between TRIBE IRA and any of its employees. TRIBE IRA does not guarantee any minimum length of employment and TRIBE reserves the right to terminate any employee, at any time, "at will," with or without cause. A supervisor or manager of the company has no authority whatsoever to make any contrary representations to any employee. TRIBE IRA reserves the right to modify or delete any of these policies, when, in its opinion, it becomes advisable to do so. Personnel rules applicable only to particular programs or positions are provided to the affected employees as appropriate and operate as an addendum to this manual.

While the IRA will normally attempt to provide employees advance notice of any change, it reserves the right to alter these policies at any time without advance notice. TRIBE IRA will do everything possible to give a minimum of two weeks' notice in writing on any changes in the personnel policy.

This policy manual supersedes all previous manuals, letters, memorandums, and understandings.

ARTICLE I - STAFFING

Section 1.00 Native Preference

Where required or authorized by law, preference for employment will be given to Alaska Natives and Native Americans. In accordance with exemptions granted in Title VII of the Civil Rights Act of 1964 as amended and section 7 (b) of Public Law 93-638, the Indian Self-Determination Act as amended, TRIBE shall to the extent feasible (1) give preference in employment for all work performed under applicable contracts to qualified Alaska Natives/American Indians regardless of age, religion or sex; and (2) further extend employment and training opportunities to Alaska Natives/American Indians that are not fully qualified, regardless of age, religion or sex.

The preference opportunities above shall be implemented to the extent consistent with the efficient performance of applicable contracts. If TRIBE is unable to fill its employment openings after giving full consideration to Alaska Natives/American Indians as required in various contracts, employment openings may be filled by other than Alaska Natives/American Indians under conditions set forth in the Equal Employment Opportunity Act and section 7(b) of Public Law 93-638.

Section 1.05 Equal Opportunity

With the exceptions outlined in Article I, Section 1.00 as to Native Preference, it is the policy of TRIBE IRA not to discriminate against any employee or applicant with regard to race, color, religion, marital status, changes in marital status, pregnancy or parenthood, national origin, sex, age, mental or physical handicap (except for bona fide occupational qualifications) relating to hiring or terms of employment.

Any person who alleges an act of discrimination by TRIBE IRA, regarding employment opportunity with TRIBE IRA may file a written complaint with the General Manager who shall investigate and resolve the situation through appropriate procedures as set forth in these policies or as otherwise established by the IRA or law.

Section 1.10 Employee Recruitment and Selection

The General Manager and Finance Officer are selected by and serve solely at the pleasure of the TRIBE IRA. The TRIBE IRA may terminate them at any time. All other employees are hired or fired by

the General Manager, in consultation with the President. At the recommendation of the President, termination decisions may be reviewed by the Council prior to becoming effective.

When a vacancy occurs, the appropriate supervisor will notify the General Manager, who will initiate the recruitment process. At the discretion of the General Manager, in consultation with the President, a position may be advertised in house before being advertised outside the organization. If an employee terminates within six weeks of their date of hire, the position does not have to be re-advertised. The General Manager has the option of offering employment to another qualified person on the applicant list or in the "open" file of eligible applicants for TRIBE positions, if one is maintained.

All applicants for employment at TRIBE are required to fill out a TRIBE employment application form. All applications, in order to be considered for a particular position, must be received by the closing date for receipt of applications noted on the recruitment notice. The General Manager may at his/her discretion advertise any position as "open until filled." Individuals who have an up to date application on file at TRIBE may request that the application be pulled for consideration for an upcoming job vacancy by the closing date. Current TRIBE employees, if interested in being considered for an employment opening, are encouraged to apply. All else being equal, an effort will be made to promote from within a capable and experienced individual, based on their demonstrated ability to assume greater responsibility.

Upon selection of an applicant for an open position an appointment letter will be sent that will include: the employee's title; whom the employee will report to; the grade, step and hourly rate of pay, when and where the first pay check will be available, along with other information the General Manager deems is relevant to the position. Financial information and forms relating to an individual's employment status shall be provided to Finance. All personnel information shall be maintained in individual personnel files by the central Administration.

With authorization from the IRA, the General Manager may hire individuals on an emergency hire basis for up to a 90-day period without going through a formal recruitment process. If the position is a regular position expected to last longer than ninety (90) days, the recruitment process will be conducted during this time. If the individual hired on an emergency basis is interested in being considered for the position, they will submit their application for consideration with other applicants.

Section 1.15 Classification of Employees

Employees will be classified in the following manner:

- a. *Regular full-time*: regularly assigned to work 75 hours in each two-week period.
- b. *Regular part-time*: regularly assigned to work less than 75 hours in each two-week period.
- c. *Regular seasonal full-time*: regularly assigned to work 75 hours in each two week period for a period of three to ten months.
- d. *Regular seasonal part-time*: regularly assigned to work less than 75 hours in each two week period for a period of three to ten months.
- e. *Temporary*: assigned to work up to 75 hours in each two week period for a set period of time, not to exceed 1 year. Temporary employees are not eligible to receive TRIBE employee benefits.

Employees shall be further classified as exempt or non-exempt personnel in keeping with Section 13 (a), subsections (a) and (b) of the Fair Labor Standards Act. Exempt and non-exempt positions are

further defined in the Definitions section, at the end of these policies. Non-exempt employees are entitled to receive overtime pay for any hours worked in excess of an eight hour day or a forty-hour workweek.

Section 1.20 Probationary Period

a. Purpose. The probationary period applies to all new employees of TRIBE IRA and provides the supervisor and the General Manager an opportunity to observe the employee's work, to train and aid the employee in adjusting to the position, and to dismiss an employee whose work performance fails to meet required work standards.

b. Duration. Every new Employee of TRIBE IRA shall serve a three (3) month probationary period. Probationary Employees may take personal leave up to the amount of hours accrued since their date of hire, only for attending to child or personal illness. Probationary employees may not take paid personal leave for other purposes. Any additional time taken off from work would be leave without pay.

c. *Dismissal during probationary period.* At any time during the initial or extended probationary period, an employee may be terminated by the General Manager. Termination during the probationary period shall not be grounds for redress under Article VIII of this manual.

d. *Extension of probationary period.* If in the opinion of the immediate supervisor, program director and the General Manager, an employee' probationary period may be extended to provide additional time for the employee to demonstrate his or her ability to meet required performance levels. The probationary period may be extended for the employee for up to two additional ninety (90) day periods. Such extension must be in writing, set forth the reasons for the extension, shall provide guidelines for improving work performance and will be evaluated by the end of the extended period. An employee placed on extended probation shall be eligible to participate in TRIBE's employee benefit programs, and may request, and be authorized to take personal leave.

e. *Probationary period following transfers or promotions.* Regular employees shall be required to serve a three (3) month probationary period following a transfer or promotion into a new position. At the end of the three (3) month period, an evaluation will be conducted to assess the employee's ability to meet the new position requirements. Transferred or promoted employees continue to accrue and may utilize their employee benefits during the probationary period.

Section 1.25 New Employee Orientation

Supervisors are responsible for ensuring that new employees receive proper orientation to the office, to the benefit plans, payroll procedures, any safety measures, and all job duties within the first two weeks on the job. All new employees must complete an orientation process and certify that they have received, read, and had the opportunity to ask questions of their supervisor regarding the various TRIBE policies and procedures which may affect them in their position.

Section 1.30 Employee Evaluation

Supervisors are to complete an initial evaluation of each new, transferred, or promoted employee just prior to the end of the three (3) month probationary period. If the probationary period is extended, a second evaluation will be completed at the end of each extension. On the basis of either the three (3) month or extended evaluation period, a recommendation may be made to transfer the employee to regular status.

Each regular employee will be evaluated annually on or about their anniversary date of hire. Each evaluation will be performed by the employee's immediate supervisor and reviewed by the General

Manager. In addition, interim evaluations may be performed to document substandard or outstanding performance. The original of each evaluation will be kept in the employee's personnel file with a copy given to the employee after the supervisor and employee has discussed the evaluation. The General Manager shall be responsible for establishing and maintaining standardized, written performance evaluation guidelines which shall be reviewed and utilized by each supervisor prior to conducting the annual evaluation.

Section 1.35 Personnel Files

Personnel files will be kept in locked file cabinets by the central Administration. Unless otherwise delegated by the General Manager, only the General Manager and Finance Officer will have access to personnel files.

Personnel files for each individual employee will be maintained and include at a minimum the following information: Applications for employment, annual performance reviews, payroll action notices, tax and other payroll information, personnel actions, commendations, employee of the month certificates, employee of the year recognition, disciplinary warnings, and educational attainment records. All information generated by a supervisor or anyone else regarding an employee, which is placed in the personnel file must be copied to the employee at the time it is placed in the personnel file.

Contents of personnel files are considered confidential, and may be released to outside parties (individuals not associated with TRIBE IRA) only with the written authorization of the employee, appropriate staff or when required by law. Employees have a right to review the contents of their personnel files but may not remove the file from the office premises. Former employees may receive copies of their personnel files upon written request but are responsible for paying the copying expenses.

Each employee is responsible for notifying the Accounting Department in the event of changes in address, telephone number, and/or family status (births, marriage, death, divorce, etc.).

Section 1.40 Nepotism

No employee may supervise an immediate family member. Immediate family member is defined as a spouse or significant other (boyfriend, girlfriend, mother, or father of shared children) grandparents, grandchildren of the employee, parents, children, and siblings of the employee and their significant other or spouse. Situations where a known close relationship exists will be evaluated on a case by case basis. Immediate family members of current employees shall not be hired if the new employee will be supervised by an immediate family member as defined above.

Job promotions which may result in a supervisor-subordinate relationship between immediate family members shall be considered on the basis of TRIBE's interest. If a close personal relationship is known to exist, the recommendation for job promotion will be scrutinized. Supervisors may request a waiver from the IRA of the prohibitions set forth above if no other qualified individual can be found to adequately fill the position. This waiver should be directed through the appropriate channels to the General Manager for a decision and then on to the IRA President. The approved waiver shall be copied to the employee, the employee's personnel file and the employee's supervisor.

ARTICLE II - PERFORMANCE EXPECTATIONS

Section 2.00 Standards of Conduct

Employees must conduct themselves in a manner which will maintain respect and dignity while engaged in official activities both within and outside the organization's facilities. Employees will apply themselves to their duties during work hours. Interpersonal relationships between staff members must remain within the bounds of common decency and good taste. Employee conduct must be consistent with the highest standards of courtesy and professional behavior. If an employee is unprofessional or in some way causes discredit to TRIBE, the problem shall be documented by the individual observing the behavior completely and clearly in writing and forwarded to the individual's supervisor to be resolved. If an employee believes that anyone in or associated with the company has requested or directed him or her to do anything that violates the law, or has prohibited the employee from doing anything that the law requires him or her to do, the employee must report this immediately to his or her immediate supervisor or to the next level, who will report the incident to the General Manager. Misconduct by the General Manager shall be reported to the IRA President.

Section 2.05 Working Hours

a) The normal work week for a full time regular employee (exempt and non-exempt) will be 37.5 hours consisting of five (5) consecutive work days of 7 ½ hours each. The consecutive days worked are normally Monday through Friday, although alternative work weeks may be established for positions requiring different schedules. The normal work day for full time employees shall be from 8:00 AM to 4:30 PM with a one (1) hour lunch break unless other arrangements are agreed to in writing in advance by the employee, supervisor and General Manager.

The normal work day for part time employees under 7 ½ hours, will be agreed upon in writing and documented on their payroll status sheet and in their personnel file. Employees are expected to perform their duties during regular assigned work hours if at all possible. Occasionally exempt employee responsibilities will require them to work outside the normal work day. Some employees, because of the nature of their work, are required to serve on on-call status outside of normal office hours. On call status is defined as an employee that has left the corporation's premises and has left a telephone number to be reached in case of an emergency. If it is necessary for an employee to attend to an emergency situation while on on-call status, the employee shall be considered to be in work status from the time the call is received until such time as they are able to return to non-work activities.

If the employee is non-exempt and works in excess of an eight (8) hour day or a forty (40) hour work week, they would receive overtime compensation at one and a half times their normal salary for those hours worked. Meetings directly related to an employee's job and held outside the non-exempt employee's regular working hours shall be considered "hours worked" if attendance is not on a voluntary basis. Non-exempt employees are responsible to record on their time sheets actual time worked, even if it is more or less than the normally scheduled hours. Exempt employees shall only be required to record their time if mandated by Council action.

If an exempt employee finds it necessary to work over an eight hour day for an extended period of time, he or she must confer with the General Manager on the nature of the work being performed. Non-exempt employees are not to work before, beyond, or outside their normal hours and are not to work overtime unless authorized beforehand in writing by the Supervisor and General Manager. The General Manager will approve or disapprove any changes to the regular work day.

TRIBE *may* offer, on a limited basis, a voluntary flexible work hour plan during the summer months. Employees participating in the plan work three 9 ½ hours days and one 9 hour day, four days a

week, from 7:00 a.m. to 5:30/5:00 p.m. with a one hour lunch break. Participation in this plan must be approved by the employee's immediate supervisor and the General Manager. Participation will not be approved unless the particular program's staffing needs are met. The applicable time period in which the flexible work hour plan will be available shall be determined by the General Manager.

Section 2.10 Rest Periods.

Each employee will have two (2) paid fifteen (15) minute rest periods each day; one during the first four (4) hours and one during the second 3 ½ hours. The employee's rest period schedule shall be approved by employee's supervisor to ensure adequate phone and other coverage for the department. In no case may rest periods be taken at the beginning or end of a shift, nor may rest periods be consolidated for use on a later date.

Section 2.15 Attendance

All employees must maintain regular work attendance. The normal work day and work week requirements of these policies apply to all employees, whether exempt or non- exempt. Regular attendance and timeliness will be among the criteria used to determine eligibility for salary increases, promotions, and continued employment. Unsatisfactory attendance and tardiness are grounds for disciplinary action, including termination. Any employee late for the start of the work day without authorization may be subject to a verbal warning and to progressive discipline for recurring offenses.

It is the responsibility of the immediate supervisor to monitor attendance and ensure the employee's time sheet is correct before it is submitted to the accounting office. Non- exempt employees will be charged personal leave for absences during normal working hours. Exempt employees will be charged personal leave for absences of one-half day or more. If an employee does not have sufficient personal leave accrued, or may not take personal leave due to probationary status, the employee will be charged leave without pay (LWOP) for the time absent; provided exempt employees will only be charged LWOP for absences of one half day or more.

If an employee will not be able to make it to work or if they will be [15 or 30] minutes or more late for the start of the work day, they are responsible for contacting their immediate supervisor to let them know. If their immediate supervisor is not available, the employee shall leave a message with the main office staff. Unless extraordinary circumstances warrant it, a call from a person other than the employee, will not be accepted as a notice from the employee for lateness or absence from work. If an absent employee does not call within two hours after the start of the working day, the employee will be considered absent without leave unless the supervisor has been previously informed. Any employee absent without leave three times during a one month period may be terminated.

Employees must have accrued personal leave and receive approval, to take personal leave in advance if at all possible. If leave taken is less than 1 working day, note in comment section of time sheet the reason for absence. If an employee is absent for three or more consecutive days due to illness or disability, the employee must provide a health practitioner's written statement verifying the illness or disability. A supervisor may require a health practitioner's verification for absences of less than three days. If an employee has been ill or disabled, the supervisor may require a written statement from a health practitioner verifying that the employee is fit to return to work. If it becomes necessary for an employee to leave the work premises during regular work hours, they must notify their supervisor prior to departing the premises or at a minimum, notify another employee of their whereabouts. Any employee who does not report to work for three (3)

consecutive days without prior notification to the supervisor may be considered to have abandoned their position, may be terminated and the position opened for immediate recruitment.

Section 2.20 Drug Free Workplace Requirements

TRIBE IRA has a commitment to providing and maintaining a drug-free workplace and has established the following policy: The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in any and all TRIBE IRA buildings, offices and other work areas. Each individual offered employment, prior to being hired by TRIBE, shall certify by signature their agreement to abide by the TRIBE IRA's Drug Free Workplace Policy as stated above.

If an individual is unwilling to sign such certification, they will not be hired. Any employee found to be under the influence of alcohol, drugs or controlled substances shall be immediately relieved of duties and sent home on Leave Without Pay status. Drugs may include inappropriate or unlawful use of prescription drugs (e.g. "uppers" or "downers".) The supervisor will document the incident in the employee's personnel file and notify the General Manager. The employee will be subject to disciplinary action, which may include termination for the first offense. If an employee is lawfully taking medication which can or does affect his physical or mental abilities, the employee shall notify his or her supervisor and submit a doctor's statement. If required by a particular funding source, TRIBE shall notify the funding agency within ten (10) days after receiving notice of any criminal drug statute conviction for a violation occurring in the workplace. Disciplinary action(s) shall be issued within 30 days of receiving notice with respect to any employee who is so convicted. TRIBE shall make a good faith effort to maintain a drug-free workplace through implementation of the fore mentioned policy statements.

Section 2.25 Drug and Alcohol Testing Policy and Procedure

a) Purpose of the Policy.

TRIBE is committed to maintaining a safe and healthy work environment for employees. TRIBE employees are responsible for delivering services to tribal members and other residents of the Bering Straits Region, and are obligated to ensure public safety and trust in our working environment and scope of services. Accordingly, the use of alcoholic beverages or controlled substances, including marijuana, amphetamines, barbiturates, heroin, or opium derivatives, hallucinogens, or other controlled substances prohibited by state or federal law is strictly prohibited. Positive screening results from an alcohol and/or drug test will result in disciplinary action which may include termination of employment.

b) Scope.

1) *Pre-employment Screening.* TRIBE reserves the right to conduct pre-employment drug screening of any individual who is being considered for regular employment. For this purpose, an individual is "being considered" for employment when the individual has been offered a position. If the applicant is under the age of 18, a consent form to be tested must be signed by the parent or guardian before an applicant will be considered for employment.

2) *Existing Employees: Reasonable Cause Testing.* Except as may be provided under subpart (1) of this section, existing employees will only be required to submit to alcohol and drug testing when there is a workplace accident or when other reasonable cause for testing exists. Decisions on testing of existing employees shall be at the discretion of the General Manager. If an existing employee terminates employment for any reason, and subsequently applies for a vacancy, he/she may be required to submit to pre-employment drug screening the same as any other applicant.

3) *Safety Sensitive Positions*. TRIBE may establish regular or random alcohol and drug testing for employees in particularly “safety sensitive” positions, which are jobs where the momentary lack of attention may lead to serious injury or death, or have other disastrous consequences. Any such positions will be identified in the applicable program rules, and the alcohol/drug testing requirement will be incorporated into the job descriptions of such employees.

c) Definitions:

1) *Accident* - An unexpected event that occurs during the performance of TRIBE business, or on TRIBE property, or involving a vehicle owned by TRIBE, that results in personal injury or in property damages in excess of \$1,000.

2) *Alcohol* - Ethyl alcohol (ethanol) in a beverage or medication.

3) *Collection Site* - TRIBE clinic, Norton Sound Regional Hospital Laboratory, or other location designated by TRIBE management.

4) *Controlled substance* - Any of the substances specified in Schedule I or Schedule II of the Federal Controlled Substance Act, 21 U.S.C. §801.812, or AS 11.71.010 - AS 11.71.070, including marijuana, cocaine, opiates, amphetamines, barbiturates, and phencyclidine (PCP).

5) *Drugs* - See controlled substances.

6) *Negative test results* - A drug or alcohol test result which does not show evidence of the presence of the prohibited substance in an individual’s system.

7) *Reasonable Cause* - When an employee’s behavior or actions in the workplace lead to a reasonable conclusion that the employee may be under the influence of alcohol and/or drugs. A reasonable conclusion requires personal, objective observation and information by a supervisor or manager, or other TRIBE officer regarding the appearance, behavior, speech, or breath odor of an on-duty employee. A third-party report that an employee may be under the influence of drugs or alcohol must be confirmed by appropriate supervisory or management staff.

8) *Positive Test Results* - For alcohol, a positive test will be a breath alcohol test above a 0.04. For drugs, a positive test result will show prohibited drug(s) in an individual’s system at the following levels:

Drug Initial Screening/ml; Confirmatory Testing/ml:

Marijuana 50/25

Cocaine 300/150

Opiates 300/300

Amphetamines 1000/500

Barbiturates 300/300

Phencyclidine (PCP) 25/25

In drug testing, an initial screening is performed to eliminate “negative” urine samples from further testing. A confirmatory test is a second analytic procedure using different chemical principals which are specific to the drug being tested for, which is used to verify “positive” results of the initial test.

d) Procedures.

1) Pre-employment screening may, at the discretion of the General Manager, be required as part of the application process. When circumstances warrant, a new employee may be hired prior to the receipt of the drug test results by TRIBE, provided that the employee is advised in writing that continued employment is contingent upon a negative result of the drug test.

2) If an employee knows of an accident occurring, or believes that an employee is under the influence of alcohol and/or a controlled substances, the employee should immediately contact his or her supervisor or, if the supervisor is not available, the General Manager or the IRA President.

Reasonable cause is determined by the General Manager in consultation with the employee's supervisor. When an accident has occurred or if reasonable cause is determined to exist, the employee will be required to report to the collection site immediately and provide a urine specimen and/or alcohol breath test. TRIBE will provide transportation to the collection site if necessary, and a supervisor or the General Manager will accompany the employee. Blood specimens for testing will not be required by TRIBE, but may be chosen by the employee.

3) If an employee is unable to produce a sufficient volume of urine to constitute a valid test, in accordance with State of Alaska Department of Labor guidelines, the employee will be held at the testing site for a period of up to four (4) hours or until they produce a valid test, whichever occurs first. During the holding period they cannot eat and may have no more than two (2) eight (8) ounce glasses of water to drink. Anyone who either refuses to wait or who after the four (4) hour period has been unable to produce a valid sample will be considered to have tested positive.

4) The employee will be responsible for notifying their supervisor and laboratory testing staff for any prescription or non-prescription medication they are taking. Medical documentation of prescriptions will be required.

5) The employee suspected of being under the influence of a controlled substance (drugs) and/or alcohol while on duty will be suspended with or without pay pending further investigation and receipt of the test results. Suspension will normally be with pay unless the employee's acts or behavior associated with the incident constitute an infraction which would be grounds for suspension without pay independent of the use of alcohol or drugs. The final decision regarding suspension will be made by the General Manager.

6) The supervisor or General Manager, upon making the determination that reasonable cause existed for screening must provide written documentation of their personal observations on which reasonable suspicion is based, within twenty-four (24) hours. These statements will be submitted to the General Manager and maintained in a confidential file separate from the employee's personnel file. All written documentation will be kept confidential.

7) At the time the specimens are collected, the employee should be given a copy of the specimen collection procedures used by the collection site personnel. The employee shall sign test authorizing forms and disclosure of the test results to TRIBE and the employee.

8) Failure to provide a specimen, refusal to take a drug test, sign the authorization and disclosure forms or cooperate with the collection personnel will constitute a presumption of being under the influence of alcohol and/or a controlled substance. Under such circumstances, the employee will be subject to appropriate disciplinary actions which may include termination of employment.

9) The General Manager will receive all test results.

e) Confidentiality.

All test results, either positive or negative will remain confidential. TRIBE will only disclose this information in writing, to the employee, the employee's supervisor, other the President on a need-to-know basis.

f) Disciplinary Action.

TRIBE may impose any appropriate discipline including termination of employment if an employee is found to be using alcohol or drugs while on the job, or for behavior at work which would otherwise be grounds for discipline irrespective of drug or alcohol use. Otherwise, employees suffering from addiction to drugs and/or alcohol will receive the same consideration that is presently extended to

employees having other illnesses. Employees will be allowed first to utilize their personal leave, and then leave without pay to pursue an appropriate program of treatment. Where treatment is unsuccessful and the alcohol or drug abuse continues or recurs, TRIBE will resort to disciplinary action up to termination of employment. Any disciplinary action taken because of continuing or recurring alcohol or drug abuse will be imposed consistent with TRIBE's Personnel Policy in Article VI.

Section 2.30 Drug and Substance Abuse Treatment

TRIBE employees are advised that drug and substance abuse counseling and rehabilitation services are provided through Norton Sound Health Corporation and other local and statewide treatment programs. TRIBE's insurance benefit program may or may not fund treatment for employees. Employees are advised to review their benefit booklet to determine the full extent of benefits. Employees who have a substance abuse problem which affects their job performance are advised to seek treatment. If an employee has a substance abuse problem, seeks treatment, and is able to resolve the situation, no further action will be taken. If however, an employee's job performance is negatively affected because of alcohol or drug abuse, he or she will be subject to disciplinary action as outlined in Article VI of these policies, up to and including termination. If an employee's work performance has suffered extensively because of substance abuse to the point TRIBE is considering termination, TRIBE may offer the employee the option of entering and successfully completing substance abuse treatment as an alternative to termination. The General Manager has the discretion to grant leave with or without pay for this purpose.

Section 2.35 Personal Issues

Employees who are experiencing crises of a personal nature are encouraged to seek professional support and advice to help resolve the problems. If necessary and with the approval of the immediate supervisor and the General Manager, employees may be granted leave with or without pay to seek assistance in resolving personal problems.

Section 2.40 Harassment including Sexual Harassment

Harassment is defined as verbal, written, physical, or visual conduct of a racial, ethnic, or other type which impairs the employee's ability to perform their job. Supervisors are advised that an employee does not need to be the direct target of harassment in order for harassment to be established. If harassment is taking place and is offensive to other employees within the work environment, the other employee(s) may file a complaint. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when such conduct:

- a) Is made explicitly or implicitly a term or condition of employment; or
- b) Is used as a basis for employment decisions; or
- c) Has the purpose or effect of interfering with work performance or creating a hostile, intimidating, or otherwise offensive working environment.

Harassment, including sexual harassment is contrary to basic standards of conduct between individuals and is prohibited by EEOC regulations. Any employee who engages in any of the acts of behavior defined above violates TRIBE policy. Employees who feel that they have been discriminated against on the basis of sex or in any manner harassed, should immediately report such incidents following the procedure below without fear of reprisal. An employee may seek to resolve a harassment problem by setting forth in writing the problem and meeting with their immediate supervisor. The employee may meet with the next higher level of management above the immediate supervisor or the General Manager if their harassment concern rests with their

immediate supervisor. The matter shall be thoroughly investigated by the General Manager. TRIBE will take immediate corrective action when an employee is determined to have violated this policy. Such action will include a range of disciplinary measures, up to and including termination.

Section 2.45 Public Information

All leaflets, letters, press releases, material for press releases, interviews, recordings, photographs, undeveloped photographic negatives, public speaking engagements, and other materials relating in any way to interpretation of TRIBE's policies or internal information must be approved by the General Manager or designee before publication or distribution. In the event staff are contacted by news agencies seeking comments on various issues, cases or policies of concern to TRIBE, staff shall take down in writing the questions and meet with the General Manager prior to relaying TRIBE's response to the news agency. The General Manager shall notify the President of all such requests for information or comments.

Section 2.50 Confidential Information

All internal matters including grievances, internal discords, personnel matters, disciplinary actions or similar matters, finances of the organization, corporate records, and similar matters, shall be considered confidential by all employees. Any intra departmental matters, such as client files, applicant files, case files, etc., shall similarly be considered confidential. Unauthorized disclosure of any such information constitutes cause for disciplinary action including termination.

Section 2.55 Conflicts of Interest

Employees are expected to devote their best efforts to the interests of TRIBE and the conduct of its affairs. While TRIBE recognizes the right of employees to engage in activities outside of the work place which are of a private nature and unrelated to our business, a policy of full disclosure will be followed to assess and prevent potential conflicts of interest from arising.

An employee MAY NOT:

- a) Accept, negotiate for, or promise to accept employment or anything of value from any person or organization, if the employee's department is engaged in the transaction of business with the person or organization;
- b) Be a party to the purchase or influence the purchase of goods or services for the use by TRIBE from any person or organization in which the employee has a substantial financial interest, unless the General Manager is notified in writing of the financial interest and approves the purchase in advance in writing; or
- c) Engage in any other employment during those hours the employee is scheduled to work for TRIBE IRA.
- d) be an employee and run for or hold a seat on the council at the same time, except that the Council may waive this restriction on a case by case basis for purposes of allowing Council members to seek short term, project specific, generally seasonal employment.

Section 2.60 Other Employment

Employees may engage in employment activities outside of regularly assigned work hours as long as the employment doesn't interfere or affect an employee's work performance during work hours or present a conflict of interest with the employee's regular job. Any employee interested in working outside their normally scheduled work week, including consulting work, shall notify their immediate supervisor of the nature and extent of the outside employment. Where potential conflict exists,

written approval from the General Manager must be obtained before engaging in outside employment. Employees will not engage in any paid activity of a nature that is in some way hostile or adverse to TRIBE's interests.

Section 2.65 Safety and Security

The safety and security of employees and company property shall be the responsibility of each employee. Employees are responsible to prevent and report unsafe conditions. In the event of an accident or injury, both the employee and their immediate supervisor, shall contact the General Manager within 24 hours to report the accident or injury. The employee will immediately request the appropriate workers compensation forms and file such forms in a timely manner.

Section 2.70 Advertising

No employee shall act as a paid or unpaid representative for any commercial, political, religious, or social organization during work hours, except as required for performance of job duties. No employee shall use any TRIBE IRA facility to distribute or display advertising materials unless approved by the General Manager or President.

Section 2.75 Political Activity

Any employee participating in partisan or non-partisan political activities shall do so as an individual and not as a representative of TRIBE IRA. Employment will not be dependent on the support of any political party, issue, or candidate for office.

Section 2.80 Company Vehicles

TRIBE company vehicles will be used only for official TRIBE business. Any employee found using the TRIBE vehicles for personal use without prior approval by the General Manager or President shall be subject to disciplinary action, up to and including termination. Any employee using a company vehicle for personal use who is in an accident, shall be expected to pay for the damages not only to the TRIBE vehicle, but also shall be liable for any other damages associated with the accident. Those departments with vehicles for their exclusive use are responsible for maintaining their own sign out log, and arranging for maintenance and upkeep as necessary. Administration will maintain the vehicles available for use by all employees.

ARTICLE III - COMPUTER/ NETWORK USE

Section 3.00 Overview

TRIBE IRA provides employees with access to computer hardware, software, peripherals, and network resources, in an effort to help employees do their jobs more efficiently. TRIBE employees are encouraged to use the technology provided to them to further the stated mission of the organization and better serve tribal members and clients. TRIBE has provided these resources and expects employees to use them appropriately. TRIBE actively promotes the use of the Internet in the pursuit of positive, community-building exchange of information, in the reduction of office costs and overhead, and as a means of regional feedback.

The expectation placed on use of computer resources is much the same as it is with other resources TRIBE grants access to (e.g.: telephone, FAX machine, copy machines, vehicles, etc.). *Computer and network resources and Internet access are to be used for business purposes only.* Just like any other resource given to an employee, a computer, peripherals, software, network and Internet access bring about the potential for increased productivity, but, if misused can cause problems which threaten company security, decrease productivity, cause public relations problems, and can even

land the organization in legal trouble due to issues like copyright violation, libel, software piracy, and sexual harassment among others. All existing company policies apply to employee conduct on the Internet, including those that deal with intellectual property protection, privacy, misuse of company resources, sexual harassment, information and data security, and confidentiality. Computer, network, and Internet use are subject to existing TRIBE policy, and local, state, and federal laws. Willful violation of the policies outlined here is grounds for disciplinary action up to and including dismissal. Supervisors or the General Manager may also choose to deny employees access to certain computer software, network resources, or the Internet if the employee is abusing these privileges.

Section 3.05 Computer Use Policy

- a) All computer hardware, software, peripherals and networking resources are the property of TRIBE IRA and are intended for use by employees to further the stated mission of this organization.
- b) Employees shall not intentionally harm computer hardware, software, or peripherals.
- c) Employees shall not use network and computer resources for personal gain, or for the purposes of promoting a private business or organization, unless approved to do so in advance by his/her supervisor and the General Manager.
- d) The files on employee computers are the property of TRIBE IRA. TRIBE has the right to view, remove, and/or copy files from employee workstations at any time for any reason.
- e) Software and hardware upgrades will be performed only upon approval by the General Manager and only by authorized, qualified individuals.
- f) Employees shall not load games on their computers, or play games on their computers during working hours, except on regular breaks.
- g) All software packages are to be used in accordance with their licenses. TRIBE employees shall not illegally copy software, nor shall they distribute licensed software to unlicensed users. This is a violation of federal law.
- h) Software media (floppy disks, CD-ROMs) are the property of TRIBE IRA and shall not be removed from the premises without specific permission from the General Manager (unless the software is being used on a laptop for TRIBE business.)

Section 3.10 Internet Use Policy

- a) Internet / email service is a privilege and is provided to staff for business use only, except as otherwise specified in these policies. No employee should have any expectation of privacy as to his or her Internet usage. Supervisors and or the General Manager may review Internet activity and analyze usage patterns to assure that company Internet resources are devoted to maintaining the highest levels of productivity.
- b) While using the Internet, employees are subject to terms and conditions outlined by the Internet service provider TRIBE uses to connect to the Internet. Employee that are utilizing Internet services that charge by the minute are required to log time spent when such time exceeds 10 minutes for any single use.
- c) TRIBE may choose to limit Internet access to those employees who demonstrate a legitimate business need.
- d) Employees are strictly prohibited from accessing and/or reading other employees' email, unless specifically permitted to do so by the employee or authorized to do so by that employee's supervisor.

- e) The display of any kind of sexually explicit image or document on any TRIBE system is a violation of our policy on sexual harassment. In addition, sexually explicit material may not be accessed, archived, stored, distributed, edited, or recorded using our network or computing resources.
- f) Internet facilities and computing resources must not be used knowingly to violate the laws and regulations of the United States or any other nation, or the laws and regulations of any state, city, province, or other local jurisdiction in any material way. Use of any TRIBE resources for illegal activity is grounds for dismissal, and we will cooperate with any legitimate law enforcement activity.
- g) Each employee using the Internet facilities of TRIBE shall identify himself or herself honestly, accurately and completely (including one's company affiliation and function where requested) when participating in chats or news groups, or when setting up accounts on outside computer systems.
- h) TRIBE retains the copyright to any material posted to any forum, news group, chat, or World Wide Web page by any employee in the course of his or her duties.
- i) Employees are reminded that chats and news groups are public forums where it is inappropriate to reveal confidential TRIBE information.
- j) Employees shall not send movies, games, and images as email attachments, unless the files serve a legitimate business need.
- k) Employees shall not use electronic mail to solicit or advertise for commercial ventures, religious or political causes, outside organizations or other non-job related solicitations.
- l) Employees may use their Internet facilities for non-business emails, research or browsing during meal time or other breaks, or outside of work hours, provided that all other usage policies are adhered to and provided that the service has free access and does not charge by the minute, or provided that the employees logs all time spent and provides accounting with the specific log on-log off details of time spent.
- m) TRIBE may comply with requests from law enforcement and regulatory agencies for logs, diaries, and archives on individuals' Internet activities.
- n) Employees with Internet access may download only software with direct business use, and must arrange to have such software properly licensed and registered. Downloaded software must be used only under the terms of its license. All downloaded software becomes the property of TRIBE IRA.
- o) User IDs and passwords help maintain individual accountability for Internet resource usage. Any employee who obtains a password or ID for an Internet resource must keep that password confidential. TRIBE policy prohibits the sharing of user IDs or passwords obtained for access to Internet sites. The General Manager shall be required to keep a log of all employee passwords, if any, to ensure that TRIBE administrative staff has full access to all electronic files stored on TRIBE equipment. All electronic files stored on TRIBE equipment is the property of TRIBE and TRIBE retains the right to access such information at any time for any purpose.

ARTICLE IV - COMPENSATION

Section 4.00 Salaries.

Salaries for TRIBE IRA employees shall be paid in accordance with the board approved salary compensation system. Salaries in all cases shall be dependent on budgetary and contract considerations.

Section 4.05 Salary Increases.

Salary increases may be granted (in accordance with guidelines contained in the Salary Compensation System) if an employee's overall work performance is ranked good or better during the annual employee performance evaluation process. Salary increases for regular employees, if granted, will generally take effect on anniversary date of hire or anniversary date of last increase. An evaluation must be completed before a salary increase will be authorized. All salary increases are subject to budgetary considerations and must be approved by the General Manager and Finance Officer, who shall verify the availability of funds.

Section 4.10 Salary Reductions

Reductions in salary may result from budget cuts, reductions in program support, or reasons other than disciplinary actions. Reduction in salary is not considered a demotion and may be temporary, pending reinstatement of adequate funding. If a reduction in salary is caused by budget cuts, any reinstatement of salaries must be approved by the General Manager and Finance Officer.

Section 4.15 Payroll Deductions.

Payroll deductions will be made as required by law, court order, and such other written authorization as an employee may provide, subject to the approval of the Finance Officer.

Section 4.20 Pay Periods.

Employees shall be paid every two weeks. Employees are responsible for completing their bi-weekly time sheet by _____ of the week following the end of a pay period. Approved time sheets must be submitted to the Accounting Department by close of business on _____. If time sheets are not received prior to the deadline, the employee may not receive their paycheck until the following pay day. Implementation of the policy shall be at the discretion of the General Manager.

Section 4.25 Pay Advances.

Pay advances are generally discouraged but *may* be issued at TRIBE's discretion when: 1) an employee will be on vacation or travel status during a payday; or 2) in cases of extreme emergency such as medical reasons, family emergencies or natural disasters. Other circumstances will be evaluated on an individual basis by the employee's immediate supervisor and General Manager. The following expenses are not considered emergencies: rent, house payments, car payments, groceries or other normal monthly bills. A written request specifying why the advance is needed along with a time sheet documenting the hours worked to date during the current pay period shall be submitted to the General Manager prior to issuance of any advance. If approved, pay advances may not exceed the amount the employee earned to date during the current pay period.

Section 4.30 Overtime Compensation.

It is the policy of TRIBE IRA to reduce to a minimum the necessity for overtime work. All overtime must be approved in writing in advance by the immediate supervisor and the General Manager. If a supervisor assigns employee overtime, the employee must work the additional time. Overtime compensation shall be paid to non-exempt employees when they work in excess of an eight hour day or a forty hour work week at one and one half times the employee's normal rate of pay. Non-exempt employees required to work on a scheduled holiday will be paid double their regular rate of pay for any hours worked. Paid time off for holidays, jury duty, vacation, sick leave or any leave of absence will not be credited as a regular work day for computation of weekly overtime. All employees classified as exempt from overtime compensation under state and federal law shall not

be eligible to receive overtime compensation, unless prescribed by law. Exempt status will be indicated in all appropriate position descriptions, and employees will be notified of their status when hired or upon a change in status as approved by the General Manager and the Council.

Section 4.35 Compensatory Time

No employee is entitled to take "comp time" for hours worked outside of his or her regularly scheduled work day or work week. Non-exempt employees shall accrue overtime compensation pursuant to Article II, sections 2, and Article IV, section 7. An adjusted work schedule can be arranged upon mutual agreement of the employee and the supervisor where for one particular day, the hours are changed to meet certain situations. Exempt employees shall not accrue overtime or compensatory time.

Section 4.40 Errors in Employee's Pay.

It shall be the responsibility of each employee that he or she receives the exact amount of earnings due him or her. Errors on an employee's payroll check should be reported to Finance immediately upon discovery. The employee will be required to agree to a repayment program, in writing, in the event of an overpayment. If an employee has been underpaid an adjustment shall be made to correct the error at the earliest following pay period.

ARTICLE V - BENEFITS

Section 5.00 Holidays.

Each regular employee will be compensated for all holidays observed by TRIBE IRA, provided that the employee works (or is in pay status) the last work day before and the first work day after the holiday. If an employee has previously requested in writing, received approval, and has accrued available personal leave, to take personal leave for full days before or after a holiday, the employee will be paid for the holiday. Employees will be compensated for the same number of hours that they normally work each day. Employees on LWOP status will not receive holiday pay. TRIBE IRA will observe the following holidays:

New Year's Day - January 1
Martin Luther King, Jr. Day - January (Monday) 16
Washington's Birthday - Third Monday in February
Joe E. Brown Day - March 18
Memorial Day - Last Monday in May
Independence Day - July 4th
Labor Day - First Monday in September
Native American Day - October 12th
Veteran's Day - November 11th
Thanksgiving Day - Fourth Thursday in November
Christmas Day - December 25th
Employee's Birthday - Employee/Supervisor mutually agreed upon date

Non-exempt employees required to work on a scheduled holiday: 1) will be paid two times their regular rate of pay for hours worked; or 2) if agreed upon in writing by both the employee and the immediate supervisor, they may elect to observe another day as their holiday in lieu of receiving holiday pay for the holiday worked. An exempt employee required to work on a holiday will be given another day off at a time mutually convenient to the employee and their immediate supervisor. The General Manager, in consultation with the President may reschedule holidays (in example from mid-week to either end of the week) to enable employees to take a three day holiday.

Regular part-time employees will be granted a paid holiday to the extent that the holiday falls on their normal work day. Regular part-time employees scheduled to work less than 7 ½ hours on a holiday will be paid for the number of hours regularly worked on that day provided they work the day prior to and after the scheduled holiday or are authorized to take personal leave in advance. Temporary employees who have worked for TRIBE for one (1) month or longer shall receive holiday pay provided they work regularly scheduled work days before and after the holiday.

Section 5.05 Personal Leave

Regular and probationary employees who have completed three (3) consecutive months of employment shall accrue and be eligible to use personal leave. Except for illness or emergencies, the use of personal leave must be approved in advance by the immediate supervisor to ensure adequate staffing. Individuals requesting to take one or more weeks of paid personal leave may receive their paycheck in advance provided a pay day falls during the period of time for which leave is requested.

Personal leave accrues as of the date of hire for regular employees. Recently hired probationary employees may take personal leave up to the amount of hours accrued since their date of hire, if necessary because of child illness or personal illness. Recently hired probationary employees may not take paid personal leave for other purposes and may not donate personal leave.

The accumulation of personal leave will be as follows:

- a) 00-24 months of service: seven hours per pay period or one hundred eighty two hours per year (4.85 weeks);
- b) 25-48 months of service: eight hours per pay period or two hundred and eight hours per year (5.55 weeks);
- c) 49-72 months of service: nine hours per pay period or two hundred thirty four hours per year (6.24 weeks); and
- d) 73 months, (over six years of service) and over: ten hours per pay period or two hundred sixty hours per year (6.93 weeks).

Employees must maintain regular employee status to accumulate personal leave. Employees serving a probationary period following a transfer or promotion will continue to accrue and be eligible to use personal leave. Temporary employees do not accrue personal leave. Regular part-time employees will accrue personal leave at a rate proportional to the number of hours per pay period they are normally scheduled to work. Employees with prior service to TRIBE IRA will be allowed to use years of previous service in determining the rate of accumulation of personal leave, so long as the employee is re-hired within one year of separation. The rate of accumulation will be determined at the time of hire. All personal leave accrued shall be utilized before Leave without Pay (LWOP) is granted. On rare occasions, LWOP may be granted without exhausting personal leave on a case by case basis upon approval from your immediate supervisor, and final approval from the General Manager.

A regular employee requesting time off in excess of personal leave accrued must submit an application for leave without pay to their immediate supervisor, who shall forward the leave application along with his or her recommendation for final approval to the General Manager. A request for LWOP for more than 20 working days shall be submitted through the General Manager to the President for final approval. Employees are encouraged to use personal leave during the fiscal year in which it accrues. An employee who has accrued personal leave in an amount greater than his or her annual accumulation on January 1 of any year will be automatically cashed out. Employees

must give notice and have the leave request approved prior to taking personal leave. Employees who have completed one year of service and have completed their probationary period may cash out accrued leave upon approval by the General Manager. Employees are encouraged to utilize at least two weeks (75 hours) of leave in each calendar year. All cash-outs will be considered taxable income and the appropriate deductions will be made.

Section 5.10 Subsistence Leave

Regular employees are eligible to take up to five (5) days subsistence leave (either as LWOP or charged against personal leave) after 12 consecutive months of employment. Subsistence leave cannot be cashed out, may not be used after a resignation is submitted and must be used by December 31st of each year. Employees must coordinate subsistence leave with their supervisors and approval will be based on providing adequate coverage of job duties during ones absence.

Section 5.15 Bereavement Leave

If a regular employee suffers a death in the immediate family, paid emergency leave MAY be granted to the employee, up to a maximum of five (5) days, and not chargeable to the employee's personal leave. Immediate family member is defined as a spouse or significant other (boyfriend, girlfriend, mother, or father of shared children) grandparents, grandchildren of the employee, parents, children, and siblings of the employee and their significant other or spouse. If the employee suffers a death of a person other than an immediate family member, and a close relationship is known to exist, bereavement leave may be granted. An employee requesting bereavement leave shall notify his/her immediate supervisor and who shall forward the request to the General Manager for approval. The General Manager shall consult with the President prior to making decisions where no family relationship exists.

Section 5.20 Admin Leave

TRIBE employees who serve on various boards and commissions, as long as their representation provides benefit to the residents of the Bering Straits region and does not seriously impact their ability to effectively fulfill their job functions, may be granted [paid] [unpaid] Administrative Leave by the General Manager to attend periodic meetings of such boards and commissions. Admin Leave shall not exceed one week per quarter for each employee. If an employee is requesting Admin Leave greater than one week per quarter, they must obtain approval by the President. If permission is granted, employees will not be required to take personal leave during the time they are away from the worksite. Otherwise, employees may request to take personal leave and if so approved, may attend the meetings.

Section 5.25 Family and Medical Leave

Family and personal leave for medical reasons may be granted to any employee for up to twelve (12) weeks preceding and/or following the birth of a child or an adoption, the need to care for a child, spouse, or parent with a serious health condition or a health condition which limits the employee's job performance. Such absence shall be charged against personal leave unless leave without pay (LWOP) is requested and approved. An employee will be determined to have resigned if he or she does not return to work after the twelve (12) weeks leave is used, unless written permission has been granted by the General Manager, in consultation with the President, for a leave extension. Employees must have worked for at least one year and for at least 1250 hours to be eligible to receive family leave. The employee will not accrue leave during the time they are on Leave Without Pay (LWOP) status. An employee on family leave or personal leave for medical

reasons cannot collect unemployment or other government compensation. You should refer to your group insurance benefit booklet to see if disability coverage applies.

Employees are requested to provide thirty (30) days notice for foreseeable leaves for birth, adoption or planned medical treatment. When a husband and wife, unwed parents or legal guardians, are employed by TRIBE and are entitled to leave because of the birth or adoption of a child or to care for a sick person, the total combined leave period may be limited to twelve (12) weeks. TRIBE may obtain medical opinions and certificates on the need for the leave and may require another medical opinion. Medical certifications must include the date the condition began, probable duration, and appropriate medical facts in order to support an employee's claim to take temporary medical leave.

A *qualifying condition* is defined as the need for continuing care and the inability to perform one's job, or the need to care for an ill family member. Employees on leave may be asked to report periodically on their status and intention of returning to work. In the event of necessary layoffs, a person on leave will receive the same consideration that they would normally receive had they not been on leave.

Section 5.30 Jury Duty

Paid leave of absence will be granted to an employee for jury duty, witness duty, or other civil duties up to a maximum of 30 working days. Such leave will not be charged against an employee's personal leave. The employee's Jury or Civil Duty compensation will be turned in to the Accounting Department so that the employee incurs no financial loss or gain.

Section 5.35 Military Leave

Leaves of absence will be granted to an employee for military training and encampment duties. Such leave may not exceed 10 working days per calendar year without the prior written approval of the General Manager. The employee's compensation will be reduced by the amount the employee receives for such military duty, less expenses, so that the employee incurs no financial loss or gain.

Section 5.40 Insurance

[Note: This section applies only if the Council has elected to carry an employee medical insurance benefit plan.]

Regular employees who work 30 or more hours a week, and who have successfully completed their initial probationary period or the probationary period determined by the immediate supervisor and TRIBE General Manager, are eligible to enroll under the TRIBE IRA group insurance plan. The plan provides medical, dental, life, and disability coverage to the extent program budgets allow. Regular seasonal employees are eligible for insurance benefits only during the period of active employment. They may continue their insurance benefits during that portion of the year when they are not actively employed, provided they reimburse TRIBE for the expense of continuing their benefits. In some instances, depending on the administration or program budget, TRIBE may elect to continue insurance coverage for employees not in active work status provided the individuals return to work within 120 days. A booklet thoroughly explaining the TRIBE Insurance Plan is available from the finance office or main administrative headquarters office.

The General Manager will be responsible for ensuring that an orientation is given on the benefits and insurance available to each employee. Temporary employees are not entitled to participate in TRIBE benefit programs. Each employee is responsible for notifying the Finance Officer in the event of a change in family or other status (births/adoptions, marriage, death, divorce, etc.) and updating their insurance, beneficiary and other information as necessary. [Check to see this is in compliance with current TRIBE Plan: Regular seasonal employees who were eligible for the prior (seasonal) year

insurance and works: 1) 30 hours per week for the Regular Class 1 plan; or 2) 17 ½ hours (for grandfathered employees) for the Reduced Class 2 plan, will continue insurance the beginning of the next month following the rehire date.]

Section 5.45 Pension

TRIBE administers a Pension Plan for the benefit of its employees. Employees must maintain regular employee status in order to participate in this plan. Regular employees are eligible to enter the plan after 12 consecutive months of service during which they have completed at least ____ hours of work. Entry dates to the plan are January 1 and July 1 of each year. Employees who terminate employment may withdraw their vested share of pension contributions. Employees should contact the Finance Officer for additional information.

Section 5.55 Reductions in Benefits

Benefits received by employees may be reduced due to budgetary considerations with two weeks written notice. It may also become necessary to set in place an employee contribution plan to assist in funding employee benefits. In the event either scenario is likely to occur, TRIBE IRA will give as much notice to employees as is reasonably possible.

ARTICLE VI - REIMBURSEMENT FOR EXPENSES

Section 6.00 Travel, Perdiem Payments/Expenses, General Travel Information.

Travel advances and per diem payments will be made promptly to employees engaged in official business. Air travel will be arranged by and purchased directly through the IRA or its designated agent. All employees will be required to fill out a Travel Authorization form which must be approved and signed by the traveler's immediate supervisor and the General Manager. 10 % of travel advances will be withheld pending the completion of a Trip Report which shall be completed with 10 days of traveling on official business. To be entitled to compensation for travel costs, employees must also adhere to the following policies and procedures:

- a) Attend all trainings, workshops or other official business for which travel costs and per diem has been provided.
- b) Employees traveling on trips that begin and end on the same day will be entitled to one half the normal per diem rate regardless of the time spent or place traveled to during the day.
- c) Any employee that attends to official business under the influence of drugs or alcohol will forfeit their per diem for that day. If an employee misses the majority of any business for which she or he has been authorized to travel for, the employee may be required to repay all costs associated with the travel and may be subject to further disciplinary action as provided under these policies. Repayment decisions shall be made by the Council upon recommendation of the General Manager.
- d) Any employee that develops a pattern of violating subsection (c) above will be prohibited from traveling for the Native Village of TRIBE for a period of time to be determined by the Council and may be required to pay back per diem and travel costs for any trip where documented abuses have occurred.

ARTICLE VII - EMPLOYEE RELATIONS

Section 7.00 Suggestions.

It is the policy of TRIBE to encourage employee recommendations for improving program and service delivery as well as administrative processes and procedures. This includes the identification of problems as well as suggested solutions. Employees are encouraged to put their comments and

recommendations in writing and forward them to their supervisor or the General Manager. The General Manager will give serious consideration to all staff comments and recommendations and take such action as he/she may deem appropriate and within his/her delegated authority. Where necessary, recommendations shall be forwarded to the Council for consideration and action. Suggestions which are adopted will be credited to the employee and noted in his or her personnel file.

[Optional] Section 7.05 Employee Personnel Policy Review Committee

Annually, the General Manager of TRIBE shall solicit and appoint interested employees to sit on the Employee Personnel Policy Review Committee. This committee shall consist of three (3) employees (in addition to the General Manager) who shall serve for a one (1) year period. The committee will review and recommend proposed changes to the TRIBE Personnel Policies to the IRA Council.

Section 7.10 Voluntary Separations.

All employees are requested to give least two (2) weeks' notice of their resignation. Lack of notice shall be noted in the employee's personnel file and considered in future hiring decisions unless the General Manager agrees in advance in writing to a shorter time frame. Supervisors are responsible for completing the Exit Interview with the terminating employee. If an employee is terminated, their final paycheck shall be made available to them within three (3) working days of their termination date. If an employee resigns, the final paycheck shall be available at the next regular payday or as otherwise agreed to by the General Manager.

Section 7.15 Post Employment

It is against TRIBE policy to provide information about a former employee to potential employers without a signed and dated authorization from the former employee to do so. Any statements made must be statements of fact and not subjective opinion. If contacted by a potential employer who does not have a signed authorization from the former employee, employees are required to refer the individual to the General Manager or Finance Officer who will verify dates of employment, salary and position held unless a signed agreement is on file releasing other information.

ARTICLE VIII - DISCIPLINE

Section 8.00 Discipline

Disciplinary action by a supervisor or the General Manager will be initiated to remind, encourage, or reprimand employees regarding conduct, performance of duties, or attendance.

Section 8.05 Causes of Disciplinary Action.

As stated previously, employees of TRIBE serve at-will and their employment may be terminated at any time, for any reason. The following list is representative of some of the activities which may result in disciplinary action. It is not comprehensive and does not alter the employment at-will relationship between the employee and TRIBE:

- a) Conviction of a felony;
- B) Conviction of a misdemeanor which is related to the position held by the employee;
- c) Addiction to the use of alcoholic beverages or to the use of narcotics which affects the performance of the employee's duties;
- d) Partaking of intoxicants or controlled substances or being under the influence while on duty;
- e) Insubordination or refusal to comply with instructions or failure to perform reasonable duties which are assigned;

- f) Inefficiency or incompetence;
- g) Inattention to duty, repeated tardiness, negligence in the care and handling of TRIBE IRA property, willful or repeated violation of basic safety practices;
- h) Improper or unauthorized use of TRIBE IRA vehicles or equipment;
- i) Absenteeism from work without authorized leave;
- j) Misconduct in the performance of employee duties;
- k) Willful giving of false information or withholding information with intent to deceive when making application for employment;
- l) Falsification of company records including but not limited to employment application or time sheet;
- m) Threatening, intimidating, coercing, using abusive language, or interfering with the performance of fellow employees;
- n) Violence against co-workers, clients, or general public at the workplace.
- o) Intentional violations of the TRIBE IRA Personnel Policies
- p) Theft.
- q) Sexual or other prohibited harassment.
- r) Positive drug screen.
- s) Misuse of the email and the Internet.

Section 8.10 Disciplinary Procedure

Where appropriate, a policy of progressive discipline will be followed by supervisors. While this policy provides for several levels of disciplinary action, employees should be aware that progressive discipline is not required. That is, TRIBE IRA reserves the right to impose disciplinary measures not in accordance with this policy if it determines that such measures are necessary due to the circumstances of a particular case. Supervisors shall initiate constructive efforts to assist employees to achieve satisfactory standards of conduct and job performance and shall seek to address employee problems or negative behavior only to the extent required. All disciplinary notices and actions must be thoroughly documented in writing. Depending on the facts and circumstances involved in each situation, supervisors may choose to begin disciplinary action at any step. In general, however, it follows this process:

a) *Oral Warning*: For minor infractions, the employee will be issued an oral warning. An oral warning serves to caution the employee that corrective action is necessary to avoid a more serious form of discipline. If the situation does not improve within a reasonable time, the supervisor may repeat the warning or implement a more serious discipline option. The supervisor will document the date and nature of the oral warning, have this document placed in the employee's personnel file, and ensure that the employee is given a copy of the document immediately. The documentation of Oral Warnings will be kept in the personnel file for a period up to 1 year.

b) *Written Reprimand*: A written reprimand is a warning action that places the employee on notice that failure to correct conduct will result in more severe discipline. Copies of written reprimands will be permanently placed in the employees personnel file. This may be issued for repeated minor infractions, or a more substantial infraction. If the situation does not improve within a reasonable time, the supervisor may repeat the measure or take the steps required to discharge the employee. The written warning notice will be prepared following a disciplinary interview with the employee. The employee will be given an opportunity to comment in writing and will be asked to sign the notice, acknowledging receipt. Three copies of the notice will be distributed as follows: 1) employee; 2) supervisor; and 3) personnel file.

c) *Probation*: A regular employee may be placed on probation by the General Manager, upon recommendation from a supervisor, for up to one hundred and eighty (180) days for disciplinary purposes. The employee shall be notified in writing: 1) why they are being placed on probation; 2) what is expected from them in terms of improved work performance; 3) that failure to correct conduct could result in more severe discipline up to and including termination. A copy of the probationary notice shall be placed in the employee's personnel file. If the situation does not improve within a reasonable time, the supervisor may take the steps required to discharge the employee. A regular employee placed on probation and subsequently dismissed, shall have the right to appeal the dismissal to the IRA Council.

d) *Demotion*: A demotion in position may be used as a form of discipline when discharge is not warranted, or when the General Manager believes the employee has the potential to correct his or her conduct or to satisfactorily perform the duties of a different position.

e) *Suspension Without Pay*: For major infractions, or failure to respond appropriately to prior disciplinary action, suspension without pay may be the appropriate recourse. A suspension without pay may only be imposed by the General Manager, in consultation with the President, and shall not exceed ten (10) working days at any one time. A suspended employee shall be notified in writing of the reasons for suspension, and the avenue available for appealing the General Manager's decision. The suspended employee shall be afforded an opportunity to respond in writing to the reasons for suspension within ten (10) working days of the notice of suspension. Following the employee's response, the General Manager may affirm or modify the suspension order.

f) *Discharge*: When in the judgment of the employee's supervisor and the General Manager, an employee has committed a major infraction or has failed to respond appropriately to prior disciplinary action, or it is otherwise determined that discharge is an appropriate disciplinary action, an employee may be discharged. A temporary employee may be dismissed at any time without recourse to the employee grievance or appeal procedure. Dismissals may be effective immediately if the General Manager believes it is in the best interest of the organization that the employee be removed from the workplace. The regular employee shall be given written notice of the discharge. The notice shall include a statement: 1) of the improper conduct, inadequate performance or other reasons for dismissal; 2) the effective date of the dismissal; 3) explaining what avenues are available for appealing the action to dismiss.

Section 8.15 Appeal for Suspensions/Dismissals

Any regular employee, who is suspended and/or dismissed, shall have the right to appeal such action directly to the IRA Council. This right of appeal is the exclusive remedy for a suspended or dismissed employee and the decision of the Council shall be final and binding on the parties. Not later than ten (10) working days after the receipt of the notice of suspension or the receipt of notice of the effective date of the dismissal, the affected individual must submit a request or notice of appeal to the General Manager who will forward the appeal to the President. The appeal must be in writing and must contain a detailed statement specifying: a) the action being appealed; b) the reasons why the employee believes the action was not in good faith or was in error. The council shall take action on the appeal within ____ days of receipt from the General Manager, who shall record the date it is turned over to the President.

Section 8.20 Grievance Policy

It is the general policy of TRIBE IRA to provide for an orderly process whereby employees may have their problems and concerns addressed as fairly and rapidly as possible without fear of reprisal. These procedures are available to all employees, except employees who have resigned or whose

term of employment otherwise ends before the grievance process can be completed. Every effort will be made to find an acceptable solution by informal means at the lowest possible level of supervision.

Definition of Grievance: The term "grievance" means all allegations by an employee or group of employees that such claimant's rights, benefits, privileges, or interests provided for in the personnel policy have been violated or that the personnel policy has been misapplied or misinterpreted with respect to such claimant in a particular case.

Section 8.25 Grievance Procedure

The procedure for an employee with a problem or complaint would be to first informally talk with the immediate supervisor. If it is not resolved, then the following steps should be taken:

- a) The employee may proceed individually or select a representative to assist them in resolving the problem or concern at hand.
- b) The employee shall document the problem clearly and concisely in writing. Memo in hand, the employee shall sit down and have a frank and open discussion with the immediate supervisor to seek to resolve the situation. If the employee has bona fide reason to believe that there is a complete breakdown of employee-supervisor communications and that the matter cannot be satisfactorily resolved through this step, the employee may develop and present written documentation to the next supervisory level, which if the General Manager is the immediate supervisor, may be the President.
- c) If the immediate supervisor is unable to satisfactorily resolve the matter within ten (10) working days of receiving the written memo, the employee should then, within ten (10) working days, present the same to the General Manager, or if the General Manager is the immediate supervisor, directly to the President.
- d) If the immediate supervisor is able to resolve the matter, he/she shall provide a brief written summary of the issues and the resolution of the matter to the General Manager who shall hold such written documentation in an independent, separate, confidential file. If the matter goes to the General Manager for resolution, he/she will give full consideration to the problem and, if necessary confer with the parties concerned. After reviewing the written documentation and conferring with the parties concerned, the General Manager shall within ten (10) working days take appropriate action which must be in writing and may be in the form of a recommendation to the supervisor and the employee or other employees or an order requiring compliance with applicable rules and regulations. The General Manager may also determine that the grievance is without merit and dismiss it.
- e) If the employee does not believe the General Manager has properly resolved the matter or does not agree with the decision to dismiss, within ten (10) working days of receiving the General Manager's written determination, the employee may request in writing that the grievance be forwarded to the Council for their consideration. The Council shall consider all available information and make a decision on the appeal within 30 days of receipt. The decision of the Council shall be final.

Section 8.65 Other Personnel Actions.

The following is a description of other non-disciplinary actions which may be taken. This list is not all encompassing. Other actions may be taken which are not noted below:

a) *Lay-off/ Reduction in force.* When a reduction in force is deemed necessary because of a shortage of funds or work, the General Manager shall, upon consideration of the recommendations of the Program Director, determine which position (s) will be deleted. The recommendations of the General Manager will be presented to the Council for final decision.

Any employee who is laid off because of funding constraints will receive maximum feasible notice of termination, but in no event less than two weeks notice. Layoffs shall not be considered disciplinary actions. In the event that funding is inadequate to maintain existing staff levels, the criteria which will be used in determining lay-offs will be the position's role in program priorities and work plans. All attempts will be made to transfer an employee subject to layoff notice to any available vacancy within the organization for which the employee is qualified, subject to program regulations. An employee laid off because of funding constraints will receive preference for rehire for a one year period after layoff providing that they meet the minimum requirements for an available position.

b) *Demotions.* Because of funding or staffing constraints, it may be necessary for the General Manager to demote some positions. Demotions because of funding or staffing constraints shall not be considered disciplinary actions.

c) *Transfers.* Transfer of an employee from one job to another job requiring the same general skills may occur as a result of changes in staffing, funding, at the initiative of the General Manager, or at the request of the employee. Transfers shall not be considered disciplinary actions.

e) *Promotions.* TRIBE employees are encouraged to apply for positions within the organization which they feel confident they can successfully fill. All else being equal, an effort will be made to promote from within a capable and experienced individual, based on their demonstrated ability to assume greater responsibility.

ARTICLE IX - TRAINING AND DEVELOPMENT

Section 9.00 School Attendance

Employees may be granted time off from work with or without pay to attend school (including correspondence school) for job related courses during normal work hours. Any such requests must be directed to the employee's immediate supervisor and approved by the General Manager.

Section 9.05 Continuing Education

TRIBE IRA will reimburse for the book costs and tuition of regular employees successfully completing courses (if funds are available) with a grade of "C" or better through an institution of higher education not to exceed two courses per term. The course(s) must increase the competence of staff in present jobs and/or prepare them for advancement within the organization. Courses that are not job-related will not be reimbursed. If an employee wishes to take courses during normal duty hours, or seeks to have tuition or book costs reimbursed, they must have prior written approval from the General Manager. Time spent attending classes or training outside regular working hours is not work time, whether or not it is job-related.

Section 9.10 Sabbatical Leave

Employees who have worked for TRIBE for ten or more years or more may request sabbatical leave for a period of time not to exceed a total of one year. This sabbatical leave will be primarily for the purpose of completing a degree or some other similar worthy endeavor which will improve the employee's job performance. The employee must prepare and submit a sabbatical proposal to the General Manager who will prepare a recommendation for presentation and approval to the Council. If approved by the Council, employees may be allowed one sabbatical leave during their career with

TRIBE unless special conditions warrant a waiver of this limit. Those employees, who request and receive sabbatical leave, will be offered their position back at the end of the sabbatical period, providing the funding is still available. Employees wishing to continue medical/dental/life insurance during their sabbatical will need to pay for their own coverage. Employees requesting a sabbatical must submit the request at least six months in advance. The Board will make the final decision as to whether or not to approve an employee's request for sabbatical leave.

Section 9.15 Training Positions.

Upon a recommendation by the General Manager and approval by the Council, positions within TRIBE may be designated as trainee positions. Training positions shall be advertised in house. If a position is designated as a trainee position, the supervisor overseeing the training position will develop a training plan (which must be approved by the General Manager) to bring a selected individual up to the skill and knowledge level necessary to satisfactorily perform all functions of a job. The employee filling the position will receive a wage one grade less than the starting wage for the position - until such time as they master the various skills and knowledge necessary to satisfactorily accomplish job functions. Savings realized in salary may be used to pay for training for the individual occupying the training position. The training plan will include the approximate time frame of the training along with a detailed plan which will include an evaluation of the success of the training and a decision on whether to promote the individual into the position for which they were potentially trained, assign them to another position if one is available, or released from employment.

DEFINITIONS

Anniversary Date - The date of hire, lateral transfer, demotion, or promotion

Demotion - The voluntary or involuntary transfer of an employee from a position in one pay-grade to a position in a lower pay grade.

Employment Date - The date an employee begins performance of job duties and is placed on the payroll.

Emergency Hire - An emergency full or part-time employee hired to fill a vacancy for a period during the recruitment process.

Exempt Employee - are those employees employed in an executive, administrative, or professional capacity

An *executive* is any employee:

- 1) Whose primary duty consists of the management of the enterprise in which she or he is employed or of a department or subdivision of it;
- 2) Who customarily and regularly directs the work of two or more other employees therein;
- 3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or other change of status of other employees is given particular weight;
- 4) Who customarily and regularly exercises discretionary powers;
- 5) Who does not devote more than 20 percent of his or her hours during the workweek to activities not directly and closely related to the performance of duties described above; and

6) Who is compensated for his or her services on a salary basis at a rate of not less than \$155 per week.

An employee employed in an *Administrative Capacity* is any employee:

- 1) Whose primary duty consists of either office or non-manual work directly related to management policies or general business operations or administrative functions for a school system, educational establishment, or institution directly related to academic instruction or training;
- 2) Who customarily and regularly exercises discretion and independent judgment;
- 3) who regularly and directly assists an executive; or who performs, under general supervision only, specialized work requiring special training, experience or knowledge, or who executes, under general supervision only, special assignments and tasks;
- 4) Who does not devote more than 20 percent, of his or her hours worked in the workweek to activities not directly related to the functions described above;
- 5) Who is compensated for his or her services on a salary or fee basis at a rate of not less than \$155 per week.

An employee employed in a *Professional Capacity* is any employee whose primary duties consist of:

- 1) Work requiring advanced knowledge acquired by a prolonged course of specialized intellectual instruction and study;
- 2) Work that is original and creative in character in a recognized field of artistic endeavor; or
- 3) Teaching, instructing, or lecturing for an educational establishment;
- 4) Whose work requires the consistent exercise of discretion in its performance;
- 5) Whose work is predominantly intellectual and varied in character;
- 6) who does not devote more than 20 percent of his or her hours worked during the workweek to activities not essential to the work described above; and
- 7) Who is compensated for services on a salary or fee basis at a rate of not less than \$170 per week.

Family, Immediate - Spouse or significant other, grandparents, grandchildren of the employee, parents, children, siblings of the employee or significant other or spouse.

Full Time - An employee scheduled to work 40 hours per week.

Non-Exempt Employee - A full time or part-time employee who does not meet the criteria for exemption as an executive, administrative, professional employee or other non-exempt capacity as defined under applicable federal and state law.

Overtime - Time worked in excess of 8 hours in any one day, or 40 hours in any workweek, or in excess of the hours indicated in a certified flexible work hour plan by a non-exempt employee.

Pay-grade - The pay range established for a specific position.

Part-time - An employee scheduled to work less than 40 hours per week.

Personnel Policy Committee - The General Manager, Vice General Manager, and Human Resources Director Other employees are appointed annually.

Probationary Employee - A regular employee's status upon initial hire, lateral transfer, demotion, or promotion The probationary period gives the appropriate supervisor a period in which to determine whether the regular employee is able to perform his/her job duties satisfactorily.

Regular Employee - A full time or part-time employee who is neither a temporary hire, nor an emergency hire

Temporary Employee - A full or part-time employee hired to fill a vacancy for a period not to exceed a 1 year period and who is not entitled to share in employee benefits.

SAMPLE PERSONNEL FORMS: Table of Contents

REVISED 03/29/06

SAMPLE PERSONNEL FORMS

1. Recruitment Forms

- Job Description – Tribal Administrator
- Authorization to Recruit
- Employment Application
- Authorization to Release Information
- Interview Questions
- Skills Test *(Tribal Administrator needs to determine)*
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- Scoring Sheets

2. Payroll Forms

- Payroll Status Form
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3. Mandatory Forms for All Employee Files

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- Leave Request Form

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- Check Request
- Professional Services Agreement
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- W-9 Form

Six Good Faith Efforts and Contract Administration Fact Sheet

The Six Good Faith Efforts and Contract Administration Requirements

The Keys to Outreach and Opportunity

Program Comparison

Old MBE/WBE Program

New DBE Program

Following the “Six Affirmative Steps” under 40 CFR Part 31, and the Six Positive Efforts under 40 CFR Part 30 were required by all grantees.	The “Six Good Faith Efforts” combine the “Six Affirmative Steps” and the “Six Positive Efforts” and are still required by all grantees. The substance of the efforts has not changed.
No protections for DBE Subcontractors	Several mechanisms are in place to protect DBE Subcontractors: <ul style="list-style-type: none"> • 30 day payment provision, notifications of DBE terminations, and continuing the Six Affirmative Steps after termination of a DBE. • Completion of 3 new forms to prevent “bait and switch” tactics. None of these new forms are completed, or submitted by the grant recipient. These forms are filled out by the recipient’s prime contractors and subcontractors.
No mechanism for recipients to develop and maintain their own list of DBEs	Recipients are now required to create and maintain a bidders list. There is a \$250K exemption for this requirement.

What is the Purpose of the Six Good Faith Efforts?

The Good Faith Efforts are required methods implored by all EPA financial assistance agreement recipients to ensure that all disadvantaged business enterprises (DBEs) have the opportunity to compete for procurements funded by EPA financial assistance dollars.

What are the Six Good Faith Efforts?

- Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that

encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

- Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

What are the New Contract Administration Requirements?

There are a number of new provisions designed to prevent unfair practices that adversely affect DBEs. Those provisions are as follows:

- A recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.
- A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.
- If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six good faith efforts if soliciting a replacement subcontractor.
- A recipient must require its prime contractor to employ the six good faith efforts even if the prime contractor has achieved its fair share objectives.

What Are the New Forms Associated With the New Contract Administration Provisions?

- EPA Form 6100-2 - DBE Program Subcontractor Participation Form. This form gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have.
- EPA Form 6100-3 - DBE Program Subcontractor Performance Form. This form captures an intended subcontractor's description of work to be performed for the prime contractor and the price of the work submitted to the prime.

- EPA Form 6100-4 – DBE Program Subcontractor Utilization Form. This form captures the prime’s intended use of an identified DBE subcontractor, and the estimated dollar amount of the subcontract.

Form	Requirement	Provided By:	Completed By:	Submitted To:
EPA Form 6100-2	Recipients required to have prime contractors provide form to Subcontractors	Prime Contractors	DBE Subcontractors	EPA DBE Coordinator
EPA Form 6100-3	Recipients required to have prime contractors provide form to Subcontractors	Prime Contractors	DBE Subcontractors	Recipients as part of a bid or proposal package
EPA Form 6100-4	Recipients required to have prime contractors complete the form	Recipients	Prime Contractors	Recipients as part of a bid or proposal package

What is the New Bidders List Requirement?

The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate of a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors.

- A recipient of a Continuing Environmental Program Grant or other annual grant must create and maintain a bidders list.
- A recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements.
- The list must include all firms that bid or quote on prime contracts, or bid or quote subcontracts on EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs.
- The bidders list must only be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. For entities receiving identified loans, the bidders list must only be kept until the project period for the identified loan has ended.

What Information Must Be Retained on the Bidders List?

- (1) Entity's name with point of contact;
- (2) Entity's mailing address, telephone number, and email address;
- (3) The procurement on which the entity bid or quoted, and when; and
- (4) Entity's status as an MBE/WBE or non-MBE/WBE.

What Are There Exemptions From The Bidders List Requirements?

- A recipient of an EPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is exempt from the requirement to create and maintain a bidders list.
- A recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the bidders list requirement to an entity receiving an identified loan in an amount of \$250,000 or less, or to an entity receiving more than one identified loan with a combined total of \$250,000 or less in any one fiscal year.
- These exemptions are limited to the bidders list requirements only.

Standard Industry Classification (SIC) codes

The following standard industrial classification codes may be relevant on EPA funded projects.

Activity	SIC Code
Construction	
Industrial buildings	1541
Heavy construction water/sewer	1623
Other heavy construction (non-residential)	1629
Concrete work	1771
Excavation work	1794
Equipment/Supplies	
<u>Manufacturers</u>	
<i>If items purchased from manufacturer</i>	
Office furniture	2521, 2522, 2531, 2441, 2424, 2591, 2599
Office supplies (paper, etc.)	2676, 2677, 2678
Computer/Office	3571, 3572, 3575, 3577, 3578, 3579
Lab equipment	3826, 3829
<u>Retail Equipment/Suppliers</u>	
Courier services	4215
Local trucking	4212
Travel agencies	4724
Telephone services	4822
Clean-up (oil spills, pesticides)	4959
Furniture sales (office)	5021
Office equipment	5044
Computer	5045
Office supplies	5046
<u>Motor Vehicle Supplies</u>	
Wholesale sales	5012
Parts	5013, 5015, 5531
Tires	5014
Dealers	5511
Gasoline	5541
Services	
<u>Motor Vehicle Services</u>	
Rental (cars)	7514
Rental (trucks)	7513
Motor vehicle repairs	7532-7539

Computer Services

Rental	7377
Maintenance	7378, 7379

Professional Services

Engineering services	8711
Architects	8712
Surveyors	8713
Accountants	8721
Testing laboratories	8734

Miscellaneous Services

Hotels	7011
Photocopying	7334
Pest control	7342
Janitorial	7349
Air conditioning/heating service and repair	7623

Title 2 of the Code of Federal Regulations

See Office of Management and Budget (OMB) Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments

Title 25 of the Code of Federal Regulations

Title 25: Indian Self-Determination and Education Assistance Act

CHAPTER 14, SUBCHAPTER II, SECTION 450e: WAGE AND LABOR STANDARDS

(a) Similar construction in locality

All laborers and mechanics employed by contractors or subcontractors (excluding tribes and tribal organizations) in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this subchapter, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. With respect to construction, alteration, or repair work to which the Act of March 3, 1921 ^[1] is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14, of 1950, and section 3145 of title 40.

(b) Preference requirements for wages and grants

Any contract, subcontract, grant, or subgrant pursuant to this subchapter, the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 452 et seq.], or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

1. Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and
2. 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 1452 of this title.

(c) Self-determination contracts

Notwithstanding subsections (a) and (b) of this section, with respect to any self-determination contract, or portion of a self-determination contract, that is intended to benefit one tribe, the tribal employment or contract preference laws adopted by such tribe shall govern with respect to the administration of the contract or portion of the contract.

Title 40 of the Code of Federal Regulations

Title 40: Protection of Environment

PART 31—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=5a1429fbbf2abc09f57143e37e36bbfd&rgn=div5&view=text&node=40:1.0.1.2.29&idno=40>

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[Appendix A to Part 31—Audit Requirements for State and Local Government Recipients](#)

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, 8087, Mar. 11, 1988, unless otherwise noted.

Subpart A—General

§ 31.1 Purpose and scope of this part.

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.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 31.3 Definitions.

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 in-kind 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.

(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.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other non-regulatory 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.

(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

§ 31.10 Forms for applying for grants.

(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 pre-applications 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 face sheet, 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.

(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.

(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.

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

Financial Administration

§ 31.20 Standards for financial management systems.

- (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.

(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.

(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.

(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.

(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.

(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.

(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

§ 31.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to re-budget 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 form 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.

(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.

(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.

(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.

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.

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.

(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 analysis 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 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 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 commercial 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, material, men 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) The new DBE Rule at 40 CFR part 33 replaced the information contained in 40 CFR 31.36(e).

(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 reasonableness 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; 73 FR 15913, Mar. 26, 2008]

§ 31.37 Subgrants.

(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.

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

§ 31.40 Monitoring and reporting program performance.

(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.

(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.

(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.

(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 non-cancellable, 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.

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.

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

§ 31.50 Closeout.

(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.

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.

(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 administrative 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]

Subpart F—Disputes

§ 31.70 Disputes.

(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.

(1) 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

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” (appropriate) 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 addition 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 cognizant 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 follow-up 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 assistance 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 work papers and reports.* Work papers 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 work papers 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 is 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.

[51 FR 6353, Feb. 21, 1986. Re-designated at 53 FR 8076, Mar. 11, 1988]

Title 40: Protection of Environment

PART 33—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PROGRAMS

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Authority: 15 U.S.C. 637 note; 42 U.S.C. 4370d, 7601 note, 9605(f); E.O. 11625, 36 FR 19967, 3 CFR, 1971 Comp., p. 213; E.O. 12138, 49 FR 29637, 3 CFR, 1979 Comp., p. 393; E.O. 12432, 48 FR 32551, 3 CFR, 1983 Comp., p. 198.

Source: 73 FR 15913, Mar. 26, 2008, unless otherwise noted.

Subpart A—General Provisions

§ 33.101 What are the objectives of this part?

The objectives of this part are:

- (a) To ensure nondiscrimination in the award of contracts under EPA financial assistance agreements. To that end, implementation of this rule with respect to grantees, sub-grantees, loan recipients, prime contractors, or subcontractors in particular States or locales—notably those where there is no apparent history of relevant discrimination—must comply with equal protection standards at that level, apart from the EPA DBE Rule's constitutional compliance as a national matter;
- (b) To harmonize EPA's DBE Program objectives with the U.S. Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995);
- (c) To help remove barriers to the participation of DBEs in the award of contracts under EPA financial assistance agreements; and
- (d) To provide appropriate flexibility to recipients of EPA financial assistance in establishing and providing contracting opportunities for DBEs.

§ 33.102 When do the requirements of this part apply?

The requirements of this part apply to procurement under EPA financial assistance agreements performed entirely within the United States, whether by a recipient or its prime contractor, for construction, equipment, services, and supplies.

§ 33.103 What do the terms in this part mean?

Terms not defined below shall have the meaning given to them in 40 CFR Part 30, Part 31, and Part 35 as applicable. As used in this part:

Availability analysis means documentation of the availability of MBEs and WBEs in the relevant geographic market in relation to the total number of firms available in that area.

Award official means the EPA Regional or Headquarters official delegated the authority to execute financial assistance agreements on behalf of EPA.

Broker means a firm that does not itself perform, manage, or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor.

Construction means erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply.

Disabled American means, with respect to an individual, permanent or temporary physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

Disadvantaged business enterprise (DBE) means an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102–389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note); a Small Business Enterprise (SBE); a Small Business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program.

Disparity study means a comparison within the preceding ten years of the available MBEs and WBEs in a relevant geographic market with their actual usage by entities procuring in the categories of construction, equipment, services, and supplies.

Equipment means items procured under a financial assistance agreement as defined by applicable regulations (for example 40 CFR 30.2 and 40 CFR 31.3) for the particular type of financial assistance received.

Fair share objective means an objective expressing the percentage of MBE or WBE utilization expected absent the effects of discrimination.

Financial assistance agreement means grants or cooperative agreements awarded by EPA. The term includes grants or cooperative agreements used to capitalize revolving loan funds, including, but not limited to, the Clean Water State Revolving Loan Fund (CWSRF) Program under Title VI of the Clean Water Act, as amended, 33 U.S.C. 1381 *et seq.*, the Drinking Water State Revolving Fund (DWSRF) Program under section 1452 of the Safe Drinking Water Act, 42 U.S.C. 300j-12, and the Brownfields Cleanup Revolving Loan Fund (BCRLF) Program under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9604.

Good faith efforts means the race and/or gender neutral measures described in subpart C of this part.

Historically black college or university (HBCU) means an institution determined by the Secretary of Education to meet the requirements of 34 CFR Part 608.

HUBZone means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified metropolitan counties, or lands within the external boundaries of an Indian reservation.

HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Identified loan means a loan project or set-aside activity receiving assistance from a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund, which:

- (1) In the case of the CWSRF Program, is a project funded from amounts equal to the capitalization grant;
- (2) In the case of the DWSRF Program, is a loan project or set-aside activity funded from amounts up to the amount of the capitalization grant; or
- (3) In the case of the BCRLF Program, is a project that has been funded with EPA financial assistance.

Insular area means the Commonwealth of Puerto Rico or any territory or possession of the United States.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Labor surplus area firm (LSAF) means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas (as identified by the Department of Labor in accordance with 20 CFR Part 654). Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

Minority business enterprise (MBE) means a Disadvantaged Business Enterprise (DBE) other than a Small Business Enterprise (SBE), a Labor Surplus Area Firm (LSAF), a Small Business in Rural Areas (SBRA), or a Women's Business Enterprise (WBE).

Minority institution means an accredited college or university whose enrollment of a single designated group or a combination of designated groups (as defined by the Small Business Administration regulations at 13 CFR Part 124) exceeds 50% of the total enrollment.

Native American means any individual who is an American Indian, Eskimo, Aleut, or Native Hawaiian.

Recipient means an entity that receives an EPA financial assistance agreement or is a sub-recipient of such agreement, including loan recipients under the Clean Water State Revolving Fund Program, Drinking Water State Revolving Fund Program, and the Brownfields Cleanup Revolving Loan Fund Program.

Services means a contractor's labor, time or efforts provided in a manner consistent with normal business practices which do not involve the delivery of a specific end item, other than documents (e.g., reports, design drawings, specifications).

Small business, small business concern or small business enterprise (SBE) means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

Small business in a rural area (SBRA) means a small business operating in an area identified as a rural county with a code 6–9 in the Rural-Urban continuum Classification Code developed by the United States Department of Agriculture in 1980.

Supplies means items procured under a financial assistance agreement as defined by applicable regulations for the particular type of financial assistance received.

United States means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territories and possessions of the United States.

Women's business enterprise (WBE) means a business concern which is at least 51% owned or controlled by women for purposes of EPA's 8% statute or a business concern which is at least 51% owned and controlled by women for purposes for EPA's 10% statute.

Determination of ownership by a married woman in a community property jurisdiction will not be affected by her husband's 50 percent interest in her share. Similarly, a business concern which is more than 50 percent owned by a married man will not become a qualified WBE by virtue of his wife's 50 percent interest in his share.

§ 33.104 May recipients apply for a waiver from the requirements of this part?

(a) A recipient may apply for a waiver from any of the requirements of this part that are not specifically based on a statute or Executive Order, by submitting a written request to the Director of the Office of Small and Disadvantaged Business Utilization.

(b) The request must document special or exceptional circumstances that make compliance with the requirement impractical, including a specific proposal addressing how the recipient intends to achieve the objectives of this part as described in §33.101. The request must show that:

(1) There is a reasonable basis to conclude that the recipient could achieve a level of MBE and WBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subparts C or D of this part;

(2) Conditions in the recipient's jurisdiction are appropriate for implementing the request; and

(3) The request is consistent with applicable law.

(c) The OSDBU Director has the authority to approve a recipient's request. If the OSDBU Director grants a recipient's request, the recipient may administer its program as provided in the request, subject to the following conditions:

(1) The recipient's level of MBE and WBE participation continues to be consistent with the objectives of this part;

(2) There is a reasonable limitation on the duration of the recipient's modified program; and

(3) Any other conditions the OSDBU Director makes on the grant of the waiver.

(d) The OSDBU Director may end a program waiver at any time upon notice to the recipient and require a recipient to comply with the provisions of this part. The OSDBU Director may also extend the waiver if he or she determines that all requirements of paragraphs (b) and (c)

of this section continue to be met. Any such extension shall be for no longer than the period originally set for the duration of the program waiver.

§ 33.105 What are the compliance and enforcement provisions of this part?

If a recipient fails to comply with any of the requirements of this part, EPA may take remedial action under 40 CFR parts 30, 31 or 35, as appropriate, or any other action authorized by law, including, but not limited to, enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*). Examples of the remedial actions under 40 CFR parts 30, 31, and 35 include, but are not limited to:

- (a) Temporarily withholding cash payments pending correction of the deficiency by the recipient or more severe enforcement action by EPA;
- (b) Disallowing all or part of the cost of the activity or action not in compliance;
- (c) Wholly or partly suspending or terminating the current award; or
- (d) Withholding further awards for the project or program.

§ 33.106 What assurances must EPA financial assistance recipients obtain from their contractors?

The recipient must ensure that each procurement contract it awards contains the term and condition specified in Appendix A to this part concerning compliance with the requirements of this part. The recipient must also ensure that this term and condition is included in each procurement contract awarded by an entity receiving an identified loan under a financial assistance agreement to capitalize a revolving loan fund.

§ 33.107 What are the rules governing availability of records, cooperation, and intimidation and retaliation?

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of EPA's DBE Program, EPA complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). EPA may make available to the public any information concerning EPA's DBE Program release of which is not prohibited by Federal law or regulation, including EPA's Confidential Business Information regulations at 40 CFR Part 2, subpart B.

(2) EPA recipients shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with Federal, state, and local law.

(b) *Cooperation.* All participants in EPA's DBE Program are required to cooperate fully and promptly with EPA, EPA Private Certifiers and EPA recipients in reviews, investigations,

and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved in accordance with §33.105.

(c) *Intimidation and retaliation.* A recipient, contractor, or any other participant in EPA's DBE Program must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part. Violation of this prohibition shall be a ground for appropriate action against the party involved in accordance with §33.105.

Subpart B—Certification

§ 33.201 What does this subpart require?

(a) In order to qualify and participate as an MBE or WBE prime or subcontractor for EPA recipients under EPA's DBE Program, an entity must be properly certified as required by this subpart.

(b) EPA's DBE Program is primarily based on two statutes. Public Law 102–389, 42 U.S.C. 4370d, provides for an 8% objective for awarding contracts under EPA financial assistance agreements to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals, including HBCUs and women (“EPA's 8% statute”). Title X of the Clean Air Act Amendments of 1990, 42 U.S.C. 7601 note, provides for a 10% objective for awarding contracts under EPA financial assistance agreements for research relating to such amendments to business concerns or other organizations owned and controlled by socially and economically disadvantaged individuals (“EPA's 10% statute”).

§ 33.202 How does an entity qualify as an MBE or WBE under EPA's 8% statute?

To qualify as an MBE or WBE under EPA's 8% statute, an entity must establish that it is owned or controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States. An entity need not demonstrate potential for success.

(a) *Ownership or control.* “Ownership” and “control” shall have the same meanings as set forth in 13 CFR 124.105 and 13 CFR 124.106, respectively. (See also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(b) *Socially disadvantaged individual.* A socially disadvantaged individual is a person who has been subjected to racial or ethnic prejudice or cultural bias because of his or her identity as a member of a group without regard to his or her individual qualities and as further defined by the implementing regulations of section 8(a)(5) of the Small Business Act (15 U.S.C. 637(a)(5); 13 CFR 124.103; see also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(c) *Economically disadvantaged individual.* An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged and as further defined by section 8(a)(6) of the Small Business Act (15 U.S.C. 637(a)(6)) and its implementing regulations (13 CFR 124.104). (See also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations). Under EPA's DBE Program, an individual claiming disadvantaged status must have an initial and continued personal net worth of less than \$750,000.

(d) *HBCU.* An HBCU automatically qualifies as an entity owned or controlled by socially and economically disadvantaged individuals.

(e) *Women.* Women are deemed to be socially and economically disadvantaged individuals. Ownership or control must be demonstrated pursuant to paragraph (a) of this section, which may be accomplished by certification under §33.204.

§ 33.203 How does an entity qualify as an MBE or WBE under EPA's 10% statute?

To qualify as an MBE or WBE under EPA's 10% statute, an entity must establish that it is owned and controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States.

(a) *Ownership and control.* An entity must be at least 51% owned by a socially and economically disadvantaged individual, or in the case of a publicly traded company, at least 51% of the stock must be owned by one or more socially and economically disadvantaged individuals, and the management and daily business operations of the business concern must be controlled by such individuals. (See also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(b) *Socially disadvantaged individual.* A socially disadvantaged individual is a person who has been subjected to racial or ethnic prejudice or cultural bias because of his or her identity as a member of a group without regard to his or her individual qualities and as further defined by the implementing regulations of section 8(a)(5) of the Small Business Act (15 U.S.C. 637(a)(5); 13 CFR 124.103; see also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(c) *Economically disadvantaged individual.* An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged and as further defined by section 8(a)(6) of the Small Business Act (15 U.S.C. 637(a)(6)) and its implementing regulations (13 CFR 124.104). (See also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

Organizations). Under EPA's DBE Program, an individual claiming disadvantaged status must have an initial and continued personal net worth of less than \$750,000.

(d) *Presumptions.* In accordance with Title X of the Clean Air Act Amendments of 1990, 42 U.S.C. 7601 note, Black Americans, Hispanic Americans, Native Americans, Asian Americans, Women, and Disabled Americans are presumed to be socially and economically disadvantaged individuals. In addition, the following institutions are presumed to be entities owned and controlled by socially and economically disadvantaged individuals: HBCUs, Minority Institutions (including Tribal Colleges and Universities and Hispanic-Serving Institutions) and private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.

(e) *Individuals not members of designated groups.* Nothing in this section shall prohibit any member of a racial or ethnic group that is not designated as socially and economically disadvantaged under paragraph (d) of this section from establishing that they have been impeded in developing a business concern as a result of racial or ethnic discrimination.

(f) *Rebuttal of presumptions.* The presumptions established by paragraph (d) of this section may be rebutted in accordance with §33.209 with respect to a particular entity if it is reasonably established that the individual at issue is not experiencing impediments to developing such entity as a result of the individual's identification as a member of a specified group.

(g) *Joint ventures.* (1) A joint venture may be considered owned and controlled by socially and economically disadvantaged individuals, notwithstanding the size of such joint venture, if a party to the joint venture is an entity that is owned and controlled by a socially and economically disadvantaged individual, and that entity owns 51% of the joint venture.

(2) As a party to a joint venture, a person who is not an economically disadvantaged individual, or an entity that is not owned and controlled by a socially and economically disadvantaged individual, may not be a party to more than two awarded contracts in a fiscal year solely by joint venture with a socially and economically disadvantaged individual or entity.

§ 33.204 Where does an entity become certified under EPA's 8% and 10% statutes?

(a) In order to participate as an MBE or WBE prime or subcontractor for EPA recipients under EPA's DBE Program, an entity must first attempt to be certified by the following:

(1) The United States Small Business Administration (SBA), under its 8(a) Business Development Program (13 CFR part 124, subpart A) or its Small Disadvantaged Business (SDB) Program, (13 CFR part 124, subpart B);

(2) The United States Department of Transportation (DOT), under its regulations for Participation by Disadvantaged Business Enterprises in DOT Programs (49 CFR parts 23 and 26); or

(3) an Indian Tribal Government, State Government, local Government or independent private organization in accordance with EPA's 8% or 10% statute as applicable.

(2) Such certifications shall be considered acceptable for establishing MBE or WBE status, as appropriate, under EPA's DBE Program as long as the certification meets EPA's U.S. citizenship requirement under §33.202 or §33.203.

(3) An entity may only apply to EPA for MBE or WBE certification under the procedures set forth in §33.205 if that entity first is unable to obtain MBE or WBE certification under paragraphs (a) (1) through (3) of this section.

(b) [Reserved]

§ 33.205 How does an entity become certified by EPA?

(a) *Filing an application.* In accordance with §33.204, an entity may apply to EPA's Office of Small and Disadvantaged Business Utilization (EPA OSDBU) for certification as an MBE or WBE. EPA's Regional Offices will provide further information and required application forms to any entity interested in MBE or WBE certification. The applicant must attest to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States. The application must include evidence demonstrating that the entity is owned or controlled by one or more individuals claiming disadvantaged status under EPA's 8% statute or owned and controlled by one or more individuals claiming disadvantaged status under EPA's 10% statute, along with certifications or narratives regarding the disadvantaged status of such individuals. In addition, the application must include documentation of a denial of certification by a Federal agency, State government, local government, Indian Tribal government, or independent private organization, if applicable.

(b) *Application processing.* EPA OSDBU will advise each applicant within 15 days, whenever practicable, after receipt of an application whether the application is complete and suitable for evaluation, and, if not, what additional information or action is required. EPA OSDBU shall make its certification decision within 30 days of receipt of a complete and suitable application package, whenever practicable. The burden is on the applicant to demonstrate that those individuals claiming disadvantaged status own or control the entity under EPA's 8% statute or own and control the entity under EPA's 10% statute.

(c) *Ownership and/or control determination.* EPA OSDBU first will determine whether those individuals claiming disadvantaged status own or control the applicant entity under EPA's 8% statute or own and control the applicant entity under EPA's 10% statute. If EPA OSDBU determines that the applicant does not meet the ownership and/or control requirements of this subpart, EPA OSDBU will issue a written decision to the entity rejecting the application and set forth the reasons for disapproval.

(d) *Disadvantaged determination.* Once EPA OSDBU determines whether an applicant meets the ownership and/or control requirements of this subpart, EPA OSDBU will determine whether the applicable disadvantaged status requirements under EPA's 8% or 10% statute have been met. If EPA OSDBU determines that the applicable disadvantaged status requirements have been met, EPA OSDBU shall notify the applicant that it has been certified and place the MBE or WBE on EPA OSDBU's list of qualified MBEs and WBEs. If EPA OSDBU determines that the applicable disadvantaged status requirements have not been met, EPA OSDBU will reject the entity's application for certification. EPA OSDBU will issue a written decision to the entity setting forth EPA OSDBU's reasons for disapproval.

(e) *Evaluation standards.* (1) An entity's eligibility shall be evaluated on the basis of present circumstances. An entity shall not be denied certification based solely on historical information indicating a lack of ownership and/or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the entity currently meets the ownership and/or control standards of this subpart.

(2) Entities seeking MBE or WBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial of certification.

(3) In making its certification determination, EPA OSDBU may consider whether an entity has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE Program.

(4) EPA OSDBU shall not consider the issue of whether an entity performs a commercially useful function in making its certification determination. Consideration of whether an entity performs a commercially useful function or is a regular dealer pertains solely to counting toward MBE and WBE objectives as provided in subpart E of this part.

(5) Information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information will be safeguarded from disclosure to unauthorized persons, consistent with applicable Federal, State, and local law.

(6) To assist in making EPA OSDBU's certification determination, EPA OSDBU itself may take the following steps:

(i) Perform an on-site visit to the offices of the entity. Interview the principal officers of the entity and review their resumes and/or work histories. Perform an on-site visit to local job sites if there are such sites on which the entity is working at the time of the certification investigation. Already existing site visit reports may be relied upon in making the certification;

(ii) If the entity is a corporation, analyze the ownership of stock in the entity;

(iii) Analyze the bonding and financial capacity of the entity;

(iv) Determine the work history of the entity, including contracts it has received and work it has completed;

(v) Obtain a statement from the entity of the type of work it prefers to perform for EPA recipients under the DBE Program and its preferred locations for performing the work, if any; and

(vi) Obtain or compile a list of the equipment owned by or available to the entity and the licenses the entity and its key personnel possess to perform the work it seeks to do for EPA recipients under the DBE Program.

§ 33.206 Is there a list of certified MBEs and WBEs?

EPA OSDBU will maintain a list of certified MBEs and WBEs on EPA OSDBU's Home Page on the Internet. Any interested person may also obtain a copy of the list from EPA OSDBU.

§ 33.207 Can an entity reapply to EPA for MBE or WBE certification?

An entity which has been denied MBE or WBE certification may reapply for certification at any time 12 months or more after the date of the most recent determination by EPA OSDBU to decline the application.

§ 33.208 How long does an MBE or WBE certification from EPA last?

Once EPA OSDBU certifies an entity to be an MBE or WBE by placing it on the EPA OSDBU list of certified MBEs and WBEs specified in §33.206, the entity will generally remain on the list for a period of three years from the date of its certification. To remain on the list after three years, an entity must submit a new application and receive a new certification.

§ 33.209 Can EPA re-evaluate the MBE or WBE status of an entity after EPA certifies it to be an MBE or WBE?

(a) EPA OSDBU may initiate a certification determination whenever it receives credible information calling into question an entity's eligibility as an MBE or WBE. Upon its completion of a certification determination, EPA OSDBU will issue a written determination regarding the MBE or WBE status of the questioned entity.

(b) If EPA OSDBU finds that the entity does not qualify as an MBE or WBE, EPA OSDBU will decertify the entity as an MBE or WBE, and immediately remove the entity from the EPA OSDBU list of certified MBEs and WBEs.

(c) If EPA OSDBU finds that the entity continues to qualify as an MBE or WBE, the determination remains in effect for three years from the date of the decision under the same conditions as if the entity had been granted MBE or WBE certification under §33.205.

§ 33.210 Does an entity certified as an MBE or WBE by EPA need to keep EPA informed of any changes which may affect the entity's certification?

(a) An entity certified as an MBE or WBE by EPA OSDBU must provide EPA OSDBU, every year on the anniversary of the date of its certification, an affidavit sworn to by the entity's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the entity's circumstances affecting its ability to meet disadvantaged status, ownership, and/or control requirements of this subpart or any material changes in the information provided in its application form. Failure to comply may result in the loss of MBE or WBE certification under EPA's DBE Program.

(b) An entity certified as an MBE or WBE by EPA OSDBU must inform EPA OSDBU in writing of any change in circumstance affecting the MBE's or WBE's ability to meet disadvantaged status, ownership, and/or control requirements of this subpart or any material change in the information provided in its application form. The MBE or WBE must attach supporting documentation describing in detail the nature of such change. The notice from the MBE or WBE must take the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The MBE or WBE must provide the written notification within 30 calendar days of the occurrence of the change.

§ 33.211 What is the process for appealing or challenging an EPA MBE or WBE certification determination?

(a) An entity which has been denied MBE or WBE certification by EPA OSDBU under §33.205 or §33.209 may appeal that denial. A third party may challenge EPA OSDBU's determination to certify an entity as an MBE or WBE under §33.205 or §33.209.

(b) Appeals and challenges must be sent to the Director of OSDBU at Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. Mail Code 1230T, Washington, DC 20460.

(c) The appeal or challenge must be sent to the Director of OSDBU (Director) within 90 days of the date of EPA OSDBU's MBE or WBE certification determination. The Director may accept an appeal or challenge filed later than 90 days after the date of EPA OSDBU's MBE or WBE certification determination if the Director determines that there was good cause, beyond the control of the appellant or challenger, for the late filing of the appeal or challenge.

(d) No specific format is required for an appeal or challenge. However, the appeal or challenge must include information and arguments concerning why EPA OSDBU's MBE or WBE certification determination should be reversed. For challenges in which a third party questions EPA OSDBU's determination to certify an entity as an MBE or WBE under §33.205 or §33.209, the third party must also send a copy of the challenge to the entity whose MBE or WBE certification is being questioned. In addition, the Director shall request

information and arguments from that entity as to why EPA OSDBU's determination to certify the entity as an MBE or WBE should be upheld.

(e) The Director makes his/her appeal or challenge decision based solely on the administrative record and does not conduct a hearing. The Director may supplement the record by adding relevant information made available by any other source, including the EPA Office of Inspector General; Federal, State, or local law enforcement authorities; an EPA recipient; or a private party.

(f) Consistent with Federal law, the Director shall make available, upon the request of the appellant, challenger or the entity affected by the Director's appeal or challenge decision, any supplementary information the Director receives from any source as described in paragraph (e) of this section.

(g) Pending the Director's appeal or challenge decision, EPA OSDBU's MBE or WBE certification determination remains in effect. The Director does not stay the effect of its MBE or WBE certification determination while he/she is considering an appeal or challenge.

(h) The Director shall reverse EPA OSDBU's MBE or WBE certification determination only if there was a clear and significant error in the processing of the certification or if EPA OSDBU failed to consider a significant material fact contained within the entity's application for MBE or WBE certification.

(i) All decisions under this section are administratively final.

§ 33.212 What conduct is prohibited by this subpart?

An entity that does not meet the eligibility criteria of this subpart may not attempt to participate as an MBE or WBE in contracts awarded under EPA financial assistance agreements or be counted as such by an EPA recipient. An entity that submits false, fraudulent, or deceitful statements or representations, or indicates a serious lack of business integrity or honesty, may be subject to sanctions under §33.105.

Subpart C—Good Faith Efforts

§ 33.301 What does this subpart require?

A recipient, including one exempted from applying the fair share objective requirements by §33.411, is required to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, even if it has achieved its fair share objectives under subpart D of this part:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

§ 33.302 Are there any additional contract administration requirements?

(a) A recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.

(b) A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.

(c) If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six good faith efforts described in §33.301 if soliciting a replacement subcontractor.

(d) A recipient must require its prime contractor to employ the six good faith efforts described in §33.301 even if the prime contractor has achieved its fair share objectives under subpart D of this part.

(e) A recipient must require its prime contractor to provide EPA Form 6100-2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. EPA Form 6100-2 gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have, for example reasons why the DBE subcontractor believes it was terminated by the prime contractor. DBE subcontractors may send completed copies of EPA Form 6100-2 directly to the appropriate EPA DBE Coordinator.

(f) A recipient must require its prime contractor to have its DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form. A recipient must then require its prime contractor to include all completed forms as part of the prime contractor's bid or proposal package.

(g) A recipient must require its prime contractor to complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package.

(h) Copies of EPA Form 6100-2—DBE Program Subcontractor Participation Form, EPA Form 6100-3—DBE Program Subcontractor Performance Form and EPA Form 6100-4—DBE Program Subcontractor Utilization Form may be obtained from EPA OSDBU's Home Page on the Internet or directly from EPA OSDBU.

(i) A recipient must ensure that each procurement contract it awards contains the term and condition specified in the Appendix concerning compliance with the requirements of this part. A recipient must also ensure that this term and condition is included in each procurement contract awarded by an entity receiving an identified loan under a financial assistance agreement to capitalize a revolving loan fund.

§ 33.303 Are there special rules for loans under EPA financial assistance agreements?

A recipient of an EPA financial assistance agreement to capitalize a revolving loan fund, such as a State under the CWSRF or DWSRF or an eligible entity under the Brownfields Cleanup Revolving Loan Fund program, must require that borrowers receiving identified loans comply with the good faith efforts described in §33.301 and the contract administration requirements of §3.302. This provision does not require that such private and nonprofit borrowers expend identified loan funds in compliance with any other procurement procedures contained in 40 CFR Part 30, Part 31, or Part 35, subpart O, as applicable.

§ 33.304 Must a Native American (either as an individual, organization, Tribe or Tribal Government) recipient or prime contractor follow the six good faith efforts?

(a) A Native American (either as an individual, organization, corporation, Tribe or Tribal Government) recipient or prime contractor must follow the six good faith efforts only if doing so would not conflict with existing Tribal or Federal law, including but not limited to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e), which establishes, among other things, that any federal contract, subcontract, grant, or subgrant awarded to Indian organizations or for the benefit of Indians, shall require preference in the award of subcontracts and subgrants to Indian organizations and to Indian-owned economic enterprises.

(b) Tribal organizations awarded an EPA financial assistance agreement have the ability to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. Tribal

governments with promulgated tribal laws and regulations concerning the solicitation and recruitment of Native-owned and other minority business enterprises, including women-owned business enterprises, have the discretion to utilize these tribal laws and regulations in lieu of the six good faith efforts. If the effort to recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts. All tribal recipients still must retain records documenting compliance in accordance with §33.501 and must report to EPA on their accomplishments in accordance with §33.502.

(c) Any recipient, whether or not Native American, of an EPA financial assistance agreement for the benefit of Native Americans, is required to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. If the efforts to solicit and recruit Indian organizations and Indian-owned economic enterprises are not successful, then the recipient must follow the six good faith efforts.

(d) Native Americans are defined in §33.103 to include American Indians, Eskimos, Aleuts and Native Hawaiians.

Subpart D—Fair Share Objectives

§ 33.401 What does this subpart require?

A recipient must negotiate with the appropriate EPA award official or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

§ 33.402 Are there special rules for loans under EPA financial assistance agreements?

A recipient of an EPA financial assistance agreement to capitalize revolving loan funds must either apply its own fair share objectives negotiated with EPA under §33.401 to identified loans using a substantially similar relevant geographic market, or negotiate separate fair share objectives with entities receiving identified loans, as long as such separate objectives are based on demonstrable evidence of availability of MBEs and WBEs in accordance with this subpart. If procurements will occur over more than one year, the recipient may choose to apply the fair share objective in place either for the year in which the identified loan is awarded or for the year in which the procurement action occurs. The recipient must specify this choice in the financial assistance agreement, or incorporate it by reference therein.

§ 33.403 What is a fair share objective?

A fair share objective is an objective based on the capacity and availability of qualified, certified MBEs and WBEs in the relevant geographic market for the procurement categories of construction, equipment, services and supplies compared to the number of all qualified entities in the same market for the same procurement categories, adjusted, as appropriate, to

reflect the level of MBE and WBE participation expected absent the effects of discrimination. A fair share objective is not a quota.

§ 33.404 When must a recipient negotiate fair share objectives with EPA?

A recipient must submit its proposed MBE and WBE fair share objectives and supporting documentation to EPA within 120 days after its acceptance of its financial assistance award. EPA must respond in writing to the recipient's submission within 30 days of receipt, either agreeing with the submission or providing initial comments for further negotiation. Failure to respond within this time frame may be considered as agreement by EPA with the fair share objectives submitted by the recipient. MBE and WBE fair share objectives must be agreed upon by the recipient and EPA before funds may be expended for procurement under the recipient's financial assistance agreement.

§ 33.405 How does a recipient determine its fair share objectives?

(a) A recipient must determine its fair share objectives based on demonstrable evidence of the number of certified MBEs and WBEs that are ready, willing, and able to perform in the relevant geographic market for each of the four procurement categories (equipment, construction, services, and supplies). The relevant geographic market is the area of solicitation for the procurement as determined by the recipient. The market may be a geographic region of a State, an entire State, or a multi-State area. Fair share objectives must reflect the recipient's determination of the level of MBE and WBE participation it would expect absent the effects of discrimination. A recipient may combine the four procurement categories into one weighted objective for MBEs and one weighted objective for WBEs.

(b) *Step 1.* A recipient must first determine a base figure for the relative availability of MBEs and WBEs. The following are examples of approaches that a recipient may take. Any percentage figure derived from one of these examples should be considered a basis from which a recipient begins when examining evidence available in its jurisdiction.

(1) *MBE and WBE Directories and Census Bureau Data.* Separately determine the number of certified MBEs and WBEs that are ready, willing, and able to perform in the relevant geographic market for each procurement category from a MBE/WBE directory, such as a bidder's list. Using the Census Bureau's County Business Pattern (CBP) database, determine the number of all qualified businesses available in the market that perform work in the same procurement category. Separately divide the number of MBEs and WBEs by the number of all businesses to derive a base figure for the relative availability of MBEs and WBEs in the market.

(2) *Data from a Disparity Study.* Use a percentage figure derived from data in a valid, applicable disparity study conducted within the preceding ten years comparing the available MBEs and WBEs in the relevant geographic market with their actual usage by entities procuring in the categories of construction, equipment, services, and supplies.

(3) *The Objective of Another EPA Recipient.* A recipient may use, as its base figure, the fair share objectives of another EPA recipient if the recipient demonstrates that it will use the same, or substantially similar, relevant geographic market as the other EPA recipient. (See §33.411 for exemptions from fair share objective negotiations).

(4) *Alternative Methods.* Subject to EPA approval, other methods may be used to determine a base figure for the overall objective. Any methodology chosen must be based on demonstrable evidence of local market conditions and be designed to ultimately attain an objective that is rationally related to the relative availability of MBEs and WBEs in the relevant geographic market.

(c) *Step 2.* After calculating a base figure, a recipient must examine the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at the fair share objective.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of MBEs and WBEs to perform contract work under EPA financial assistance agreements, as measured by the volume of work MBEs and WBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within the recipient's jurisdiction, to the extent it is not already accounted for in the base figure; and

(iii) If the base figure is the objective of another EPA recipient, it must be adjusted for differences in the local market and the recipient's contracting program.

(2) A recipient may also consider available evidence from related fields that affect the opportunities for MBEs and WBEs to form, grow, and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of MBEs and WBEs to get the financing, bonding and insurance required to participate; and

(ii) Data on employment, self-employment, education, training, and union apprenticeship programs, to the extent it can be related to the opportunities for MBEs and WBEs to perform in the program.

(3) If a recipient attempts to make an adjustment to its base figure to account for the continuing effects of past discrimination (often called the “but for” factor) or the effects of another ongoing MBE/WBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

§ 33.406 May a recipient designate a lead agency for fair share objective negotiation purposes?

If an Indian Tribal, State, or local Government has more than one agency that receives EPA financial assistance, the agencies within that Government may designate a lead agency to negotiate MBE and WBE fair share objectives with EPA to be used by each of the agencies. Each agency must otherwise negotiate with EPA separately its own MBE and WBE fair share objectives.

§ 33.407 How long do MBE and WBE fair share objectives remain in effect?

Once MBE and WBE fair share objectives have been negotiated, they will remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives. The fact that a disparity study utilized in negotiating fair share objectives has become more than ten years old during the three-year period does not by itself constitute a significant change requiring renegotiation.

§ 33.408 May a recipient use race and/or gender conscious measures as part of this program?

(a) Should the good faith efforts described in subpart C of this part or other race and/or gender neutral measures prove to be inadequate to achieve an established fair share objective, race and/or gender conscious action (e.g., apply the subcontracting suggestion in §33.301(c) to MBEs and WBEs) is available to a recipient and its prime contractor to more closely achieve the fair share objectives, subject to §33.409. Under no circumstances are race and/or gender conscious actions required by EPA.

(b) Any use of race and/or gender conscious efforts must not result in the selection of an unqualified MBE or WBE.

§ 33.409 May a recipient use quotas as part of this program?

A recipient is not permitted to use quotas in procurements under EPA's 8% or 10% statute.

§ 33.410 Can a recipient be penalized for failing to meet its fair share objectives?

A recipient cannot be penalized, or treated by EPA as being in noncompliance with this subpart, solely because its MBE or WBE participation does not meet its applicable fair share objective. However, EPA may take remedial action under §33.105 for a recipient's failure to comply with other provisions of this part, including, but not limited to, the good faith efforts requirements described in subpart C of this part.

§ 33.411 Who may be exempted from this subpart?

(a) *General.* A recipient of an EPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance

agreement with a combined total of \$250,000 or less in any one fiscal year, is not required to apply the fair share objective requirements of this subpart. This exemption is limited to the fair share objective requirements of this subpart.

(b) Clean Water State Revolving Fund (CWSRF) Program, Drinking Water State Revolving Fund (DWSRF) Program, and Brownfields Cleanup Revolving Loan Fund (BCRLF) Program Identified Loan Recipients. A recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the fair share objective requirements of this subpart to an entity receiving an identified loan in an amount of \$250,000 or less or to an entity receiving more than one identified loan with a combined total of \$250,000 or less in any one fiscal year. This exemption is limited to the fair share objective requirements of this subpart.

(c) Tribal and Intertribal Consortia recipients of program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR Part 35, Subpart B. Tribal and Intertribal consortia recipients of PPG eligible grants are not required to apply the fair share objective requirements of this subpart to those grants. This exemption is limited to the fair share objective requirements of this subpart.

(d) Technical Assistance Grant (TAG) Program Recipients. A recipient of a TAG is not required to apply the fair share objective requirements of this subpart to that grant. This exemption is limited to the fair share objective requirements of this subpart.

§ 33.412 Must an Insular Area or Indian Tribal Government recipient negotiate fair share objectives?

The requirements in this subpart regarding the negotiation of fair share objectives will not apply to an Insular Area or Indian Tribal Government recipient until three calendar years after the effective date of this part. Furthermore, in accordance with §33.411(c), tribal and intertribal consortia recipients of program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR part 35, subpart B are not required to apply the fair share objective requirements of this subpart to such grants.

Subpart E—Recordkeeping and Reporting

§ 33.501 What are the recordkeeping requirements of this part?

(a) A recipient, including those recipients exempted under §33.411 from the requirement to apply the fair share objectives, must maintain all records documenting its compliance with the requirements of this part, including documentation of its, and its prime contractors', good faith efforts and data relied upon in formulating its fair share objectives. Such records must be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement.

(b) A recipient of a Continuing Environmental Program Grant or other annual grant must create and maintain a bidders list. In addition, a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses

to follow, competitive bidding requirements. (See *e.g.*, §33.303). The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts, or bid or quote subcontracts on EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs. The bidders list must only be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. For entities receiving identified loans, the bidders list must only be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors:

- (1) Entity's name with point of contact;
- (2) Entity's mailing address, telephone number, and e-mail address;
- (3) The procurement on which the entity bid or quoted, and when; and
- (4) Entity's status as an MBE/WBE or non-MBE/WBE.

(c) *Exemptions.* A recipient of an EPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is exempt from the paragraph (b) of this section requirement to create and maintain a bidders list. Also, a recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the paragraph (b) of this section bidders list requirement of this subpart to an entity receiving an identified loan in an amount of \$250,000 or less, or to an entity receiving more than one identified loan with a combined total of \$250,000 or less in any one fiscal year. This exemption is limited to the paragraph (b) of this section bidders list requirements of this subpart.

§ 33.502 What are the reporting requirements of this part?

MBE and WBE participation must be reported by all recipients, including those recipients exempted under §33.411 from the requirement to apply the fair share objectives, on EPA Form 5700–52A. Recipients of Continuing Environmental Program Grants under 40 CFR part 35, subpart A; recipients of Performance Partnership Grants (PPGs) under 40 CFR part 35, subpart B; General Assistance Program (GAP) grants for tribal governments and intertribal consortia; and institutions of higher education, hospitals and other non-profit organizations receiving financial assistance agreements under 40 CFR part 30, will report on MBE and WBE participation on an annual basis. All other financial assistance agreement recipients, including recipients of financial assistance agreements capitalizing revolving loan funds, will report on MBE and WBE participation semiannually. Recipients of financial assistance agreements that capitalize revolving loan programs must require entities receiving identified loans to submit their MBE and WBE participation reports on a semiannual basis to the financial assistance agreement recipient, rather than to EPA.

§ 33.503 How does a recipient calculate MBE and WBE participation for reporting purposes?

(a) *General.* Only certified MBEs and WBEs are to be counted towards MBE/WBE participation. Amounts of MBE and WBE participation are calculated as a percentage of total financial assistance agreement project procurement costs, which include the match portion of the project costs, if any. For recipients of financial assistance agreements that capitalize revolving loan programs, the total amount is the total procurement dollars in the amount of identified loans equal to the capitalization grant amount.

(b) *Ineligible project costs.* If all project costs attributable to MBE and WBE participation are not eligible for funding under the EPA financial assistance agreement, the recipient may choose to report the percentage of MBE and WBE participation based on the total eligible and non-eligible costs of the project.

(c) *Joint ventures.* For joint ventures, MBE and WBE participation consists of the portion of the dollar amount of the joint venture attributable to the MBE or WBE. If an MBE's or WBE's risk of loss, control, or management responsibilities is not commensurate with its share of the profit, the Agency may direct an adjustment in the percentage of MBE or WBE participation.

(d) *Central Purchasing or Procurement Centers.* A recipient must report MBE and WBE participation from its central purchasing or procurement centers.

(e) *Brokers.* A recipient may not count expenditures to a MBE or WBE that acts merely as a broker or passive conduit of funds, without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices.

(1) *Presumption.* If 50% or more of the total dollar amount of a MBE or WBE's prime contract is subcontracted to a non-DBE, the MBE or WBE prime contractor will be presumed to be a broker, and no MBE or WBE participation may be reported.

(2) *Rebuttal.* The MBE or WBE prime contractor may rebut this presumption by demonstrating that its actions are consistent with normal practices for prime contractors in its business and that it will actively perform, manage, and supervise the work under the contract.

(f) *MBE or WBE Truckers/Haulers.* A recipient may count expenditures to an MBE or WBE trucker/hauler only if the MBE or WBE trucker/hauler is performing a commercially useful function. The following factors should be used in determining whether an MBE or WBE trucker/hauler is performing a commercially useful function:

(1) The MBE or WBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting MBE or WBE objectives.

(2) The MBE or WBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

Appendix A to Part 33—Term and Condition

Each procurement contract signed by an EPA financial assistance agreement recipient, including those for an identified loan under an EPA financial assistance agreement capitalizing a revolving loan fund, must include the following term and condition:

The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

Title 48: Federal Acquisition Regulations System

Part 370 – SPECIAL PROGRAMS AFFECTING ACQUISITION

Subpart 370.5—Acquisitions Under the Buy Indian Act

370.500 *Scope of subpart.*

This subpart sets forth the policy on preferential acquisition from Indians under the negotiation authority of the Buy Indian Act. Applicability of this subpart is limited to acquisitions made by or on behalf of the Indian Health Service of the Public Health Service.

370.501 *Policy.*

(a) The Indian Health Service will utilize the negotiation authority of the Buy Indian Act to give preference to Indians whenever the use of that authority is authorized and is practicable. The Buy Indian Act, 25 U.S.C. 47, prescribes the application of the advertising requirements of section 3709 of the Revised Statutes to the acquisition of Indian supplies. As set out in 25 U.S.C. 47, the Buy Indian Act provides as follows:

So far as may be practicable Indian labor shall be employed, and purchases of the products (including, but not limited to printing, notwithstanding any other law) of Indian industry may be made in open market in the discretion of the Secretary of the Interior.

(b) The functions, responsibilities, authorities, and duties of the Secretary of the Interior for maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians are transferred to the Surgeon General of the United States under the supervision of the Secretary of Health and Human Services, 42 U.S.C. 2001

(a). Accordingly, the Secretary of Health and Human Services is authorized to use the Buy Indian Act in the acquisition of products of Indian industry in connection with the maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians. This authority has been delegated exclusively to the Indian Health Service and is not available for use by any other HHS component (unless that component is making an acquisition on behalf of the Indian Health Service).

(c) Use of the Buy Indian Act negotiation authority has been emphasized in subsequent legislation, particularly Public Law 94–437 and Public Law 96–537.

370.502 *Definitions.*

Buy Indian contract means any contract involving activities covered by the Buy Indian Act that is negotiated under the provisions of 41 U.S.C. 252(c) and 25 U.S.C. 47 between an Indian firm and a contracting officer representing the Indian Health Service.

Indian means a member of any tribe, pueblo, band, group, village, or community that is recognized by the Secretary of the Interior as being Indian or any individual or group of individuals that is recognized by the Secretary of the Interior or the Secretary of Health and

Human Services. The Secretary of Health and Human Services in making determinations may take into account the determination of the tribe with which affiliation is claimed.

Indian firm means a sole enterprise, partnership, corporation, or other type of business organization owned, controlled, and operated by one or more Indians (including, for the purpose of sections 301 and 302 of Public Law 94–437, former or currently federally recognized Indian tribes in the State of New York) or by an Indian firm; or a nonprofit firm organized for the benefit of Indians and controlled by Indians (see 370.503(a)).

Product of Indian industry means anything produced by Indians through physical labor or by intellectual effort involving the use and application of skills by them.

370.503 Requirements.

(a) *Indian ownership.* The degree of Indian ownership of an Indian firm shall be at least 51 percent during the period covered by a Buy Indian contract.

(b) *Joint ventures.* An Indian firm may enter into a joint venture with other entities for specific projects as long as the Indian firm is the managing partner. However, the joint venture must be approved by the contracting officer prior to the award of a contract under the Buy Indian Act.

(c) *Bonds.* In the case of contracts for the construction, alteration, or repair of public buildings or public works, performance and payment bonds are required by the Miller Act (40 U.S.C. 270a–270f) and FAR part 28. In the case of contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe, bonds are not required. However, bonds are required when dealing with private business entities which are owned by an Indian tribe or members of an Indian tribe. Bonds may be required of private business entities which are joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe. A bid guarantee or bid bond is required only when a performance or payment bond is required.

(d) *Indian preference in employment, training, and subcontracting.* Contracts awarded under the Buy Indian Act are subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act 25 U.S.C. 450e, which requires that preference be given to Indians in employment, training, and subcontracting. The Indian Preference clause set forth in 352.270–2 shall be included in all Buy Indian solicitations and resultant contracts. The Indian Preference Program clause set forth in 352.270–3 shall be used as specified in 370.202(b). All requirements set forth in subpart 370.2 which are applicable to the instant Buy Indian acquisition shall be followed by the contracting officer, e.g., sections 370.204 and 370.205.

(e) *Subcontracting.* Not more than 50 percent of the work to be performed under a prime contract awarded pursuant to the Buy Indian Act shall be subcontracted to other than Indian

firms. For this purpose, work to be performed does not include the provision of materials, supplies, or equipment.

(f) *Wage rates.* A determination of the minimum wage rates by the Secretary of Labor as required by the Davis-Bacon Act (40 U.S.C. 276a) shall be included in all contracts awarded under the Buy Indian Act for over \$2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works, except contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe. The wage rate determination is to be included in contracts with private business entities even if they are owned by an Indian tribe or a member of an Indian tribe and in connection with joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe.

370.504 Competition.

(a) Contracts awarded under the Buy Indian Act are subject to competition among Indians or Indian concerns to the maximum extent that the Contracting Officer determines is practicable. When competition is determined not to be practicable, a Justification for Other than Full and Open Competition shall be prepared in accordance with 306.303 and subsequently retained in the contract file.

(b) Solicitations must be synopsisized and publicized in *FedBizOpps* at <http://www.fedbizopps.gov> and copies of the synopses sent to the tribal office of the Indian tribal government directly concerned with the proposed acquisition as well as to Indian concerns and others having a legitimate interest. The synopsis must state that the acquisition is restricted to Indian firms under the Buy Indian Act.

[71 FR 76515, Dec. 20, 2006]

370.505 Responsibility determinations.

(a) A contract may be awarded under the Buy Indian Act only if it is first determined that the project or function to be contracted for is likely to be satisfactorily performed under that contract and the project or function is likely to be properly completed or maintained under that contract.

(b) The determination called for by paragraph (a) of this section, to be made prior to the award of a contract, will be made in writing by the contracting officer reflecting an analysis of the standards set forth in FAR 9.104-1.