

103515

STANDARD FORM 424

EPA Form 5700-33 (Rev. 11-86) Previous editions are obsolete.

AR500262

PART II
PROJECT APPROVAL INFORMATION

Form Approved.
OMB No. 2030-0020
Approval expires 7-31-89

Item 1.
Does this assistance request State, local, regional, or other priority rating? _____ Yes _____ No

Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State or local advisory, educational, or health clearances? _____ Yes _____ No

Name of Agency or Board _____
(Attach Documentation)

Item 3.
Does this assistance request require clearinghouse review in accordance with Executive Order 12372? _____ Yes _____ No

(Attach Comments)

Item 4.
Does this assistance request require State, local, regional or other planning approval? _____ Yes _____ No

Name of Approving Agency _____
Date _____

Item 5.
Is the proposed project covered by an approved comprehensive plan? _____ Yes _____ No

Check one: State ☐
Local ☐
Regional ☐
Location of Plan _____

Item 6.
Will the assistance requested serve a Federal installation? _____ Yes _____ No

Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 7.
Will the assistance requested be on Federal land or installation? _____ Yes _____ No

Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 8.
Will the assistance requested have an impact or effect on the environment? _____ Yes _____ No

See instructions for additional information to be provided.

Item 9.
Has the project for which assistance is requested caused, since January 1, 1971, or will it cause, the displacement of any individual, family, business, or farm? _____ Yes _____ No

Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 10.
Is there other related assistance on this project previous, pending, or anticipated? _____ Yes _____ No

See instructions for additional information to be provided.

Item 11.
Is project in a Designated Flood Hazard Area? _____ Yes _____ No

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INSTRUCTIONS

PART II

Negative answers will not require an explanation unless the Federal agency requests more information at a later date. Provide supplementary data for all "Yes" answers in the space provided in accordance with the following instructions:

Item 1—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project.

Item 2—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval.

Item 3—Attach the clearinghouse comments for the preapplication in accordance with the instructions contained in Executive Order 12372. If comments were submitted previously with a preapplication, do not submit them again; but any additional comments received from the clearinghouse should be submitted with this application.

Item 4—Furnish the name of the approving agency and the approval date.

Item 5—Show whether the approved comprehensive plan is State, local or regional, or if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination and state whether this project is in conformance with the plan.

Item 6—Show the population residing or working on the Federal installation who will benefit from this project.

Item 7—Show the percentage of the project work that will be conducted on federally-owned or leased land. Give the name of the Federal installation and its location.

Item 8—Describe briefly the possible beneficial and harmful impact on the environment of the proposed project. If an adverse environmental impact is anticipated, explain what action will be taken to minimize the impact. Federal agencies will provide separate instructions if additional data are needed.

Item 9—State the number of individuals, families, businesses, or farms this project will displace. Federal agencies will provide separate instructions if additional data are needed.

Item 10—Show the Federal Domestic Assistance Catalog number, the program name, the type of assistance, the status and the amount of each project where there is related previous, pending or anticipated assistance. Use additional sheets, if needed.

Item 11—Flood Insurance—Check "Yes" if project or any nonexpendable property is to be located in a special flood hazard area designated by the Department of Housing and Urban Development. If the answer is "Yes" the grantee must purchase the required flood insurance if required pursuant to Item 7 of the General Instructions to this application.

AR500264

PART III-BUDGET INFORMATION

SECTION A-BUDGET SUMMARY

GRANT PROGRAM, FUNCTION OR ACTIVITY (a)	FEDERAL CATALOG NO. (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-SCHEDULE A 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					
j. Indirect Charges					
k. TOTALS	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

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SECTION 8 - SCHEDULE B - BUDGET CATEGORIES

8. Program Elements	FUNDING			(4) MAN- YEARS
	(1) FEDERAL	(2) NON-FEDERAL	(3) TOTAL	
a.	\$	\$	\$	
b.				
c.				
d.				
e.				
f.				
g.				
h.				
i. Total Program Elements	\$	\$	\$	
j. STATE TOTAL	\$	\$	\$	

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SECTION C—NON-FEDERAL RESOURCES

(a) GRANT PROGRAM	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	\$	\$	\$	\$
9.				
10.				
11.				
12. TOTALS	\$	\$	\$	\$

SECTION D—FORECASTED CASH NEEDS

	TOTAL FOR 1st YEAR	1st QUARTER	2nd QUARTER	3rd QUARTER	4th QUARTER
13. Federal	\$	\$	\$	\$	\$
14. Non-Federal					
15. TOTALS	\$	\$	\$	\$	\$

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. TOTALS	\$	\$	\$	\$

SECTION F—OTHER BUDGET INFORMATION
(Attach Additional Sheets If Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

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INSTRUCTIONS

PART III

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 not 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 Columns (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. Schedule A—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 were 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.

Lines 6a-h—Show the estimated amount for each direct cost budget (*object class*) category for each column with program, function or activity heading.

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

Line 6j—Show the amount of indirect cost. Refer to Office of Management and Budget Circular No. A-87.

Line 6k—Enter the total of amounts of 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. When additional sheets were prepared, the last two sentences apply only to the first page with summary totals.

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 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.

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INSTRUCTIONS

PART III (Continued)

Section B. Schedule B—Budget Categories

Lines 6a-h—For each program element fill in the total requirements for funds (*Federal, non-Federal, and total*) and manyears.

Line i—Show the totals of Lines 6a through h in each column.

Line j—Show the State totals. Total (*Program Elements*) and State total might not be equal due to expenses which are not classified under specific program elements.

Section C. Source of 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. (See Attachment F, A-102.)

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 amount of cash and in-kind contributions to be made by the applicant as shown in Section A. (See also Attachment F, A-102.)

Column (c)—Enter the State 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 continuing 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 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 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, pre-determined, 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 required herein or any other comments deemed necessary.

PART V ASSURANCES

The Applicant agrees and certifies that he or she will comply with the regulations, policies, guidelines, and requirements, including OMB Circulars No. A-102 and A-87, and Executive Order 12372, as they relate to the application, acceptance, and use of Federal funds for this Federally assisted project. Also, the Applicant agrees and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or nation origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary source of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.
5. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to employees of institutions of higher education, hospitals, other non-profit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.
7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
8. It will give the grantor agency and the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.
9. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements.
10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.
12. It will comply with all applicable requirements of Section 13 of the Clean Water Act Amendments of 1972 (P.L. 92-500), if the grant is awarded under any grant authority of that Act, which 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 otherwise subject to discrimination under any program or activity under the said Clean Water Act Amendments for which the applicant receives financial assistance and will take all necessary measures to effectuate this agreement.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, DC 20460		Form Approved OMB No. 2000-0453 Approval expires 10-31-87
PROCUREMENT SYSTEM CERTIFICATION		
APPLICANT'S NAME	ASSISTANCE APPLICATION NUMBER	
APPLICANT'S ADDRESS		
SECTION I — INSTRUCTIONS		
The applicant must complete and submit a copy of this form with each application for EPA Assistance. If the applicant has certified its procurement system to EPA within the past 2 years and the system has not been substantially revised, complete Part A in Section II, then sign and date the form. If the system has not been certified within the past 2 years, complete Part B, then sign and date the form.		
SECTION II — CERTIFICATION		
A. I affirm that the applicant has within the past 2 years certified to EPA that its procurement system complies with 40 CFR Part 33 and that the system meets the requirements in 40 CFR Part 33. The date of the applicant's latest certification is:	MONTH/YEAR	
B. Based upon my evaluation of the applicant's procurement system, I, as authorized representative of the applicant: <i>(Check one of the following:)</i>		
☐ 1. CERTIFY that the applicant's procurement system will meet all of the requirements of 40 CFR Part 33 before undertaking any procurement action with EPA assistance		
Please furnish citations to applicable procurement ordinances and regulations		
☐ 2. DO NOT CERTIFY THE APPLICANT'S PROCUREMENT SYSTEM. The applicant agrees to follow the requirements of 40 CFR Part 33, including the procedures in Appendix A, and allow EPA preaward review of proposed procurement actions that will use EPA assistance.		
TYPED NAME AND TITLE	SIGNATURE	DATE

MBE/WBE* UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE AGREEMENTS, AND OTHER FEDERAL FINANCIAL ASSISTANCE

PART 1. (NEGATIVE REPORTS MAY BE REQUIRED)

1A. FEDERAL FISCAL YEAR 19		1B. REPORTING QUARTER (Check appropriate box) ☐ 1st (Oct.-Dec.) ☐ 2nd (Jan.-Mar.) ☐ 3rd (Apr.-Jun.) ☐ 4th (Jul.-Sep.)	
2. FEDERAL FINANCIAL ASSISTANCE AGENCY (Department/Agency, Bureau/Administering Office, Address)		3. REPORTING RECIPIENT (Name and Address)	
2A. REPORTING CONTACT	PHONE:	3A. REPORTING CONTACT	PHONE:
4A. FINANCIAL ASSISTANCE AGREEMENT ID NUMBER		4B. FEDERAL FINANCIAL ASSISTANCE PROGRAM	
4C. TYPE OF FEDERAL ASSISTANCE AGREEMENT ☐ GRANT ☐ COOPERATIVE AGREEMENT ☐ OTHER FEDERAL FINANCIAL ASSISTANCE			
5A. PERIOD WHEN PROCUREMENT UNDER THIS AWARD WILL OCCUR START DATE:		END DATE:	
5B. AMOUNT OF TOTAL PROJECT DOLLARS PLANNED FOR PROCUREMENT THIS FISCAL YEAR \$	5C. RECIPIENT'S MBE/WBE GOALS (Percent of total procurement dollars (5b) for each) MBE % WBE %		
5D. MBE/WBE PROCUREMENT ACCOMPLISHED THIS QUARTER MBE \$ WBE \$		5E. NEGATIVE REPORT (Check) ☐ SEE INSTRUCTIONS	
6. COMMENTS:			

7. NAME OF AUTHORIZED REPRESENTATIVE	TITLE
8. SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE

* WBE reporting is optional at the direction of Federal financial assistance agency. --
AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 334
Prescribed by DEPARTMENT OF COMMERCE

AR500272

PART II.

[illegible]

1 = Agriculture
2 = Mining
3 = Construction
4 = Manufacturing

5 = Transportation
6 = Wholesale Trade
7 = Retail Trade
8 = Finance, Insurance

9 = Services
a = Business Services
b = Professional Services
c = Repair Services
d = Personal Services

10 - Other

INSTRUCTIONS

MBE/WBE UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE AGREEMENTS, AND OTHER FEDERAL FINANCIAL ASSISTANCE Standard Form 334

A. General Instructions:

MBE/WBE utilization is based on Executive Orders 11625, 12138 and 12432 and OMB Circular A-102. Standard Form 334 must be completed by recipients of Federal grants, cooperative agreements, or other Federal financial assistance valued at \$500,000¹ or more and which involve procurement of supplies, equipment, construction or services to accomplish Federal assistance programs.

Recipients are required to report to agency award officials within one month following the end of each Federal fiscal year quarter (i.e. January 31, April 30, July 31 and October 31) during which any procurement in excess of \$10,000 is actually executed under this assistance agreement.

B. Definitions:

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

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.

There is no standard definition of *minority individuals* used by all Federal financial assistance agencies. However, 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 your Federal financial assistance agency can provide additional information.

¹ There is no reporting threshold for the Environmental Protection Agency (EPA). Recipients of EPA financial assistance must report under all assistance agreements regardless of the size of the award.

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.

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.

The following affirmative steps for utilizing MBEs and WBEs are suggested:

1. Inclusion of MBEs/WBEs on solicitation lists.
2. Assure MBEs/WBEs are solicited once they are identified.
3. Where feasible, divide total requirements into smaller tasks to permit maximum MBE/WBE participation.
4. Where feasible, establish delivery schedules which will encourage MBE/WBE participation.
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, sub-agreement, or contract award take the affirmative steps outlined here.

C. Instructions for Part I:

1. Complete Federal fiscal year and check applicable reporting quarter. (Federal fiscal year runs from October 1 through September 30.)
2. Identify the Federal financial assistance department or agency including the bureau, office or other subactivity which administers your financial assistance agreement.

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3. 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. Assistance agreement number assigned by Federal financial assistance agency.
- 4b. If appropriate, identify specific department or agency Federal financial assistance program under which this project is awarded.
- 4c. Check type of Federal assistance.
- 5a. Period during which contracts and other purchases under this award will actually be executed.
- 5b. Includes procurement using Federal funds plus recipient matching funds and funds from other sources.
- 5c. Portion of total procurement dollars recipient plans to spend with MBEs or WBEs this fiscal year. With the concurrence of the Federal financial assistance agency, a fair share goal shall be determined by each recipient.
- 5d. Dollar amount of all MBE/WBE contracts awarded under this assistance agreement this quarter.
- 5e. Check only if one or more procurements in excess of \$10,000 were executed this reporting quarter but no MBE/WBE procurements occurred. Sign and date form and return it to Federal financial assistance agency.

6. Additional comments or explanations. Please refer to specific item number(s) if appropriate.
7. Name and title of official administrator or designated reporting official.
8. Signature and month, day, year report submitted.

D. Instructions for Part II:

For each MBE/WBE procurement over \$10,000 made under this assistance agreement during the reporting quarter, provide the following information. (Recipients may also report on individual MBE/WBE procurements of less than \$10,000 if they want these credited toward their MBE/WBE goals, however, reporting on smaller procurements is not required.)

1. Check whether this is a *first tier* procurement made directly by Federal financial assistance recipient or other *second tier* procurement made by recipient's subgrantee or prime contractor. Include all qualifying second tier purchases executed this quarter regardless of when the first tier procurement occurred.
2. Check MBE or WBE.
3. Dollar value of procurement.
4. Date of award, shown as month, day, year.
5. Using codes at the bottom of the form, identify type of product or service acquired through this procurement (eg., enter 1 if agriculture, 2 if mining, etc.).
6. Name and address of MBE/WBE firm.

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REQUEST FOR ADVANCE OR REIMBURSEMENT

(See instructions on back)

1. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

Approved by Office of Management and Budget, No. 80-R0183

PAGE OF PAGES

1. TYPE OF PAYMENT REQUESTED

a. "X" one, or both boxes

☐ ADVANCE ☐ REIMBURSEMENT

b. "X" the applicable box

☐ FINAL ☐ PARTIAL

2. BASIS OF REQUEST

☐ CASH

☐ ACCRUAL

4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY

5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST

6. EMPLOYER IDENTIFICATION NUMBER

7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER

8. PERIOD COVERED BY THIS REQUEST

FROM (month, day, year)

TO (month, day, year)

9. RECIPIENT ORGANIZATION

10. PAYEE (Where check is to be sent is different than item 9)

Name

Name

Number and Street

Number and Street

City, State and ZIP Code

City, State and ZIP Code

11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED

PROGRAMS/FUNCTIONS/ACTIVITIES ▶	(a)	(b)	(c)	TOTAL
a. Total program outlays to date (As of date)	\$	\$	\$	\$
b. Less: Cumulative program income				
c. Net program outlays (Line a minus line b)				
d. Estimated net cash outlays for advance period				
e. Total (Sum of lines c & d)				
f. Non-Federal share of amount on line e				
g. Federal share of amount on line e				
h. Federal payments previously requested				
i. Federal share now requested (Line g minus line h)				
j. Advances required by month, when requested by Federal grantor agency for use in making prescheduled advances	1st month			
	2nd month			
	3rd month			

12. ALTERNATE COMPUTATION FOR ADVANCES ONLY

a. Estimated Federal cash outlays that will be made during period covered by the advance	\$
b. Less: Estimated balance of Federal cash on hand as of beginning of advance period	
c. Amount requested (Line a minus line b)	\$

13. CERTIFICATION

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.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

DATE REQUEST SUBMITTED

TYPED OR PRINTED NAME AND TITLE

TELEPHONE (AREA CODE, NUMBER, EXTENSION)

This space for agency use

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11c, 11e, 11f, 11g, 11i, 12 and 13 are self-explanatory; specific instructions for other items are as follows:

<i>Item</i>	<i>Entry</i>	<i>Item</i>	<i>Entry</i>
2	Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis.		use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.
4	Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.	11a	Enter in "as of date", the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees.
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (Institution) code if requested by the Federal agency.	11b	Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement.
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.	11d	Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance.
8	Enter the month, day, and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested.	13	Complete the certification before submitting this request.
Note: The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports.			
11	The purpose of the vertical columns (a), (b), and (c), is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed,		

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FINANCIAL STATUS REPORT

(Follow instructions on the back)

3. RECIPIENT ORGANIZATION (Name and complete address, including ZIP code)

1. FEDERAL AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH REPORT IS SUBMITTED		2. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER		OMB Approved No. 50-10180		PAGE OF	
4. EMPLOYER IDENTIFICATION NUMBER		5. RECIPIENT ACCOUNT NUMBER OR IDENTIFYING NUMBER		6. FINAL REPORT YES ☐ NO ☐		7. BASIS CASH ☐ ACCRUAL ☐	
8. PROJECT/GRANT PERIOD (See instructions)		9. PERIOD COVERED BY THIS REPORT		10. FROM (Month, day, year)		11. TO (Month, day, year)	

10. PROGRAMS/FUNCTIONS/ACTIVITIES	STATUS OF FUNDS					TOTAL (e)
	(a)	(b)	(c)	(d)	(f)	
a. Net outlays previously reported	\$	\$	\$	\$	\$	\$
b. Total outlays this report period						
c. Less: Program income credits						
d. Net outlays this report period (Line b minus line c)						
e. Net outlays to date (Line d plus line f)						
f. Less: Non-Federal share of outlays						
g. Total Federal share of outlays (Line e minus line f)						
h. Total unliquidated obligations						
i. Less: Non-Federal share of unliquidated obligations shown on line h						
j. Federal share of unliquidated obligations						
k. Total Federal share of outlays and unliquidated obligations						
l. Total cumulative amount of Federal funds authorized						
m. Unobligated balance of Federal funds						

11. TYPE OF RATE (Please "X" in appropriate box)		12. CERTIFICATION	
☐ PROPORTIONAL	☐ PREDETERMINED	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.	
a. RATE	b. BASIS	13. SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	
c. TOTAL AMOUNT	d. FEDERAL SHARE	TYPED OR PRINTED NAME AND TITLE	
14. REMARKS (State any explanation about accuracy or information required by Federal awarding agency in compliance with procurement legislation)		DATE REPORT SUBMITTED	
		TELEPHONE (Area code, number and extension)	

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INSTRUCTIONS

Please type or print legibly. Items 1, 2; 3, 6, 7, 9, 10d, 10a, 10g, 10i, 10l, 11a, and 12 are self-explanatory, specific instructions for other items are as follows:

<i>Item</i>	<i>Entry</i>	<i>Item</i>	<i>Entry</i>
4	Enter the employer identification number assigned by the U.S. Internal Revenue Service or FICE (institution) code, if required by the Federal sponsoring agency.	10c	Enter the amount of all program income realized in this period that is required by the terms and conditions of the Federal award to be deducted from total project costs. For reports prepared on a cash basis, enter the amount of cash income received during the reporting period. For reports prepared on an accrual basis, enter the amount of income earned since the beginning of the reporting period. When the terms or conditions allow program income to be added to the total award, explain in remarks, the source, amount and disposition of the income.
5	This space is reserved for an account number or other identifying numbers that may be assigned by the recipient.	10f	Enter amount pertaining to the non-Federal share of program outlays included in the amount on line e.
8	Enter the month, day, and year of the beginning and ending of this project period. For formula grants that are not awarded on a project basis, show the grant period.	10h	Enter total amount of unliquidated obligations for this project or program, including unliquidated obligations to subgrantees and contractors. Unliquidated obligations are: Cash basis—obligations incurred but not paid; Accrued expenditure basis—obligations incurred but for which an outlay has not been recorded. Do not include any amounts that have been included on lines a through g. On the final report, line h should have a zero balance.
10	The purpose of vertical columns (a) through (f) is to provide financial data for each program, function, and activity in the budget as approved by the Federal sponsoring agency. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the totals of all programs, functions or activities should be shown in column (g) of the first page. For agreements pertaining to several Catalog of Federal Domestic Assistance programs that do not require a further functional or activity classification breakdown, enter under columns (a) through (f) the title of the program. For grants or other assistance agreements containing multiple programs where one or more programs require a further breakdown by function or activity, use a separate form for each program showing the applicable functions or activities in the separate columns. For grants or other assistance agreements containing several functions or activities which are funded from several programs, prepare a separate form for each activity or function when requested by the Federal sponsoring agency.	10j	Enter the Federal share of unliquidated obligations shown on line h. The amount shown on this line should be the difference between the amounts on lines h and i.
10a	Enter the net outlay. This amount should be the same as the amount reported in Line 10e of the last report. If there has been an adjustment to the amount shown previously, please attach explanation. Show zero if this is the initial report.	10k	Enter the sum of the amounts shown on lines g and j. If the report is final the report should not contain any unliquidated obligations.
10b	Enter the total gross program outlays (less rebates, refunds, and other discounts) for this report period, including disbursements of cash realized as program income. For reports that are prepared on a cash basis, outlays are the sum of actual cash disbursements 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 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 net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contractors, subgrantees, and other payees.	10m	Enter the unobligated balance of Federal funds. This amount should be the difference between lines k and i.
		11b	Enter rate in effect during the reporting period.
		11c	Enter amount of the base to which the rate was applied.
		11d	Enter total amount of indirect cost charged during the report period.
		11e	Enter amount of the Federal share charged during the report period. If more than one rate was applied during the project period, include a separate schedule showing bases against which the indirect cost rates were applied, the respective indirect rates the month, day, and year the indirect rates were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date.

**COST OR PRICE SUMMARY***(See accompanying instructions before completing this form)*Form Approved
OMB No. 2030-0011
Approval expires 10-31-86**PART I - GENERAL**

1. RECIPIENT		2. ASSISTANCE IDENTIFICATION NO.	
3. NAME OF CONTRACTOR OR SUBCONTRACTOR		4. DATE OF PROPOSAL	
5. ADDRESS OF CONTRACTOR OR SUBCONTRACTOR (Include ZIP Code)		6. TYPE OF SERVICE TO BE FURNISHED	
TELEPHONE NUMBER (Include Area Code)			

PART II - COST SUMMARY

7. DIRECT LABOR (Specify labor categories)	ESTIMATED HOURS	HOURLY RATE	ESTIMATED COST	TOTALS
		\$	\$	
DIRECT LABOR TOTAL:				\$
8. INDIRECT COSTS (Specify indirect cost pools)	RATE	x BASE =	ESTIMATED COST	
		\$	\$	
INDIRECT COSTS TOTAL:				\$
9. OTHER DIRECT COSTS				
a. TRAVEL			ESTIMATED COST	
(1) TRANSPORTATION			\$	
(2) PER DIEM			\$	
TRAVEL SUBTOTAL:			\$	
b. EQUIPMENT, MATERIALS, SUPPLIES (Specify categories)			ESTIMATED COST	
			\$	
EQUIPMENT SUBTOTAL:				
c. SUBCONTRACTS			ESTIMATED COST	
			\$	
SUBCONTRACTS SUBTOTAL:			\$	
d. OTHER (Specify categories)			ESTIMATED COST	
			\$	
OTHER SUBTOTAL:			\$	
e. OTHER DIRECT COSTS TOTAL:				\$
10. TOTAL ESTIMATED COST				\$
11. PROFIT				\$
12. TOTAL PRICE				\$

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PART III — PRICE SUMMARY

13. COMPETITOR'S CATALOG LISTINGS, IN-HOUSE ESTIMATES, PRIOR QUOTES (Indicate basis for price comparison)	MARKET PRICE(S)	PROPOSED PRICE
		8

PART IV — CERTIFICATIONS

14. CONTRACTOR

14a. HAS A FEDERAL AGENCY OR A FEDERALLY CERTIFIED STATE OR LOCAL AGENCY PERFORMED ANY REVIEW OF YOUR ACCOUNTS OR RECORDS IN CONNECTION WITH ANY OTHER FEDERAL ASSISTANCE AGREEMENT OR CONTRACT WITHIN THE PAST 12 MONTHS?

☐ YES ☐ NO (If "Yes" give name, address, and telephone number of reviewing office)

14b. THIS SUMMARY CONFORMS WITH THE FOLLOWING COST PRINCIPLES

14c. This proposal is submitted for use in connection with and in response to:
(1)

This is to certify to the best of my knowledge and belief that the cost and pricing data summarized herein are complete, current, and accurate as of: (2) DATE

I further certify that a financial management capability exists to fully and accurately account for the financial transactions under this project. I further certify that I understand that the subagreement price may be subject to downward renegotiation and/or recoupment where the above cost and pricing data have been determined, as a result of audit, not to have been complete, current, and accurate as of the date above.

(3) TITLE OF PROPOSER	SIGNATURE OF REVIEWER	DATE OF EXECUTION
-----------------------	-----------------------	-------------------

15. RECIPIENT REVIEWER

I certify that I have reviewed the cost/price summary set forth herein and the proposed costs/price appear acceptable for subagreement award.

(3) TITLE OF PROPOSER	SIGNATURE OF REVIEWER	DATE OF EXECUTION
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16. EPA REVIEWER

(3) TITLE OF PROPOSER	SIGNATURE OF REVIEWER	DATE OF EXECUTION
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AR500281

PURPOSE AND APPLICABILITY

The purpose of this form is to provide a simple form for the display of cost and price data. 40 CFR 33.290 requires the recipient to perform cost or price analysis for every procurement action, including subagreement modifications. This form is not required by EPA, but may be used at the recipient's option. If the recipient currently uses a cost and price analysis form which accomplishes the same objectives as this form, the recipient may use its own form.

INSTRUCTIONS

If this form is used, CAREFULLY READ AND FOLLOW ALL INSTRUCTIONS. Many items are not self-explanatory. Attach additional sheets if necessary.

Use only the applicable portions of this form:

Part I is applicable to all subagreements.

Part II is applicable to all subagreements requiring a cost analysis pursuant to EPA procurement regulations.

Part III is applicable to all subagreements where review is based on price comparison (i.e., price analysis).

Part IV certifications will be executed as required by the instructions for each block.

PART I — GENERAL

Item 1 — Enter the name of the recipient as shown on the assistance agreement.

Item 2 — Enter the assistance identification number shown on the assistance agreement (or assigned to the project, if no assistance agreement has yet been executed).

Item 3 — Enter the name of the contractor or subcontractor with whom the subagreement is proposed to be executed.

Item 4 — Enter the date of the contractor's or subcontractor's proposal to the recipient.

Item 5 — Enter the full mailing address of the contractor or subcontractor.

Item 6 — Give a brief description of the work to be performed under the proposed subagreement.

Part II — COST SUMMARY

This portion of the form is to be completed by the contractor (or his/her subcontractor) with whom a subagreement is proposed to be executed, unless that subagreement is a formally advertised, competitively bid, fixed price contract.

Nothing in the following discussions should be interpreted as recommending the inclusion as direct costs any items normally treated as overhead costs in the form's accounting or estimating system. 40 CFR Part 30 identifies general cost principles applicable to subagreements under EPA assistance. Pursuant to that Part, all subagreements awarded to profit-making organizations are subject to the cost principles of 41 CFR 31.2. Architect engineer and construction contracts are also subject to 41 CFR 31.105.

Item 7 — Direct Labor

Direct labor costs normally include salaries at a regular time rate. Overtime premiums should be identified separately on an attachment. Incurrence of unanticipated overtime costs requires the approval of the recipient at the time of incurrence. If significant overtime is known to be needed at the time of completion of the cost review form, the reasons therefore, labor categories, rates and hours should be identified on an attachment. Also included is the cost of partners' or principals' time when they are directly engaged in services to be rendered

under the subagreement. In case the full time of any employee is not to be devoted to work to be performed under the subagreement only the cost of actual time to be applied should be included. The compensation of a partner or principal shall be included as direct cost only for the time that she/he is expected to be engaged directly in the performance of work under the subagreement and only if it is the firm's normal practice to charge such time directly to all jobs. The rate of compensation of a partner or principal shall be commensurate with the cost of employing another qualified person to do such work, but the salary portion shall not exceed the actual salary rate of the individual concerned. Distribution of profits shall not be included in the rate of compensation.

Enter in block 7 the categories of professional or technical personnel necessary to perform each major element of work under the subagreement scope of services. Estimate hours worked for each category and extend them by the wage rates to be paid during the actual performance of the work. Current rates, adjusted for projected increases, if any, should be used for the actual categories of labor contemplated. All projected increases should be supported by recent experience or established personnel policy.

Enter in the far right column the total estimated direct labor cost.

Supporting records to be maintained by the contractor and which must be submitted or made available to the recipient or EPA upon request include:

- The method of estimating proposed hours worked.
- The computation technique used in arriving at proposed labor rates.
- The specific documents, books, or other records used as factual source material to develop proposed hours worked and labor rates.
- Detailed rate computations which were used in computing the information submitted on the form.

If in block 14a, the contractor has checked "No," a brief narrative description of the methods used in arriving at items a through d above shall be included on an attached sheet.

Item 8 — Indirect Costs

Indirect costs may consist of one or more pools of expenses which are grouped on the basis of the benefits accruing to the cost objectives represented by the distribution base or bases to which they are allocated. Since accounting practices vary, the use of particular groupings is not required. Neither is the use of any particular allocation base mandatory. However, it is mandatory that the method used results in an equitable allocation of indirect costs to cost objectives which they support.

Normally, the firm's accounting system and estimating practices will determine the method used to allocate overhead costs. The firm's established practices, if in accord with generally accepted accounting principles and PROVIDED THEY PRODUCE EQUITABLE RESULTS IN

THE CIRCUMSTANCES, will generally, be accepted. Proposed overhead rates should represent the firm's best estimate of the rates to be experienced during the subagreement period. They should be based upon recent experience and be adjusted for known factors which will influence experienced trends.

Common overhead groupings overhead on direct labor and general and administrative expenses. The first grouping usually includes employment taxes, fringe benefits, holidays, vacation, idle time, bonuses, etc., applicable to direct labor. The second generally includes the remaining costs which because of their incurrence for common or joint objectives are not readily subject to treatment as direct costs. It is expected, however, that proposal groupings will correspond with the firm's normal method for accumulating indirect costs. (Under some accounting systems, the first grouping would be included instead under item 7.) No special categorization is required provided the results are realistic and equitable.

Direct salaries are the normal distribution base for overhead costs, but in some circumstances other bases produce more equitable results. As in the case of overhead costs groupings, the method to be used will depend upon the firm's normal practices and the equity of the results produced in the circumstances.

In the case of multibranch firms, joint ventures, or affiliates, it is expected that overhead costs applicable to the specific location(s) where work is to be based on cost data from the most recent fiscal periods updated to reflect changes in volume of business or operations.

Enter in block 8 the indirect cost pools normally used by the firm for allocation of indirect costs. Enter the indirect cost rate for each pool and extend each one by the rate base to which it applies to arrive at the estimated indirect costs to be incurred during the actual performance of the work. If the direct labor total from block 7 is not used as the rate base for any of the indirect cost pools, the rate base used must be explained on an attached sheet.

A brief narrative statement outlining the firm's policies and practices for accumulating indirect costs. Enter the indirect cost rate costs and the method used to compute the proposed rate or rates shall accompany the form. Include comment on the firm's policies regarding the pricing and costing of principals' time. The normal accounting treatment of principals' salaries, the annual amounts, and the hourly charge rate, if used, should be discussed.

Enter in the far right column the total estimated indirect costs.

Supporting records to be maintained by the contractor and which must be submitted or made available to the recipient or EPA upon request include:

- a. Detailed cost data showing overhead accounts, allocation bases, and rate computations for the preceding fiscal period. If more than six months of the current fiscal period have elapsed, cost data for this period should be included as one of the three period(s).
- b. Company budgets, budgetary cost data, and overhead rate computations for future periods.

Item 9 — Other Direct Costs

The following items are illustrative of costs normally included in this category of costs:

- a. Travel costs, including transportation, lodging, subsistence, and incidental expenses incurred by personnel or consultants while in a travel status in connection with the performance of services required by the contract. The cost principles generally

require the use of less than first class air accommodations and also limit the cost of private aircraft.

b. Equipment, Materials, and Supplies

- (1) Long distance telephone, telegraph, and cable expenses to be incurred in connection with the performance of services required in connection with the contract.
- (2) Reproduction costs including blueprints, black and white prints, ozalid prints, photographs, photostats, negatives, and express charges.
- (3) Commercial printing, binding, artwork, and models.
- (4) Special equipment.

c. Subcontracts.

d. Other. Direct costs, if any, not included above.

Enter in blocks 9a-d all other direct costs proposed. Travel costs entered must be supported by an attachment which identifies the number of staff trips proposed and the estimated cost per staff trip for both local and long distance transportation. The number of days and the rate per day must be provided to support the per diem shown. Each subcontract and consultant agreement must be identified separately in block 9c.

Enter in the far right column on line 9e the total of all other direct costs (9a-d).

Supporting data to be maintained by the contractor and which must be submitted or made available to the recipient or EPA upon request include:

- a. basis for other direct costs proposed.
- b. factual sources of costs, rates, etc., used in computing proposed amount of each cost element.

Item 10 — Total Estimated Cost

Enter the total of all direct labor, indirect costs, and other direct costs from items 7, 8, and 9.

Item 11 — Profit

A fair and reasonable provision for profit cannot be made by simply applying a certain predetermined percentage to the total estimated cost. Rather, profit will be estimated as a dollar amount after considering:

- a. degree of risk,
- b. nature of the work to be performed,
- c. extent of firm's investment,
- d. subcontracting of work, and
- e. other criteria.

The Federal Acquisition Regulation cost principles applicable to subagreements with profit-making organizations (41 CFR 31.2 and 31.105) disallow certain types of costs which are sometimes incurred by firms in the normal conduct of their business. Examples of costs which are not allowable under these cost principles include, but are not limited to, entertainment, interest on borrowed capital, and bad debts. Because the Government considers "profit" to be the excess of

price over allowable costs, such computation can indicate a higher profit estimate than the firm's experienced profit as it customarily computes it. The contractor may separately disclose to the recipient its customary computations.

Enter the dollar amount of profit in block 11.

Item 12 — Total Price

Enter the total of items 10 and 11.

PART III — PRICE SUMMARY

This portion of the form is for use by a recipient when price comparison (i.e., price analysis) is used in subagreement review. It may also be used by a contractor when price comparison is used as a basis for award of a subcontract.

Item 13 — Competitor's Catalog Listings, In-House Estimates, Price Quotes

Enter sources of all competitive bids or quotes received, or catalogs used and their prices, or in-house estimates made, if appropriate, for comparison. Attach additional sheets if necessary, particularly for purchases of several different items.

Enter in the far right column the proposed price for the subagreement.

PART IV — CERTIFICATIONS

Item 14 — Contractor — FOR USE BY CONTRACTOR OR SUBCONTRACTOR ONLY.

- a. Complete this block only if part II has been completed.
- b. Complete this block only if part II has been completed.

EPA Form 5700-41 (Rev. 4-84)

Enter the specific cost principles with which the cost summary of Part II conforms. Cost principles applicable to subagreements with various types or organizations are identified in 40 CFR Part 30.410. Cost principles applicable to subagreements with profit-making organizations are those at 41 CFR 31.2, and, for architect-engineer or construction contracts, 41 CFR 31.105.

- c. (1) Describe the proposal, quotation, request for price adjustment, or other submission involved, giving appropriate identifying number (e.g., RFP No. _____).
- (2) Enter the date when the price negotiations were concluded and the contract price was agreed to. The responsibility of the subagreement is not limited by the personal knowledge of the contractor's negotiator if the time of agreement, showing that the negotiated price is not based on complete, current, and accurate data.
- (3) Enter the date of signature. This date should be as close as practicable to the date when the price negotiations were concluded and the subagreement price was agreed to (not to exceed 30 days).

Item 15 — Recipient Reviewer — FOR USE BY RECIPIENT ONLY.

If required by applicable assistance regulations, the recipient must submit the signed form for EPA review prior to execution of the subagreement.

Item 16 — EPA Reviewer — FOR USE BY EPA ONLY.

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APPENDIX C

KEY CONTACTS LIST

I. Contacts for the Superfund Program

- A. EPA Technical Assistance Grants Staff
- B. EPA Headquarters Superfund Community Relations Staff
- C. EPA Regional Technical Assistance Grants Contacts
- D. State Superfund Contacts

II. Small, Minority, and Women's Business Contacts

- A. EPA Headquarters Contacts
- B. Minority Business Development Centers (Regional Offices)
- C. Minority Business Development Centers (District Offices)

III. Intergovernmental Review Contacts

- A. State Single Point of Contact List

KEY CONTACTS LIST

I. Contacts for the Superfund Program

A. EPA Technical Assistance Grants Staff

Daphne Gemmill
Office of Emergency and Remedial Response
EPA Headquarters (WH-548E)
401 M Street, S.W.
Washington, DC 20460
(202) 382-2460

B. EPA Headquarters Superfund Community Relations Staff

Melissa Friedland
Superfund Community Relations Coordinator
Office of Emergency and Remedial Response
EPA Headquarters (WH-548E)
401 M Street, S.W.
Washington, DC 20460
(202) 382-2461

Vanessa Musgrave
Superfund Community Relations Coordinator
Office of Emergency and Remedial Response
EPA Headquarters (WH-548E)
401 M Street, S.W.
Washington, DC 20460
(202) 382-2462

C. EPA Regional Technical Assistance Grant Contacts

Region 1

Mary Grealish
Superfund Management
EPA - Region 1
John F. Kennedy Federal Building
Boston, MA 02203
(617) 573-5701

Region 4

Pat Zweig
Superfund
EPA - Region 4
345 Courtland Street, N.E.
Atlanta, GA 30365
(404) 347-2234

Region 2

Lillian Johnson
Office of Public Affairs
EPA - Region 226 Federal Plaza
New York, NY 10278
(212) 264-4534

Region 5

Jennifer Hall
Office of Public Affairs
EPA - Region 5
230 South Dearborn
Chicago, IL 60604
(312) 886-4359

Region 3

Ann Cardinal
Office of Public Affairs
EPA - Region 3
841 Chestnut Street
Philadelphia, PA 19107
(215) 597-9905

Region 6

Ellen Greeney
EPA - Region 6
1445 Ross Avenue, 10th Floor
Dallas, TX 75270
(214) 655-6720

Appendix C

Region 7

Steve Wurtz
Office of Public Affairs
EPA - Region 7
726 Minnesota Avenue
Kansas City, KS 66101
(913) 236-2803

Region 8

Robin Coursen
Superfund
EPA - Region 8
1 Denver Place
999 18th Street, Suite 1300
Denver, CO 80202
(303) 293-1648

D. State Superfund Contacts

Region 1

Connecticut:

William Delaney
Director, Information and Education
Connecticut Department of Environmental
Protection
Office of Public Affairs
Room 117, State Office Building
165 Capitol Avenue
Hartford, CT 06106
(203) 566-5524

Maine:

Kevin Nelson
Environmental Services Specialist
Office of Information and Education
Maine Department of Environmental
Protection
State House, Station 17
Augusta, ME 04333
(207) 289-2343

Massachusetts:

Sara Weinstein
Director, Office of Public Participation
Massachusetts Department of Environmental
Quality Engineering
1 Winter Street, 5th Floor
Boston, MA 02108
(617) 292-5820

Region 9

Helen Burke
Toxics and Waste Management Division
EPA - Region 9
215 Fremont Street
San Francisco, CA 94105
(415) 974-7538

Region 10

Gretchen Schreiber
Hazardous Waste Division
EPA - Region 10
1200 6th Avenue
Seattle, WA 98101
(206) 442-2100

New Hampshire:

Kenneth Marschner
Administrator, Hazardous Waste Bureau
Water Supply and Pollution Control
Commission
Hazen Drive
Concord, NH 03103
(603) 271-2943

Rhode Island:

Tom Getz, Chief
Division of Air and Hazardous Materials
Rhode Island Department of Environmental
Management
75 Davis Street
Providence, RI 02908
(401) 277-2808

Vermont:

Tom Moyer
Waste Management Division
Environmental Release Management Section
Agency of Natural Resources
Department of Environmental Conservation
103 South Main Street
Waterbury, VT 05676
(802) 244-8702

Region 2

New Jersey:

Grace Singer
Chief, Bureau of Community Relations
Division of Hazardous Site Mitigation
New Jersey Department of Environmental
Protection
CN413
401 East State Street
Trenton, NJ 08625
(609) 984-3081

New York:

Bruce Bentley
Citizen Participation Specialist
Department of Environmental Conservation
50 Wolf Road, Room 505
Albany, NY 12233
(518) 457-0849

Region 3

Delaware:

David Small
Chief, Information and Education
Department of Natural Resources and
Environmental Control
P.O. Box 1401
Dover, DE 19901
(302) 736-4506

District of Columbia:

A. Padmanabha, Director
Pasty Hardin, Public Affairs
Department of Consumer and Regulatory
Affairs
Environmental Control Division
5010 Overlook Avenue, S.W.
Washington, DC 20032
(202) 727-7395

Maryland:

Ray Feldman/Peggy Powell
Public Affairs Officers
Office of Environmental Programs
201 West Preston Street
Baltimore, MD 21201
(301) 225-5747

Puerto Rico:

Juan Merced
Director, Air Quality Area
Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910
(809) 722-0077

Pennsylvania:

John Caltagirone
Office of Communications
Department of Environmental Resources
Harrisburg, PA 17120
(717) 787-1323

Virginia:

Dr. Cathy Harris/Cheryl Cashman
Public Affairs Officers
Department of Waste Management
Monroe Building
101 North 14th Street
Richmond, VA 23219
(804) 225-2667

West Virginia:

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Appendix C

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APPENDIX D

SELECTED REGULATORY TEXT

**EPA Grant Regulations
40 CFR Part 30, Annotated**

**EPA Procurement Regulations
40 CFR Part 33, Annotated**

OMB Circular A-122 and Revision

SUBCHAPTER B—GRANTS AND OTHER FEDERAL ASSISTANCE

PART 30—GENERAL REGULATION FOR ASSISTANCE PROGRAMS

Subpart A—What is the Purpose and Scope of this Regulation?

Sec.

- 30.100 What is the purpose of this regulation?
- 30.101 What is the scope of this regulation?
- 30.102 What laws authorize EPA to issue this regulation?

Subpart B—What Definitions Apply to this Regulation?

- 30.200 What definitions apply to this regulation?

Subpart C—How do I Apply for and Receive Assistance?

- 30.300 What activities does EPA fund?
- 30.301 To whom does EPA award assistance?
- 30.302 How do I apply for assistance?
- 30.303 What steps must I take when filing a standard application?
- 30.304 Is the information I submit to EPA confidential?
- 30.305 How do I find out if EPA approved or disapproved my application?
- 30.306 How long will I have to complete my project?
- 30.307 How much must I contribute to the funding of my project?
- 30.308 When may I begin incurring costs?
- 30.309 What is the effect of accepting an assistance agreement?

Subpart D—How does EPA Pay Me?

- 30.400 How does EPA make payments?
- 30.405 Can I assign my payment to anyone else?
- 30.410 How does EPA determine allowable costs?
- 30.412 How are costs categorized?

Subpart E—How do I Manage My Award?

- 30.500 What records must I maintain?
- 30.501 How long must I keep these records?
- 30.502 To whom must my contractor and I show these records?
- 30.503 What type of quality assurance practices am I required to have?
- 30.505 What reports must I submit?

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- 30.510 What type of financial management system must I maintain?
- 30.515 What restrictions on signs, surveys, and questionnaires must I observe?
- 30.518 What are the procedures for publishing scientific, informational, and educational documents?
- 30.520 When may I use my own employees ("force account")?
- 30.525 How should I treat program income?
- 30.526 How do I treat interest earned on EPA funds?
- 30.530 May I purchase personal property using EPA assistance funds?
- 30.531 What property management standards must I follow for nonexpendable personal property purchased with an EPA award?
- 30.532 How do I dispose of personal property?
- 30.535 May I purchase real property with EPA awarded funds?
- 30.536 How do I manage Federally-owned property?
- 30.537 Are contractors required to comply with EPA property policies?
- 30.538 May I use General Services Administration (GSA) supplies and services?
- 30.540 Who will audit my project?

Subpart F—What Other Federal Requirements Must I Comply With?

- 30.600 What Federal laws and policies affect my award?
- 30.601 Are there restrictions on the use of assistance funds for advocacy purposes?
- 30.603 What additional Federal laws apply to EPA assisted construction projects?
- 30.610 What are my responsibilities for preventing and detecting fraud and other corrupt practices?
- 30.611 Can I hire a person or agency to solicit EPA assistance for me?
- 30.612 May an EPA employee act as my representative?
- 30.613 What is EPA's policy on conflict of interest?
- 30.615 May I employ a former EPA employee and still receive assistance?

Subpart G—Can an Assistance Agreement be Changed?

- 30.700 What changes to my assistance agreement require a formal amendment?
- 30.705 What changes can I make to my assistance agreement without a formal amendment?

Sec.

30.710 Can I terminate a part or all of my assistance agreement?

Subpart H—How do I Close out my Project?

30.800 What records and reports must I keep after I complete my project?

30.802 Under what conditions will I owe money to EPA?

Subpart I—What Measures may EPA Take for Non-compliance?

30.900 What measures may EPA take for non-compliance?

30.901 What are the consequences of a stop-work order?

30.902 What are the consequences of withholding payments?

30.903 What are the consequences of termination for cause?

30.904 What are the consequences of annulment?

30.905 May I request a review of a termination, or annulment?

30.906 What are the consequences of suspension or debarment?

Subpart J—Can I get an Exception ("Deviation") From These Regulations?

30.1001 Will EPA approve any exceptions to these regulations?

30.1002 Who may request a deviation?

30.1003 What information must I include in a deviation request?

30.1004 Who approves or disapproves a deviation request?

30.1005 May I request a review of a deviation decision?

Subpart K—What Policies Apply to Patents, Data, and Copyrights?

30.1100 What assistance agreements are subject to EPA patent rules?

30.1101 What Federal patent laws or policies govern my assistance agreement?

30.1102 What are my invention rights and my reporting requirements if my award is other than an award under section 6914 of RCRA?

30.1103 What are my invention rights and obligations if I am a profitmaking firm with an award under section 6914 of RCRA?

30.1104 Can I get a waiver from section 6981(c) of RCRA?

30.1106 Do the patent rules apply to subagreements?

30.1108 Does EPA require any type of licensing of background patents that I own?

30.1112 Are there any other patent clauses or conditions that apply to my award?

Sec.

30.1130 What rights in data and copyrights does EPA acquire?

Subpart L—How are Disputes Between EPA Officials and me Resolved?

30.1200 What happens if an EPA official and I disagree about an assistance agreement requirement?

30.1205 If I file a request for review, with whom must I file?

30.1210 What must I include in my request for review or reconsideration?

30.1215 What are my rights after I file a request for review or reconsideration?

30.1220 If the Assistant Administrator confirms the final decision of the Headquarters disputes decision official, may I seek further administrative review?

30.1225 If the Regional Administrator confirms the final decision of the Regional disputes decision official, may I seek further administrative review at EPA Headquarters?

30.1230 Will I be charged interest if I owe money to EPA?

30.1235 Are there any EPA decisions which may not be reviewed under this subpart?

APPENDIX A—EPA PROGRAMS

APPENDIX B—PATENTS AND COPYRIGHTS CLAUSES

APPENDIX C—RIGHTS IN DATA AND COPYRIGHTS

APPENDIX D—PART 30 REPORTING REQUIREMENTS

APPENDIX E—PART 30 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. 138 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 9601 et seq.

SOURCE: 48 FR 45062, Sept. 30, 1983, unless otherwise noted.

Text of 40 CFR Part 30

Explanation of Key Provisions

Subpart A—What is the Purpose and Scope of this Regulation?

§ 30.100 What is the purpose of this regulation?

(a) The U.S. Environmental Protection Agency (EPA) is responsible for protecting and enhancing the quality of the environment. To achieve these objectives, EPA may award assistance in the form of grants, cooperative agreements, or fellowships to support: (1) State and local pollution control programs; (2) research, demonstration, or training projects; and (3) other projects that advance EPA's mission. This regulation tells how to apply for and manage an EPA project, describes EPA involvement in the process, and identifies recipients' responsibilities. Other EPA assistance regulations supplement these. They are found in 40 CFR Part 32 (Debarment), Part 33 (Procurement Under Assistance Agreements), Part 35 (State and Local Assistance), Part 40 (Research and Demonstration), Part 45 (Training) and Part 46 (Fellowships).

(c) This regulation incorporates the requirements of Office of Management and Budget (OMB) Circulars and EPA Orders.

(d) Recipients must provide the reporting information required in this part to be eligible for EPA assistance awards.

NOTE: The OMB clearances required by the Paperwork Reduction Act are identified in Appendix D to this part.

§ 30.101 What is the scope of this regulation?

This regulation covers financial assistance awards made as grants or cooperative agreements under requirements of the Federal Grant and Cooperative Agreement Act (Pub. L. 95-224). It does not cover direct EPA contracts under which EPA acquires property or services for its use.

§ 30.102 What laws authorize EPA to issue this regulation?

Reorganization Plan Number 3 of 1970 and the following statutes authorize the Administrator of EPA to issue this regulation.

All technical assistance grants are considered "assistance agreements" and are therefore subject to all of the relevant requirements in this section.

Text of 40 CFR Part 30

(a) The Clean Water Act, as amended (33 U.S.C. 1251 et seq.);
(b) The Clean Air Act, as amended (42 U.S.C. 7401 et seq.);
(c) The Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.);
(d) The Safe Drinking Water Act, as amended (42 U.S.C. 300f et seq.);
(e) The Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 et seq.);
(f) The Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and
(g) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).
[48 FR 45062, Sept. 30, 1983; 49 FR 38944, Oct. 2, 1984]

Subpart B—What Definitions Apply to this Regulation?

§ 30.200 What definitions apply to this regulation?

"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.

"Applicant." Any entity that files an application or unsolicited proposal for EPA financial assistance under this subchapter.

"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 special conditions.

"Award official." The EPA official with the authority to execute assistance agreements and to take other actions authorized by this subchapter and by EPA Orders.

"Budget period." The length of time EPA specifies in an assistance agreement during which the recipient may expend or obligate Federal funds.

Explanation of Key Provisions

Text of 40 CFR Part 30

"Consolidated assistance." An assistance agreement awarded under more than one EPA program authority or funded together with one or more other Federal agencies. Applicants for consolidated assistance submit only one application.

"Continuation award." 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 (see § 30.306).

"Contractor." Any party to whom a recipient awards a subagreement.

"Cooperative agreement." An assistance agreement in which substantial EPA involvement is anticipated during the performance of the project (does not include fellowships).

"Cost sharing." The portion of allowable project costs that a recipient contributes toward completing its project (i.e., non-Federal share, matching share).

"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. The following are examples of environmentally related measurements: (a) A determination of pollutant concentrations from sources or in the ambient environment, including studies of pollutant transport and fate; (b) a determination of the effects of pollutants on human health and on the environment; (c) a determination of the risk/benefit of pollutants in the environment; (d) a determination of the quality of environmental data used in economic studies; and (e) a determination of the environmental impact of cultural and natural processes.

"Expendable personal property." All tangible personal property other than nonexpendable personal property.

"Force account work." The use of the recipient's own employees or equipment for construction, construction-related activities (including A and E services), or for repair or improvement to a facility.

Explanation of Key Provisions

Text of 40 CFR Part 30

Explanation of Key Provisions

"Foreign awards." An EPA award of assistance when all or part of the project is performed in a foreign country by (a) a U.S. recipient, (b) a foreign recipient, or (c) an international organization.

"Formal amendment." A written modification of an assistance agreement signed by both the authorized representative of the recipient and the award official.

"Grant 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).

"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 benefiting the EPA funded project.

"Nonexpendable personal property." Personal property with a useful life of at least two years and an acquisition cost of \$500 or more.

"Personal property." 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.

"Program income." 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.)

Text of 40 CFR Part 30

Explanation of Key Provisions

"Project." The activities or tasks EPA identifies in the assistance agreement.

"Project costs." All costs the recipient incurs in carrying out the project. EPA considers all allowable project costs to include the Federal share.

"Project officer." The EPA official designated in the assistance agreement as EPA's program contact with the recipient. Project officers are responsible for monitoring the project.

"Project period." 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.

"Quality assurance narrative statement." A description of how precision, accuracy, representativeness, completeness, and compatibility 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.

"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.

"Quality assurance project plan." An organization's written procedures which delineate how it produces quality data for a specific project or measurement method.

"Real property." Land, including land improvements, and structures and appurtenances, excluding movable machinery and equipment.

"Recipient." Any entity which has been awarded and accepted an EPA assistance agreement.

"Standard operating procedure." A document which describes in detail an operation, analysis, or action which is commonly accepted as the preferred method for performing certain routine or repetitive tasks.

Text of 40 CFR Part 30

"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.

"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.

"Unsolicited proposal." An informal written offer to perform EPA funded work for which EPA did not publish a solicitation.

[48 FR 45082, Sept. 30, 1983, as amended at 49 FR 38944, Oct. 2, 1984]

Subpart C—How do I Apply for and Receive Assistance?

§ 30.300 What activities does EPA fund?

EPA awards assistance to support various activities that protect the environment and reduce or control pollution. EPA groups these activities into the following types of assistance programs:

- (a) State and local pollution control;
- (b) Construction of wastewater treatment works;
- (c) Research;
- (d) Demonstration;
- (e) Training;
- (f) Fellowships;
- (g) Special investigations, surveys or studies; and
- (h) Consolidated assistance.

§ 30.301 To whom does EPA award assistance?

(a) EPA awards assistance only to applicants which are eligible under applicable statutes and regulations and which have the ability to meet the following criteria:

Explanation of Key Provisions

EPA may award a technical assistance grant to any group of individuals that may be affected by a release or threatened release of toxic chemicals from any hazardous waste site that is listed on the National Priorities List (NPL) (e.g. a Superfund site) or proposed for listing and a response action is underway. See Chapter 3 for a discussion of group eligibility criteria.

Text of 40 CFR Part 30

(1) Financial resources, technical qualifications, experience, organization, and facilities adequate to carry out the project, or a demonstrated ability to obtain these;

(2) Resources to meet the project completion schedule contained in the assistance agreement;

(3) A satisfactory performance record for completion of projects and subagreements;

(4) Accounting and auditing procedures adequate to control property, funds, and assets, as required in Subpart E of this part;

(5) Procurement standards that comply with Part 33 of this subchapter;

(6) Property management systems for acquiring, maintaining, safeguarding, and disposing of property, as required in Subpart E of this part; and

(7) Demonstrated compliance or willingness to comply with the civil rights, equal employment opportunity, labor law, and other statutory requirements under Subpart F of this part.

(b) EPA considers your submission of an assistance application as your assurance that you can and will meet these standards. EPA may conduct a preaward audit or other review to determine your capabilities.

(c) EPA must notify you in writing if it finds you unable to meet these standards. The written notice will state the reasons for the finding. You may appeal EPA's findings under the disputes procedures in Subpart L.

(d) Individuals, agencies, or organizations voluntarily excluded, suspended, or debarred under 40 CFR Part 32 are ineligible to receive assistance.

§ 30.302 How do I apply for assistance?

(a) You must submit a standard application to apply for EPA assistance.

(b) Before you file an application to perform unsolicited work, you may submit an unsolicited proposal. EPA will apprise you of your proposal's potential for funding.

Explanation of Key Provisions

Recipients must be aware that acceptance of EPA grant funds will require the establishment of accounting, procurement, and property management systems. EPA has the authority to cancel the assistance agreement or stop the reimbursement of the expenditure of Federal funds when grants are improperly or inadequately managed.

Applicants to the Technical Assistance Grant Program managed by EPA must complete EPA Form 5700-33 "State and Local Nonconstruction Programs" and EPA Form 5700-48 "Procurement System Certification." These forms will be included in the application kit. In addition, a completed application package must include a "Scope of Services," which specifies the projected tasks, schedule, and budget for the technical assistance project. See Chapter 4 for more details on the special requirements for technical assistance grants.

Text of 40 CFR Part 30

(c) You can get program information and an application kit with instructions from the EPA grants office which is responsible for administering that program. Regional EPA grants offices provide and review applications and award assistance for State and local pollution control projects. State water pollution control agencies provide and review applications for grants for the construction of wastewater treatment facilities. EPA Headquarters provides and reviews applications for and awards research, demonstration, fellowships, training, special investigations, surveys, studies, and most training assistance.

(d)(1) For assistance agreements awarded for Fiscal Year 1984, you must develop and implement a quality assurance program acceptable to the award official if your proposal involves any environmental related measurements or data generation. Except as noted in paragraphs (d) (2) and (3) of this section, your application for financial assistance must include a quality assurance plan which meets the requirements in § 30.503. If you already have an EPA approved quality assurance plan, you need only reference that plan in your application, provided the plan covers the project in your application.

(2) The recipient of an assistance award under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, must submit a schedule for developing a quality assurance project plan within 30 days of receiving an assistance award. Recipients may not begin field or laboratory work until the award official approves the recipient's quality assurance project plan.

(3) The recipient of a wastewater treatment construction grant awarded under Title II of the Clean Water Act must comply with § 30.503 only if a grant condition specifically requires the recipient to gather environmental related data. If a quality assurance program is required, recipients must submit a schedule for developing a quality assurance project plan within 30 days of assistance award. Recipients must not begin field or laboratory work until the award official approves the recipient's quality assurance project plan.

Explanation of Key Provisions

Text of 40 CFR Part 30

[48 FR 45062, Sept. 30, 1983; 49 FR 38944, Oct. 2, 1984]

§ 30.303 What steps must I take when filing a standard application?

(a) Before you file an application, you must complete the forms according to the instructions. At least one copy of the completed application must have an original signature of the person authorized to obligate you or your organization to the terms and conditions of EPA's regulations and assistance agreement.

(b) You must:

(1) Comply with your State's intergovernmental review process, if it established one under Executive Order 12372. See 40 CFR Part 29 (48 FR 29288, June 24, 1983).

(2) Comply with the areawide review requirements of Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334) if your project will be located in a metropolitan area. EPA programs that are subject to areawide review are listed in 48 FR 29304, June 24, 1983, and marked with an asterisk (*).

§ 30.304 Is the information I submit to EPA confidential?

(a) Generally, the information is not confidential. When EPA receives your assistance application or unsolicited proposal the information you submit becomes part of the Agency's records. As such, it is subject to EPA's disclosure of information policy (40 CFR Part 2) which is based on the provisions of the Freedom of Information Act (5 U.S.C. 552) and on the provision for patents and rights in data and copyrights under Subpart K of this part.

(b) If you submit data, documents, or parts of documents which you consider to be confidential, you should clearly identify them with the words "trade secret," "proprietary," or "business confidential." For further instructions on assertion of confidentiality claims, see 40 CFR Part 2, Subpart B.

Explanation of Key Provisions

See IFR section 35.4045 and Chapter 4 of this manual for detailed instructions on how to apply for a technical assistance grant.

Before filing the grant application, a grant applicant must find out what procedures need to be followed to comply with their State's intergovernmental review process. State contacts are listed in Appendix C. EPA will not process an application without evidence of compliance with this requirement. See Chapter 4 of this manual, and the grant application form for more details.

Technical assistance grant application information is not considered confidential.

Text of 40 CFR Part 30

Explanation of Key Provisions

§ 30.305 How do I find out if EPA approved or disapproved my application?

(a) If EPA approves your application, the award official will prepare and sign an assistance agreement and send it to you for signature. Your authorized representative must either sign and return the agreement to EPA within three calendar weeks after you receive it or request EPA to extend the time for acceptance. If you do not sign or request an extension within the three week period, the assistance agreement is null and void.

(b) If EPA disapproves your application, it will promptly notify you in writing. You may appeal EPA's disapproval under Subpart L.

(c) Sometimes, EPA will defer your application. You will be notified in writing of this decision.

§ 30.306 How long will I have to complete my project?

(a) Your assistance agreement will state the length of your approved budget period(s) and project period. Subject to statutory provisions, your approved project period may include more than one budget period. In this case, you must submit a continuation application to EPA to request funding for each budget period after the initial one. EPA makes continuation awards subject to availability of funds and Agency priorities. (Assistance awards under 40 CFR Part 35, Subpart A, do not have project periods, but recipients of such awards may receive continuation awards.)

(b) The continuation application must include:

(1) A detailed progress report for the current budget period;

(2) A preliminary financial statement for the current budget period that includes estimates of the amount you expect to spend by the end of the current budget period and the amount of any uncommitted funds which you propose to carry over beyond the term of the current budget period;

(3) A budget for the new budget period;

(4) A detailed work plan revised to account for your actual accomplishments during the current budget period;

(5) An invention report, if applicable;

EPA will notify the grant applicant in writing if the application has been approved, denied or deferred. If an application has been approved, the group's project manager must sign the assistance agreement within three weeks or request an extension of the time for acceptance. If it has been denied, EPA's disapproval may be appealed under Subpart L.

A technical assistance grant project period may cover the duration of the cleanup process at the hazardous waste site. Each budget period may not be longer than three years, thus a project may extend over more than one budget period. In this case, a continuation application (EPA Form 5700-33) must be submitted to EPA.

The continuation application must include:

- a detailed progress report for the current budget period;
- a Financial Status Report (SF 269);
- a budget for the new budget period; and
- an updated Scope of Services.

Text of 40 CFR Part 30

Explanation of Key Provisions

(6) Any other reports that the assistance agreement may require.

(c) If approved by the award official, you may carry over unexpended prior year funds: (1) In lieu of new funds; (2) to complete work started in prior years; or (3) to supplement the new award. You must meet all program and cost sharing requirements in each budget period to carry over funds.

(d) If EPA executes a continuation agreement, EPA will reimburse you for allowable costs you incur between the end of a budget period and date of award for the next budget period provided you submit a continuation application before the expiration of the prior budget period.

[48 FR 45062, Sept. 30, 1983, as amended at 49 FR 38944, Oct. 2, 1984]

§ 30.307 How much must I contribute to the funding of my project?

(a) The amount of cost sharing you must contribute depends upon the statutory and regulatory cost sharing provisions that apply to your specific assistance project (see 40 CFR Parts 35 and 40). You must contribute at least a 5 percent share of the total allowable project costs for each budget period *unless*:

(1) A lesser amount is specified in the respective statute or regulation applicable to your project; or

(2) The assistance agreement is for a remedial planning action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(b) You may satisfy the requirement for cost sharing with cash or, when not prohibited by statute or regulations, with in-kind contributions. Your contribution may not be paid with Federal funds or with property or services received under another assistance agreement, unless authorized by statute. Additionally, your contributions must be:

(1) Negotiated before and specified in your assistance agreement;

(2) Verifiable from your records;

(3) Used exclusively for a single project; and

(4) Properly allocable to and allowable under the project.

EPA may reimburse a group for allowable costs incurred between the end of a budget period and renewal of funding if the group submits a continuation application (EPA Form 5700-33) before the first budget period expires.

The technical assistance grant program requires a 35% contribution of matching funds in cash or in-kind contributions. See Chapter 3 for a discussion of this requirement.

An in-kind contribution represents the value of non-cash contributions provided by the grant recipient and non-Federal third parties including States, local units of government and private citizens. In-kind contributions may be charges for the use of real property, non-expendable personal property, or the value of goods and services.

Text of 40 CFR Part 30

Explanation of Key Provisions

(c) All project expenditures by the recipient shall be deemed to include the Federal share.

[48 FR 45062, Sept. 30, 1983; 49 FR 38944, Oct. 2, 1984]

§ 30.308 When may I begin incurring costs?

(a) Except as permitted in § 30.306(d), paragraph (b) of this section, or other EPA regulations, the award official and you must sign the EPA assistance agreement before you incur costs.

(b) You may incur costs between the date the award official signs the assistance agreement and you sign the agreement, provided the costs are identified in the agreement and you do not change the agreement.

[49 FR 38944, Oct. 2, 1984]

EDITORIAL NOTE: For a class deviation document affecting § 30.308, see 50 FR 24876, June 13, 1985.

§ 30.309 What is the effect of accepting an assistance agreement?

(a) When the award official signs the assistance agreement, EPA will obligate Federal funds for the amount stated in your assistance agreement for the purposes of the award. EPA is not obligated to provide Federal funds for any costs incurred by you in excess of the Federal share of your approved budget. (See Subpart G of this part.)

(b) The award of an assistance agreement constitutes a public trust. By signing and accepting an assistance agreement, you become responsible for complying with all terms and conditions of your assistance agreement, including any special conditions necessary to assure compliance with EPA policies and objectives, this subchapter, and any other applicable statute or regulation. You must efficiently and effectively manage your project, successfully complete the project according to the schedule, and meet all monitoring and reporting requirements. You may not delegate or transfer this responsibility.

The EPA grant agreement must be signed by the group's project manager and the EPA Award Official before costs are incurred.

EPA will not provide funds for costs incurred in excess of the Federal share of the approved budget.

The grant recipient is legally responsible for the proper management of the Federal funds awarded including compliance with all Federal laws and regulations, as well as thorough recordkeeping, and accounting. The recipient may not delegate or transfer this responsibility.

Text of 40 CFR Part 30

Explanation of Key Provisions

Subpart D—How does EPA Pay Me?

§ 30.400 How does EPA make payments?

(a) EPA will promptly pay you for allowable costs you incur in accordance with EPA regulations and your assistance agreement. If at any time, EPA determines you received payment for unallowable cost or received an over-payment, you are required to reimburse EPA. (See § 30.802.)

(b) Your assistance agreement will specify one of the following ways for EPA to pay you. You will receive the appropriate forms and instructions with your assistance agreement.

(1) *By letter of credit.* EPA will pay you by the letter of credit method, if you meet the Treasury Department's criteria contained in Treasury Circular No. 1075, as revised. You must establish a separate bank account when payments under a letter of credit are made on a "check-paid" basis.

(2) *By advance.* If you do not qualify for a letter of credit, EPA may pay you by the advance payment method. You must negotiate the amount of your initial advance with the award official. The negotiated amount should not exceed the cash you will need for the first three months of operation. You must request the initial advance on Standard Form 270 (SF 270, "Request for Advance or Reimbursement") which will be included in your award package. EPA will issue a check for the first three months or one check each month (at EPA's option) to pay the advance. After your initial advance, you must submit an SF 270 at least quarterly, but not more often than monthly, indicating the amount of your expenditures to date and your request for funds for the coming period.

(3) *By reimbursement.* If you do not meet letter of credit requirements or receive advance payments, EPA will pay you by reimbursement. Also, EPA generally will pay you under the reimbursement method if you are receiving assistance under EPA's wastewater treatment construction grants program (see 40 CFR Part 35, Subpart I). When EPA pays by this method, you will be reimbursed for costs which you have incurred and are currently and legally obligated to pay.

Technical assistance grants will be paid by the "reimbursement" method. Recipients of EPA grant awards may submit an EPA Form SF 270 — "Request For Reimbursement" quarterly. See instructions provided in Chapter 6.

Text of 40 CFR Part 30

Explanation of Key Provisions

§ 30.405 Can I assign my payment to anyone else?

Except as provided for in 40 CFR 35.2025(b)(2) of EPA's wastewater treatment construction grants regulation, you cannot assign your right to receive payments under your assistance agreement. EPA will make payments only to the payee identified in the assistance agreement.

EPA will make payments only to the person identified in the grant as the payee.

§ 30.410 How does EPA determine allowable costs?

To be allowable, costs must meet applicable statutory provisions and Federal cost principles. EPA uses the following cost principles in determining allowable costs for all EPA assistance agreements and subagreements under them, except as otherwise provided by statute or this subchapter. Regardless of whether the organization is the recipient of the award or is performing services for the recipient, the nature of the organization is the sole criterion for determining applicable cost principles.

The primary allowable cost incurred under the Technical Assistance Grant Program will be paying the technical advisor for services rendered. For a discussion of other allowable costs, see Chapter 6 of this manual.

(a) *State and local governments* must use OMB Circular A-87 to determine allowable costs;

(b) *Educational institutions* must use: (1) OMB Circular A-21 cost principles for research and development, training, and other educational services under grants, cooperative agreements, and subagreements, and (2) OMB Circular A-88 which provides principles for coordinating the establishment of indirect cost rates and the auditing of grants, cooperative agreements, and subagreements;

(c) *Other non-profit institutions* must use OMB Circular A-122, as revised;

(d) *Profit-making organizations* must use Federal Acquisition Regulation 48 CFR Subparts 31.1 and 31.2;

(e) *Hospitals* must use 45 CFR Part 74, Appendix E.

[48 FR 45062, Sept. 30, 1983, as amended at 49 FR 38944, Oct. 2, 1984]

Text of 40 CFR Part 30

Explanation of Key Provisions

§ 30.412 How are costs categorized?

(a) Costs are categorized as being either a direct cost if they support a specific project only or as an indirect cost as described in the applicable cost principles (see § 30.410). To receive payment for indirect costs, you must have negotiated an indirect cost rate with your cognizant Federal Agency and your assistance agreement must provide for the use of that rate.

(b) You may request a special indirect cost rate, if (1) your project is conducted at an off-site location; or (2) your project is a large, one-time project and its costs would distort the normal direct cost base used in computing the indirect cost rate.

Subpart E—How do I Manage My Award?

§ 30.500 What records must I maintain?

(a) You must maintain official records for each assistance award you receive and identify them with EPA assistance identification numbers. These records must contain the following information:

(1) Amount received and expended for the project, including all Federal and cost sharing funds;

(2) Program income;

(3) Total cost of the project (both direct and indirect costs);

(4) Property purchased under the award or used as part of your in-kind contribution;

(5) *Time records and other supporting data.* Institutions of higher education may account for the distribution of salaries and wages of professorial or professional staff by budgeted, planned, or assigned work activity if the system for wages and salaries meets the requirements in OMB Circular A-21;

(6) Documentation of compliance with applicable statutes and regulations.

(b) Your contractor must maintain books, documents, papers, and records pertinent to the project.

[48 FR 45062, Sept. 30, 1983, as amended at 49 FR 38945, Oct. 2, 1984]

Recipients are required to establish a recordkeeping system. Throughout the technical assistance process, groups must keep very complete records of all activities relating to the grant. See Chapter 6 for a discussion of how to meet these requirements.

Text of 40 CFR Part 30

§ 30.501 How long must I keep these records?

(a) Generally you and your contractor must keep all records for three years from the end of the project. Except for real property and nonexpendable personal property records, the beginning date of the three year period depends on the type of project you are conducting, as follows:

(1) For research, demonstration, and training programs, the submission date of a final Financial Status Report (SF-269);

(2) For State and local assistance programs, the submission date of the final Financial Status Report (SF-269); or

(3) For construction awards, the approval date of EPA's final payment for the project.

(b) You must keep your records on real property and nonexpendable personal property for three years from the date of final disposition.

(c) If EPA terminates your award, you must keep all records for three years from the termination date, except as provided in paragraph (b) of this section.

(d) If litigation, a claim, a dispute under Subpart L, or an audit is begun before the end of the three year period, you must keep all records until the three years have passed or until the litigation, dispute, claim, or audit is completed and resolved, whichever is longer.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

§ 30.502 To whom must my contractor and I show these records?

You and your contractor must allow the project officer and any authorized representative of EPA, including the Office of Inspector General, the Comptroller General of the United States, the Department of Labor, or a representative of delegated States under the wastewater treatment construction grants program, to inspect, copy, and audit records pertinent to the project. Access to records is not limited to the required retention periods. You and your contractor must allow access to records at any reasonable time for as long as the records are kept.

Explanation of Key Provisions

All records pertaining to the technical assistance grant must be kept for three years following project completion or until any litigation, dispute, claim, or audit relating to the grant is resolved. If, after three years, the recipient intends to dispose of the records, EPA must be notified in writing and the records must be held until EPA notifies the recipient as to their disposition.

The grant recipient and the group's contractors must allow the EPA TAG Project Officer or any other authorized representative of EPA to inspect, copy, and audit records relating to the project.

Text of 40 CFR Part 30

Explanation of Key Provisions

§ 30.503 What type of quality assurance practices am I required to have?

Section 30.503 does not apply to technical assistance grants since the grant will not fund activities to gather new primary data (text deleted).

§ 30.505 What reports must I submit?

(a) *Interim and final progress reports.* You must submit interim and final progress reports if the assistance agreement or EPA regulations require them. See 40 CFR Parts 35, 40, and 45 for specific requirements. EPA or its authorized representatives may inspect your project at any reasonable time to review its progress.

Recipients are required to submit final Financial Status Reports at the close of each budget period. Participants in the Technical Assistant Grant Program are required to submit quarterly progress reports.

(b) *Financial reports.* (1) You must submit a Financial Status Report (SF 269) within 90 days after each budget period and within 90 days after the end of your project completion or termination. If either the Financial Status Report (FSR) you submit after the budget period or the FSR you submit after your project is completed or terminated includes unliquidated obligations, you must submit a final FSR immediately after those obligations are liquidated. If you do not submit a final FSR within a reasonable time after the 90 day period, the award official may disallow the unliquidated obligations.

(2) Under the wastewater treatment construction grants program, your final "Outlay Report and Request for Reimbursement for Construction Programs" (SF 271) will serve as the financial report.

(3) Recipients of fellowship assistance agreements do not have to submit FSR's.

(c) *Invention reports.* You must report all inventions to the award official (see Subpart K for details).

(d) *Report on federally-owned property.* You must submit an annual inventory of all Federally-owned property used on your project. At the end of the project period, or when you no longer need the property, you must submit a final inventory which states the present condition of each item and requests disposition instructions.

[48 FR 45062, Sept. 30, 1983, as amended at 49 FR 38945, Oct. 2, 1984]

§ 30.510 What type of financial management system must I maintain?

You must maintain a financial management system that consistently applies accepted accounting principles

See Chapter 6 for a discussion of how to comply with EPA's financial recordkeeping requirements, a sample general ledger for recording cash transactions during a budget period, and a sample quarterly progress report.

Text of 40 CFR Part 30

Explanation of Key Provisions

and practices and at least includes:

(a) An accurate, current, and complete accounting of all financial transactions for your project;

(b) Records, together with supporting documents showing the source and application of all project funds, including assistance awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income;

(c) Control over, and accountability for, all project funds, property, and other assets, and an assurance that you used these solely for their authorized purpose;

(d) A comparison of actual costs versus budgeted object class amounts;

(e) Procedures to ensure prompt disbursement of Federal funds after you receive them;

(f) Procedures for determining allowable, allocable, and reasonable costs;

(g) Audits at least every other year on an organization-wide basis or as required by OMB Circular A-128, if applicable (see § 30.540); and

(h) A systematic method to resolve audit findings and recommendations.

(48 FR 45062, Sept. 30, 1983, as amended at 51 FR 6353, Feb. 21, 1986)

§ 30.515 What restrictions on signs, surveys, and questionnaires must I observe?

(a) *Signs.* You must place a visible project identification sign at a construction site. The sign must give project information and credit EPA for funding. Your project officer will give you specifications for sign design, content, and placement. The cost of making and erecting the sign is an allowable cost.

(b) *Surveys and questionnaires.* If your survey or questionnaire states that information is being collected for the Federal Government, you must request written approval from EPA to use Agency funds to cover the costs of data collection. To assure compliance with the Paperwork Reduction Act of 1980, Pub. L. 96-511 (44 U.S.C. 3501 et seq.), the project officer can grant approval only with the agreement of the EPA Headquarters reports management officer. You must also receive the project officer's approval to list EPA as a recipient of the survey information.

A group's records must undergo an independent audit at least every other year.

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§ 30.518 What are the procedures for publishing scientific, informational, and educational documents?

(a) EPA encourages publication of the results of its assistance agreements.

(b) You must comply with EPA's peer and administrative review process if you intend to release to the public informational materials, reports, and other products produced under an EPA assistance agreement.

(1) Except for articles published under paragraph (d) of this section, you must submit three copies of the documents to your project officer for EPA review. EPA will evaluate the documents and will provide you with written, suggested changes, if any.

(2) You should make every effort to accommodate suggestions arising from the EPA review process while preparing a revised draft. You should alert EPA reviewers to suggestions you cannot accommodate and to changes initiated by you in the revised draft.

(3) If an agreement is reached that the material is appropriate for release as an EPA publication, the following statement must be included in the document:

The information in this document has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient). It has been subjected to the Agency's peer and administrative review and has been approved for publication as an EPA document. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

(c) If agreement cannot be reached that the material is appropriate for release as an EPA publication, you may independently publish and distribute the document for your own use and at your own expense provided you include the following statement in the document:

Although the information in this document has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient), it may not necessarily reflect the views of the Agency and no official endorsement should be inferred.

(d) EPA also encourages independent publication of reports in referred journals at any time. You must submit

Explanation of Key Provisions

If a grant recipient or one of the group's contractors wishes to publish a report under a technical assistance grant, they must submit the document for review to the EPA TAG Project Officer. For the purposes of this program, "publish" means to have a document prepared for public distribution by a professional printing house. Copied materials need not be submitted for EPA review.

If a group does publish documents for its own use, it must include this statement.

Text of 40 CFR Part 30

Explanation of Key Provisions

a copy of the article to your project officer when you send it for publication. Following publication, three copies of the article should be submitted to the project officer. The article must include the following statement:

Although the research described in this article has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient), it has not been subjected to the Agency's peer and administrative review and therefore may not necessarily reflect the views of the Agency and no official endorsement should be inferred.

(e) Documents that are not to be released to the public as EPA publications but are part of a recipient's regular pollution control activities are not subject to the EPA peer and administrative review process, e.g., State pollution control agency-published newsletters and operation and maintenance manuals under the wastewater treatment construction grants program. However, EPA encourages you to establish a similar review process before publishing any documents at your own expense. You may publish such documents only if you include the following statement:

This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient). The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

§ 30.520 When may I use my own employees ("force account")?

Section 30.520 does not apply to technical assistance grants because the Technical Assistance Grant Program will not fund construction activities (text deleted).

§ 30.525 How should I treat program income?

Section 30.525 does not apply to the Technical Assistance Grant Program because program income (income earned by the recipient from charges for the project) is not allowed under the Technical Assistance Grant Program (text deleted).

Text of 40 CFR Part 30

Explanation of Key Provisions

§ 30.526 How do I treat interest earned on EPA funds?

If you earn interest on an EPA advance, you must return it to EPA unless you are:

(a) A State, or State agency as defined under section 203 of the Intergovernmental Cooperation Act of 1968, (42 U.S.C. 4213), or

(b) A tribal organization as defined under sections 102, 103, or 104 of the Indian Self Determination Act (25 U.S.C. 450f, 450g, and 450h).

Any interest earned on grant funds must be credited against remaining EPA funds obligated to the group, i.e., EPA will subtract the interest earned from the total amount of the award under the grant agreement.

§ 30.530 May I purchase personal property using EPA assistance funds?

(a) *Nonprofit institutions of higher education conducting basic or applied research and nonprofit organizations whose primary purpose is the conduct of scientific research.* You may purchase personal property for the conduct of basic or applied research if authorized to do so in your assistance agreement. Before you purchase property or equipment with a unit acquisition cost of \$10,000 or more, you must receive the award official's approval. Title will be vested in you but may be limited as provided in paragraph (a)(1) of this section.

A grant recipient may purchase property with EPA grant funds only if authorized to do so in the grant agreement.

(1) If EPA determines that it is in the best interest of the Agency, EPA may reserve the right to transfer the title for personal property having a unit acquisition cost of \$1,000 or more to the Federal Government or a third party, within 120 days after project completion. EPA must identify such property in the assistance agreement, or otherwise notify you in writing that EPA reserves the right to transfer the title.

(2) If EPA does not reserve the right to transfer the title, you have no other obligations or accountability to EPA.

(b) *Other recipients.* You may purchase personal property with EPA assistance funds if authorized to do so in your assistance agreement. Before you purchase personal property with a unit cost of \$10,000 or more, you must receive the award official's approval. Title will be vested in you, subject to the following conditions:

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(1) You must use the property in the EPA assisted project for which it was acquired as long as needed, whether or not the project continues to be supported with EPA funds;

(2) You must assure that EPA's interest (the percentage of EPA's participation in the total award) is adequately reflected and protected in compliance with all recordation or registration requirements of the Uniform Commercial Code or other applicable local laws on all nonexpendable personal property with a unit acquisition cost of \$10,000 or more;

(3) You must follow the property management standards in § 30.531;

(4) You must follow the disposition requirements in § 30.532; and

(5) EPA reserves the right to transfer the title for nonexpendable personal property having a unit acquisition cost of \$1,000 or more to the Federal Government or a third party, within 120 days after project completion. EPA must identify such property in the assistance agreement.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

§ 30.531 What property management standards must I follow for nonexpendable personal property purchased with an EPA award?

Nonprofit institutions of higher education conducting basic or applied research and nonprofit organizations whose primary purpose is to conduct scientific research are exempt from the following standards. All other recipients must comply with the following property management standards. Recipients may use their own property management system if the system meets the following minimum standards.

(a) Maintain accurate records reflecting:

(1) A description of the property;

(2) Manufacturer's serial number, model number, or other identification number;

(3) Source of the property, including assistance identification number;

(4) Whether title is vested in the recipient or the Federal Government;

(5) Unit acquisition date and cost;

Explanation of Key Provisions

Recipients are required to establish a property management system if any property is purchased with grant funds.

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Explanation of Key Provisions

(6) The percentage of the Federal share of the cost;

(7) Location, use, and condition of property and the date the information was recorded; and

(8) Ultimate disposition data, including sales price or the method used to determine the price, or the method used to determine current fair market value where a recipient compensates EPA for its share under § 30.532 of this part.

(b) Conduct a physical inventory of property, and reconcile the results with the property records, at least once every two years. Your inventory must verify the current use and continued need for the property.

(c) Maintain a control system to prevent loss, damage, or theft. (You must thoroughly investigate and document any loss, damage, or theft of nonexpendable personal property.)

(d) Maintain adequate maintenance procedures that ensure the property is in good condition and that instruments used for precision measurements are periodically calibrated.

(e) Maintain proper sales procedures which provide for competition resulting in the highest possible return.

(f) Maintain identification of Federally-owned property.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

§ 30.532 How do I dispose of personal property?

Nonprofit institutions of higher education conducting basic or applied research and nonprofit organizations whose primary purpose is the conduct of scientific research are exempt from the following requirements. All other recipients must comply with the following requirements. When personal property is no longer needed for the original project, you may use it on other EPA projects. If you do not have other EPA projects, you may use it on other Federal projects. If you wish to use the property on other than Federally sponsored activities, you must comply with the following requirements;

Groups may purchase non-expendable personal property with technical assistance funds if authorized to do so in the grant agreement. Non-expendable personal property is equipment with a useful life of at least two years and an acquisition cost of \$500 or more. Groups must comply with EPA property management requirements. See Chapter 5, "Determining Allowable Costs."

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Explanation of Key Provisions

(a) Generally, if you purchased non-expendable personal property for less than \$1,000 per unit, you may either keep it or sell it and keep the proceeds. However, if you are a profit-making organization, you may keep nonexpendable personal property only if you reimburse EPA for its proportionate share of the current fair market value of the property.

(b) EPA is entitled to compensation on nonexpendable personal property you purchased for more than \$1,000. You may keep it, provided you compensate EPA for its proportionate share of the current fair market value. If you do not want to keep the property, your project officer will give you instructions for disposition.

(c) If, at the end of your project, you have expendable personal property with a total aggregate fair market value exceeding \$1,000, you may use the property on other Federally sponsored projects. If you do not use the property on other Federally sponsored projects you must keep it or sell it, but in either case you must compensate EPA for its proportionate share of the current fair market value.

[48 FR 45062, Sept. 30, 1983, as amended at 49 FR 38945, Oct. 2, 1984]

§ 30.535 May I purchase real property with EPA awarded funds?

You may purchase real property subject to the following conditions:

(a) The award official must approve the purchase.

(b) Except as provided in paragraph (f) of this section, you must use the real property only for the purpose for which it was purchased under the assistance award.

(c) You comply with the requirements in 40 CFR Part 4.

(d) You must also comply with 40 CFR Part 35, Subpart I, if your award is a wastewater treatment construction grant.

(e) You must assure that EPA's interest is adequately reflected and protected in compliance with all recordation or registration requirements of applicable local laws on real property.

(f) When it is no longer needed for the original project:

Groups may purchase real property with technical assistance funds if authorized to do so in the grant agreement. Real property includes land and buildings. Groups must comply with EPA property management requirements. See Chapter 6, "Determining Allowable Costs."

Text of 40 CFR Part 30

(1) You must get approval from EPA to use the property for other Federally supported projects or programs; or

(2) You must contact EPA for instructions on how to dispose of the property. EPA may:

(i) Permit you to retain title to the property provided you compensate EPA for its share; or

(ii) Direct you to sell the property and to compensate EPA for its share, less your expenses; or

(iii) Direct you to transfer the title of the property to the Federal Government and then compensate you based on your percentage of participation in the original cost of the project, which will be applied to the current fair market value of the property.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

§ 30.536 How do I manage federally-owned property?

You must negotiate the use of federally-owned property with the award official and comply with your lease agreement and § 30.505(d). You must inform the project officer of the availability of the property when the property is no longer needed for the assistance project or when you have completed the project. EPA will give you instructions on where to return the property.

§ 30.537 Are contractors required to comply with EPA property policies?

Generally, contractors are not required to comply with EPA property policies. However, if your contractors acquired personal property with EPA funds, and the subagreement states that ownership vests in you or EPA, the contractor must comply with EPA property policies.

§ 30.538 May I use General Services Administration (GSA) supplies and services?

You may not use GSA sources of supplies and services, or excess Government property. Excess Government property consists of property under the control of any Federal agency that is not required for its needs.

Explanation of Key Provisions

Text of 40 CFR Part 30

§ 30.540 Who will audit my project?

(a) *General.* EPA may perform pre-award or interim audits, as well as a final audit of your project. If EPA audits your project, EPA will rely to the extent practicable on your audits conducted under § 30.510(g) (if done in accordance with applicable audit standards) instead of reauditing the same records.

(b) *State and local governments.* (1) State and local governments must comply with the audit requirements of OMB Circular A-128 (see Appendix E). Generally, under A-128 you must conduct an audit each year, unless the Circular permits you to conduct less frequent audits. The Circular provides:

(i) State and local governments that receive \$100,000 or more in Federal financial assistance in a year must have an audit made in accordance with the Circular.

(ii) State and local governments that receive \$25,000 or more, but less than \$100,000, in a year must have an audit made in accordance with the Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

(iii) State and local governments that receive less than \$25,000 in a year are exempt from compliance with the Circular and are subject only to the audit requirements prescribed by State and local law or regulation.

(2) EPA will keep audit cognizance over subagreements under the wastewater treatment construction grants program.

(c) *Other recipients.* The award official may request a final audit after the submission of, or the due date of, the final Financial Status Report (see § 30.505(b)). Where your organization has a cognizant Federal audit agency, EPA will refer these audits to your organization's cognizant Federal audit agency. Where OMB has not established a cognizant Federal audit agency, EPA staff may perform or arrange for the audit to be performed.

[48 FR 45062, Sept. 30, 1983, as amended at 51 FR 6353, Feb. 21, 1986]

Explanation of Key Provisions

Recipients should be aware that EPA may audit their project at any time. The financial recordkeeping procedures outlined in Chapter 6 discusses how to establish a financial management system that will meet EPA audit requirements.

Text of 40 CFR Part 30

Explanation of Key Provisions

Subpart F—What Other Federal Requirements Must I Comply With?

§ 30.600 What Federal laws and policies affect my award?

You must comply with all applicable Federal laws.

(a) *National Environmental Policy Act.* You must comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) as amended and other related environmental laws and executive orders that require you to assess the environmental impact of your project. See 40 CFR Part 6 for specific requirements.

(b) *Flood Disaster Protection Act.* If your project involves construction or property acquisition in a special flood hazard area, you must comply with the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, December 13, 1973). If your project is located in a community participating in the National Flood Insurance Program (42 U.S.C. 4001-4128), the Act requires you to purchase flood insurance as a condition of receiving EPA assistance. If the community is not participating in the National Flood Insurance Program and the special flood hazard area has been designated by the Federal Insurance Administration of the Federal Emergency Management Agency for at least one year, EPA will not award assistance for your project until the community enters the program and flood insurance is purchased. See 44 CFR Parts 59 through 79 for specific requirements.

(c) *Clean Air Act.* Section 306 of the Clean Air Act, (42 U.S.C. 7606), as amended, and Executive Order 11738 prohibit EPA from awarding assistance to you (with certain exceptions) if you intend to use any facility on EPA's List of Violating Facilities to complete work on your agreement. You must include a clause in all subagreements that requires the recipients of those subagreements to comply with the requirements of 40 CFR Part 15 (see 40 CFR 33.1020).

(d) *Federal Water Pollution Control Act.* Section 508 of the Federal Water Pollution Control Act, (33 U.S.C. 1368), as amended, and Executive Order 11738 prohibit EPA from awarding assistance to you (with certain ex-

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ceptions) if you intend to use any facility on EPA's List of Violating Facilities to complete work on your agreement. You must include a clause in all subagreements to comply with the requirements of 40 CFR Part 15 (see 40 CFR 33.1020). Section 13 of the 1972 Amendments to the Act prohibits sex discrimination under any program or activity receiving assistance under the Act. See 40 CFR Part 7 for specific requirements.

(e) *Civil Rights Act.* You must comply with section 602, Title VI of the Civil Rights Act of 1964, (42 U.S.C. 2000d), and related nondiscrimination laws and Executive Order 11246. These authorities prohibit you from excluding any person from participating in, denying them the benefits of, or discriminating against them on the basis of race, color, or national origin under any program or activity involving Federal financial assistance. See 40 CFR Parts 7 and 8 for specific requirements.

(f) *Rehabilitation Act.* You must comply with section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794), as amended, which prohibits discrimination on the basis of handicap in Federally assisted programs. See 40 CFR Part 7 for specific requirements.

(g) *Age Discrimination Act.* You must comply with the provisions of the Age Discrimination Act of 1975, (42 U.S.C. 6101 et seq.), which prohibit discrimination on the basis of age in Federally assisted programs. See 40 CFR Part 7 for specific requirements.

(h) *Title IX of the Education Amendments of 1972.* You must comply with Title IX of the Education Amendments of 1972, (20 U.S.C. 1681 et seq.) which prohibits sex discrimination in Federally assisted education programs. See 40 CFR Part 7 for specific requirements.

(i) *Uniform Relocation Assistance and Real Property Acquisition Policies Act.* You must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601 et seq.), if your project involves acquiring an interest in real property and/or any displacement of persons, businesses, or farm operations. See 40 CFR Part 4 for specific requirements.

Explanation of Key Provisions

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Explanation of Key Provisions

(j) *The Indian Self-Determination and Education Assistance Act.* You must comply with the Indian Self-Determination and Education Assistance Act of 1975 (Pub. L. 93-638). If your project will benefit Indians, the Act requires you to give Indians preference in training and employment opportunities and in the award of subagreements.

(k) *The Hatch Act.* If you are a State or local government recipient, you must ensure compliance with the Hatch Act, (5 U.S.C. 1501 et seq.), as amended. The Act requires State and local government employees to comply with the restrictions on political activities imposed by the Act if their principal employment activities are funded wholly or in part by Federal assistance. See 5 CFR Part 151 for specific prohibitions and exemptions.

(l) *Safe Drinking Water Act.* Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h-3(e)), prohibits EPA from awarding assistance to you if EPA determines that your project may contaminate a sole source aquifer which will result in a significant hazard to public health. See CFR Part 149.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

§ 30.601 Are there restrictions on the use of assistance funds for advocacy purposes?

(a) You may not use assistance funds for:

(1) Lobbying or influencing legislation before Congress;

(2) Partisan or political advocacy purposes; or

(3) An activity whose objective could affect or influence the outcome of an EPA regulatory or adjudicatory proceeding.

(b) For nonprofit recipient organizations other than educational institutions, EPA will implement § 30.601(a) (1) and (2) consistent with the requirements of OMB Circular A-122, as revised (see § 30.410(c)).

[49 FR 38945, Oct. 2, 1984]

§ 30.603 What additional Federal laws apply to EPA assisted construction projects?

Under CERCLA, technical assistance grant funds cannot be used for legal actions including the preparation of testimony and the hiring of expert witnesses. See Chapter 3 for more information about legal restrictions and other conditions of eligible activities.

Section 30.603 does not apply to technical assistance grants since technical assistance grants cannot be issued to fund construction activities (text deleted).

Text of 40 CFR Part 30

Explanation of Key Provisions

§ 30.610 What are my responsibilities for preventing and detecting fraud and other corrupt practices?

(a) You bear the primary responsibility for preventing, detecting, and prosecuting corrupt practices under your assistance agreement.

(b) If you become aware of allegations, evidence, or the appearance of corrupt practices, you must:

(1) Immediately inform the EPA project officer and the EPA Office of Inspector General; and

(2) Promptly pursue available State and local legal and administrative remedies.

§ 30.611 Can I hire a person or agency to solicit EPA assistance for me?

Yes, but you may not reimburse with EPA assistance funds any person, corporation, partnership, agency, or other entity which solicits or secures EPA assistance for you in exchange for a commission, a percentage fee, a brokerage fee, or a contingent fee.

§ 30.612 May an EPA employee act as my representative?

(a) An EPA employee may not represent you as an agent or attorney in any proceeding before EPA or any other Federal agency in which the United States is a party or has a direct or substantial interest unless:

(1) You are a State or local government agency;

(2) The EPA employee is on detail to the agency under the Intergovernmental Personnel Act (5 U.S.C. 3371-3376); and

(3) The representation takes place in the context of carrying out programs for which EPA and your agency have a joint responsibility under the environmental statutes.

(b) Except as provided for in paragraph (a) of this section, an EPA employee must not act as an agent or attorney for a recipient or for a contractor or subcontractor of a recipient in any claim against the United States.

A group can hire someone to prepare the EPA grant application for them but they cannot reimburse that person for their service with EPA grant funds.

Text of 40 CFR Part 30

§ 30.613 What is EPA's policy on conflict of interest?

EPA's policy is to prevent personal or organizational conflict of interest, or the appearance of such conflict of interest in the award and administration of EPA assistance, including subagreements. (For restrictions on EPA employees, see 40 CFR Part 3.)

(a) An official or employee of a recipient may not participate in any activity relating to EPA assistance if any of the following persons or organizations, to the official's or employee's knowledge, has a financial interest in the activity:

- (1) The official or employee himself;
- (2) The official or employee's spouse or minor child;
- (3) A partner of the official or employee;

(4) An organization (other than a public agency) in which the official or employee serves as an officer, director, trustee, partner, or employee; or

(5) Any person or organization with whom the official or employee is negotiating or has any arrangement concerning prospective employment.

(b) Officials and employees of recipients must avoid any action which might result in, or create the appearance of:

- (1) Using official position for private gain;
- (2) Giving preferential treatment to any person;
- (3) Losing independence or impartiality;

(4) Making an official decision outside official channels; or

(5) Undermining public confidence in the integrity of EPA programs.

§ 30.615 May I employ a former EPA employee and still receive assistance?

You may hire a former EPA employee and still receive assistance provided the former employee complies with the restrictions on post-employment activities established by 18 U.S.C. 207. These restrictions are explained in regulations issued by the Office of Personnel Management under 5 CFR Part 737 and EPA regulations under 40 CFR Part 3.

Explanation of Key Provisions

Conflicts of interest must be avoided. Conflicts occur if employees, officers, or agents of a group or their families have a financial or other interest in a contractor to be hired or are employed by the prospective contractor. Additionally, contractors are required to disclose to the recipients all financial and business relationships with a potentially responsible party involved at the site for which the grant has been awarded. See section 35.4130 of the Interim Final Rule for further details.

Text of 40 CFR Part 30

Explanation of Key Provisions

Subpart G—Can an Assistance Agreement be Changed?

§ 30.700 What changes to my assistance agreement require a formal amendment?

You must receive from the award official a formal amendment before implementing:

- (a) A transfer of an award to another recipient;
- (b) Changes in the objectives of the project;
- (c) Changes in the assistance amount;
- (d) Substantial changes within the scope of the project; or
- (e) A rebudgeting of the following:
 - (1) Amounts budgeted for either construction or non-construction activities if transferred from one activity to the other;
 - (2) Amounts budgeted for indirect costs to absorb increases in direct costs; or
 - (3) Amounts budgeted for training allowances if transferred to other cost categories.

§ 30.705 What changes can I make to my assistance agreement without a formal amendment?

Minor changes in the project work that are consistent with the objective of the project and within the scope of the assistance agreement do not require the execution of a formal amendment before the recipient's implementation of the change. However, such changes do not obligate EPA to provide Federal funds for any costs incurred by you in excess of the assistance amount, unless approved in advance under § 30.700.

§ 30.710 Can I terminate a part or all of my assistance agreement?

(a) You and EPA may terminate a part or all of your assistance agreement, when both parties agree that the continuation of the project will not produce beneficial results. You and the award official must agree on the conditions of the termination, the effective date, and in the case of partial termination, the portion to be terminated. EPA may unilaterally terminate for cause your assistance agreement under § 30.903 of this part.

Recipients of EPA grants may negotiate changes in the grant agreement with the EPA Award Official. See Chapter 4 for a discussion on changes that may be permitted.

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(b) EPA will pay you the Federal share of allowable costs incurred up to the date of termination and allowable costs related to commitments you made prior to termination that you cannot cancel.

Subpart H—How do I Close out my Project?

§ 30.800 What records and reports must I keep after I complete my project?

You and your contractors must keep all books, records, documents, and other evidence (including accounting procedures and practices and sub-agreement documents) that track the progress of your project in accordance with the requirements under § 30.501.

§ 30.802 Under what conditions will I owe money to EPA?

(a) If the award official determines that you owe funds, you must reimburse the Federal government that amount. EPA will take appropriate legal and administrative action to collect the amount you owe the Agency if reimbursement is not made in a timely manner. EPA may offset the debt against other funds payable to you under an EPA or other Federal agency assistance agreement if not explicitly prohibited by another statute.

(b) EPA will charge you interest if you fail to pay within 30 days from the date of the Agency's decision that a debt is owed. The interest rate will be the rate established by the Secretary of the Treasury in accordance with the Treasury Fiscal Requirements Manual 6-8020.20. The rates are published quarterly in the FEDERAL REGISTER.

(c) If you are not a State or local government, EPA will charge you its cost to process and handle the overdue debt at the end of each 30 day period the debt is overdue, and a penalty of 6% per annum if the debt is not paid within 120 days after the date of the Agency's decision that a debt is owed.

[48 FR 45062, Sept. 30, 1983, as amended at 51 FR 6353, Feb. 21, 1986]

Explanation of Key Provisions

All records must be kept for three years following project completion or until any litigation, dispute, claim, or audit relating to the grant is resolved. If after the three years, the recipient intends to dispose of the records, EPA must be notified in writing and the records must be held until EPA notifies the recipient as to their disposition. See section 35.4105 of the Interim Final Rule for further details.

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Subpart I—What Measures may EPA Take for Non-compliance?

§ 30.900 What measures may EPA take for non-compliance?

If you do not comply with all of the terms and conditions of your assistance agreement, the award official may apply any of the following:

- (a) Issue a stop-work order;
- (b) Withhold payment;
- (c) Suspend or terminate your assistance agreement for cause;
- (d) Annul your assistance agreement;
- (e) Request that the Director, Grants Administration Division, debar or suspend you as an eligible recipient;
- (f) Take other appropriate administrative action; or
- (g) Institute judicial proceedings.

[48 FR 45062, Sept. 30, 1983, as amended at 49 FR 38945, Oct. 2, 1984]

§ 30.901 What are the consequences of a stop-work order?

(a) A stop-work order requires you to immediately stop the work or activities described in the order and to take all reasonable steps to minimize costs incurred on the work. The award official will issue the order in writing. The order will be in effect for forty-five days after you receive it unless cancelled or extended by mutual agreement between you and EPA. If the problem cannot be resolved during the stop-work period and EPA is likely to terminate or annul the agreement, the award official will so inform you.

(b) If the stop-work order is cancelled and it caused any increase in the cost of and/or the time for completing the project, you may request an adjustment in the project period, budget period, or assistance amount. You must submit a request for adjustment to the project officer within sixty days after the stop-work order ended.

Explanation of Key Provisions

A stop work order requires that work is immediately stopped and remains in effect for 45 days unless cancelled or extended by mutual agreement between the recipient and EPA.

Text of 40 CFR Part 30

Explanation of Key Provisions

§ 30.902 What are the consequences of withholding payments?

(a) The award official may withhold payments when you fail to comply with the tasks, reporting requirements, or conditions of your assistance agreement. The award official will provide you reasonable notice in writing before withholding payment.

(b) The award official may withhold only the amount necessary to assure compliance with your assistance agreement.

(c) The award official may withhold payment to the extent you are indebted to the United States, unless the collection of the indebtedness will impair the accomplishment of the project and the continuation of the project is in the best interest of the United States.

§ 30.903 What are the consequences of termination for cause?

(a) The award official may unilaterally terminate your agreement in whole or in part at any time before the date of completion, whenever he determines that you have failed to comply with the conditions of your agreement. The award official will provide you an opportunity for consultation before issuing a notice of termination.

(b) If EPA terminates your agreement, the award official will notify you in writing of his determination, the reasons for the termination, and the effective date. Upon receiving the termination notice, you must stop work immediately. EPA will not reimburse you for any new commitments you make after you receive the termination notice.

(c) EPA will pay you the Federal share of allowable costs incurred up to the date of termination and allowable costs related to commitments you made prior to termination that you cannot cancel.

§ 30.904 What are the consequences of annulment?

(a) The award official may unilaterally annul in whole or in part your assistance agreement in any of the following cases:

(1) You have made no substantial progress on the project without good cause;

Upon receipt of a termination notice, the recipient must stop work immediately. EPA will not reimburse a group for any financial commitments or obligations made after a termination notice is issued.

000201

Text of 40 CFR Part 30

Explanation of Key Provisions

(2) You obtained an assistance agreement by fraud or misrepresentation;

(3) You are found to practice corrupt administrative procedures;

(4) You have inordinately delayed project completion without good cause; or

(5) You have failed to meet the project purpose to the extent that the fundamental purpose stated in the assistance agreement is frustrated.

(b) If EPA intends to issue an annulment, the award official will inform you of the annulment in writing. The award official will provide you an opportunity for consultation before issuing a notice of annulment. If your assistance agreement is annulled, you must return all funds received for the project including those already expended. EPA may pursue other available remedies under Federal, State, and local laws.

§ 30.905 May I request a review of a termination or annulment?

You may request a review of EPA's decision to terminate or annul an assistance agreement. Within thirty days after the notice of termination or annulment is issued, you must file a written request for review to the appropriate Assistant or Regional Administrator. Your request for review must follow the procedures under Subpart L of this part.

[49 FR 38945, Oct. 2, 1984]

§ 30.906 What are the consequences of suspension or debarment?

EPA may suspend or debar you in accordance with 40 CFR Part 32. You may not receive assistance or a subagreement if your name or organization appears on EPA's Master List of Debarred and Suspended Firms and Individuals.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

Subpart J—Can I get An Exception ("Deviation") From These Regulations?

§ 30.1001 Will EPA approve any exceptions to these regulations?

Requests for reviews of a termination action by EPA must be submitted to the appropriate EPA office within 30 calendar days of the notice.

EPA may issue a deviation or exception from its regulations on a case-by-case basis.

Text of 40 CFR Part 30

Explanation of Key Provisions

(a) On a case-by-case basis, EPA will consider requests for exceptions to these regulations.

(b) EPA may issue a "deviation" from any of its assistance related regulations, except for those that implement statutory and executive order requirements.

(c) The award official may "waive" certain requirements of this subchapter for foreign awards. All provisions waived will be stated in the assistance agreement.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

§ 30.1002 Who may request a deviation?

You, your project officer, or an EPA program office may request a deviation from EPA regulations. If you are the initiator, you must send your written request to your project officer if the request is for a Headquarters program or to the Regional Administrator for a Regionally administered program, who will then forward the request to the Director, Grants Administration Division, with a recommendation for approval or disapproval.

§ 30.1003 What information must I include in a deviation request?

Your request must include the following information:

(a) Your name, the assistance identification number, date of award, and the dollar value of the application or award;

(b) The section of the regulation from which you need a deviation;

(c) A complete description of what the deviation will do and a justification of why the deviation is necessary; and

(d) A statement of whether the same or a similar deviation has been previously requested. If such a request has been made previously, explain why it was made and the outcome.

§ 30.1004 Who approves or disapproves a deviation request?

(a) The Director, Grants Administration Division (GAD), approves or disapproves your deviation request. Assistant Administrators in the affected program areas must review and concur on deviations affecting a class of applicants or recipients.

Text of 40 CFR Part 30

Explanation of Key Provisions

(b) If EPA approves the deviation before an award, the revised requirement will be included in your assistance agreement. Approval of a deviation before an award does not guarantee an award.

§ 30.1005 May I request a review of a deviation decision?

You may not request a review of a deviation decision under the procedures in Subpart L of this part. However, you may request the Director of the Grants Administration Division to reconsider his decision.

(48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984)

Subpart K—What Policies Apply to Patents, Data, and Copyrights?

§ 30.1100 What assistance agreements are subject to EPA patent rules?

§ 30.1101 What Federal patent laws or policies govern my assistance agreement?

§ 30.1102 What are my invention rights and my reporting requirements if my award is other than an award under section 6914 of RCRA?

§ 30.1103 What are my invention rights and obligations if I am a profitmaking firm with an award under section 6914 of RCRA?

§ 30.1104 Can I get a waiver from section 6981(c) of RCRA?

On a case by case basis, you may ask EPA for a deviation from section 6981(c) of RCRA. You must follow the procedures in Subpart J.

§ 30.1106 Do the patent rules apply to subagreements?

§ 30.1108 Does EPA require any type of licensing of background patents that I own?

§ 30.1112 Are there any other patent clauses or conditions that apply to my award?

§ 30.1130 What rights in data and copyrights does EPA acquire?

Sections 30.1100–30.1104, 30.1106, 30.1108, and 30.1112 will rarely apply to technical assistance grants (text deleted). In the event that activities funded under a technical assistance grant involve patents, data, or copyrights, grant recipients should read, understand, and comply with Subpart K in its entirety.

The patent rules apply to technical assistance grants only in the unlikely event that subagreements involve experimentation, development, special investigation, surveys, studies, or research (text deleted). Under these circumstances, grant recipients should read, understand, and comply with Subpart K in its entirety.

Text of 40 CFR Part 30

Explanation of Key Provisions

Subpart L—How are Disputes Between EPA Officials and me Resolved?

§ 30.1200 What happens if an EPA official and I disagree about an assistance agreement requirement?

(a) Disagreements should be resolved at the lowest level possible.

(b) If you can not reach an agreement, the EPA disputes decision official will provide you with a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning your assistance agreement.

(c) The disputes decision official's decision will constitute final agency action unless you file a request for review by registered mail, return receipt requested, within 30 calendar days of the date of the decision.

[48 FR 45062, Sept. 30, 1983; 49 FR 38946, Oct. 2, 1984]

§ 30.1205 If I file a request for review, with whom must I file?

(a) For final decisions issued by an EPA disputes decision official at Headquarters, you must file your request with the Assistant Administrator responsible for the assistance program.

(b) For final decisions issued by a Regional disputes decision official, you must file your request for review with the Regional Administrator. If the Regional Administrator issued the final decision, you must request the Regional Administrator to reconsider that decision.

§ 30.1210 What must I include in my request for review or reconsideration?

Your request must include:

(a) A copy of the EPA disputes decision official's final decision;

(b) A statement of the amount in dispute;

(c) A description of the issues involved; and

(d) A concise statement of your objections to the final decision.

§ 30.1215 What are my rights after I file a request for review or reconsideration?

If a disagreement occurs between a group and an EPA official regarding the terms of the grant, the dispute should be resolved at the lowest level of EPA authority possible. If agreement cannot be reached, the Disputes Decision Official will issue a written decision. This decision is final unless the group requests a review by the Award Official within 30 days of the date of the decision.

Text of 40 CFR Part 30

Explanation of Key Provisions

(a) You may be represented by counsel and may submit documentary evidence and briefs for inclusion in a written record;

(b) You are entitled to an informal conference with EPA officials; and

(c) You are entitled to a written decision from the appropriate Regional or Assistant Administrator.

§ 30.1220 If the Assistant Administrator confirms the final decision of the Headquarters disputes decision official, may I seek further administrative review?

A decision by the Assistant Administrator to confirm the final decision of a Headquarters disputes decision official will constitute the final Agency action.

§ 30.1225 If the Regional Administrator confirms the final decision of the Regional disputes decision official, may I seek further administrative review at EPA Headquarters?

(a) A determination by the Regional Administrator to confirm the Regional disputes decision official's decision will constitute the final Agency action. However, you may file a petition for discretionary review by the Assistant Administrator responsible for the assistance program within 30 calendar days of the Regional Administrator's decision. Your petition must be sent to the Assistant Administrator by registered mail, return receipt requested, and must include:

(1) A copy of the Regional Administrator's decision; and

(2) A concise statement of the reasons why you believe the decision is erroneous.

(b) If the Assistant Administrator decides not to review the Regional Administrator's decision, the Assistant Administrator will advise you in writing that the Regional Administrator's decision remains the final Agency action.

(c) 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 you to submit briefs in support of your petition for

The EPA Assistant Administrator's decision is the final step in regard to a dispute.

Text of 40 CFR Part 30

review and may provide you an opportunity for an informal conference in order to clarify factual 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.

§ 30.1230 Will I be charged interest if I owe money to EPA?

(a) Interest will accrue on any amounts of money due and payable to EPA from the date of the disputes decision official's final decision, even if you request review of the decision under this subpart. Only full payment of the debt within 30 days of the disputes decision officials' final decision will prevent EPA from charging interest. If you pay a debt but request review under this subpart and the amount of the debt is reduced as a result of the review, EPA will refund the interest and penalty charges that you paid on the adjustment. However, processing and handling charges which you may have paid are refundable only if EPA determines that the entire amount of the debt is not owed.

(b) State and local government recipients are not subject to the penalty and handling charges in this section, but are subject to the interest charges.

[48 FR 45062, Sept. 30, 1983, as amended at 51 FR 6353, Feb. 21, 1986]

§ 30.1235 Are there any EPA decisions which may not be reviewed under this subpart?

You may not request a review of:

(a) Disapprovals of deviations under Subpart J;

(b) Bid protest decisions under Part 33;

(c) National Environmental Policy Act decisions under Part 6;

(d) Advanced wastewater treatment decisions of the Administrator; and

(e) Policy decisions of the EPA Audit Resolution Board.

[48 FR 45062, Sept. 30, 1983, as amended at 49 FR 38946, Oct. 2, 1984]

APPENDIX A—EPA PROGRAMS

The following chart identifies EPA's assistance programs and the types of awards (grants or cooperative agreements) that EPA will award under these programs.

Explanation of Key Provisions

Other than the technical assistance grant (catalogue no. 66.807), none of EPA's other assistance programs apply (text deleted).

Text of 40 CFR Part 30

Explanation of Key Provisions

APPENDIX B—PATENTS AND COPYRIGHTS CLAUSES

Notice and Assistance Clause

(a) The recipient must report to the project officer, promptly and in reasonable written detail, each known notice or claim of patent or copyright infringement on this agreement.

(b) In the event of any claim or suit against the Government, on account of any alleged patent or copyright infringement arising out of the performance of this agreement or out of the use of any supplies furnished or work or services performed hereunder, the recipient must furnish to the Government, when requested by the project officer, all evidence and information in possession of the recipient pertaining to such suit or claim. Such evidence and information must be furnished at the expense of the Government except where the recipient has agreed to indemnify the Government.

(c) The recipient must include in each subagreement (including any lower tier subagreement) in excess of \$10,000 a clause substantially similar to the foregoing provisions.

Authorization and Consent Clause

EPA gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent held by the United States in the performance of an assistance agreement and any subagreement.

APPENDIX C—RIGHTS IN DATA AND COPYRIGHTS

Appendix C will rarely apply to technical assistance grants (text deleted). In the event that activities funded under a technical assistance grant involve rights in data and copyrights, grant recipients should read, understand, and comply with Appendix C in its entirety.

APPENDIX D—PART 30 REPORTING REQUIREMENTS

This section lists the various forms and OMB clearance numbers for applications for EPA assistance other than technical assistance grants (text deleted).

APPENDIX E—PART 30 AUDIT REQUIREMENTS FOR STATE AND LOCAL GOVERNMENT RECIPIENTS

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A-128

This section only applies to government entities that receive Federal funds, such as a State with whom EPA signs a technical assistance grant cooperative agreement (text deleted).

PART 33—PROCUREMENT UNDER ASSISTANCE AGREEMENTS

Sec.

- 33.001 Applicability and scope of this part.
- 33.005 Definitions.

Subpart A—Procurement System Evaluation

- 33.105 Applicability and scope of this subpart.
- 33.110 Applicant and recipient certification.
- 33.115 Procurement system review.

Subpart B—Procurement Requirements

- 33.205 Applicability and scope of this subpart.
- 33.210 Recipient responsibility.
- 33.211 Recipient reporting requirements.
- 33.220 Limitation on subagreement award.
- 33.225 Violations.
- 33.230 Competition.
- 33.235 Profit.
- 33.240 Small, minority, women's, and labor surplus area businesses.
- 33.245 Privy of subagreement.
- 33.250 Documentation.
- 33.255 Specifications.
- 33.260 Intergovernmental agreements.
- 33.265 Bonding and insurance.
- 33.270 Code of conduct.
- 33.275 Federal cost principles.
- 33.280 Payment to consultants.
- 33.285 Prohibited types of subagreements.
- 33.290 Cost and price considerations.
- 33.295 Subagreements awarded by a contractor.

SMALL PURCHASES

- 33.305 Small purchase procurement.
- 33.310 Small purchase procedures.
- 33.315 Requirements for competition.

FORMAL ADVERTISING

- 33.405 Formal advertising procurement method.
- 33.410 Public notice and solicitation of bids.
- 33.415 Time for preparing bids.
- 33.420 Adequate bidding documents.
- 33.425 Public opening of bids.
- 33.430 Award to lowest, responsive, responsible bidder.

COMPETITIVE NEGOTIATION

- 33.505 Competitive negotiation procurement method.
- 33.510 Public notice.
- 33.515 Evaluation of proposals.
- 33.520 Negotiation and award of subagreement.

Sec.

- 33.525 Optional selection procedure for negotiation and award of subagreements for architectural and engineering services.

NONCOMPETITIVE NEGOTIATION

- 33.605 Noncompetitive negotiation procurement method.

Subpart C—Requirements for Recipients of Assistance Agreements for the Construction of Treatment Works

- 33.705 Applicability and scope of this subpart.
- 33.710 Buy American.
- 33.715 Use of the same architect or engineer during construction.

Subpart D—Requirements for Institutions of Higher Education and Other Nonprofit Organizations

- 33.805 Applicability and scope of this subpart.
- 33.810 Nonapplicable subagreement clauses.
- 33.815 Nonapplicable procurement provisions.
- 33.820 Additional procurement requirements.

Subpart E—Requirements for Recipients of Remedial Action Cooperative Agreements Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

- 33.905 Applicability and scope of this subpart.
- 33.910 Preference for formal advertising.
- 33.915 Award official approval.

Subpart F—Subagreement Provisions

- 33.1005 Applicability and scope of this subpart.
- 33.1010 Requirements for subagreement clauses.
- 33.1015 Subagreement provisions clause.
- 33.1016 Labor standards provisions.
- 33.1019 Patents, data and copyrights clause.
- 33.1020 Violating facilities clause.
- 33.1021 Energy efficiency clause.
- 33.1030 Model subagreement clauses.

Subpart G—Protests

- 33.1105 Applicability and scope of this subpart.
- 33.1110 Recipient protest procedures.
- 33.1115 Protest appeal.
- 33.1120 Limitations on protest appeals.
- 33.1125 Filing requirements.

Sec.

33.1130 Review of protest appeals.

33.1140 Deferral of procurement action.

33.1145 Award official's review.

**APPENDIX A—PROCEDURAL REQUIREMENTS
FOR RECIPIENTS WHO DO NOT CERTIFY
THEIR PROCUREMENT SYSTEMS, OR FOR
RECIPIENTS WHO HAVE THEIR PROCURE-
MENT CERTIFICATIONS REVOKED BY EPA**

AUTHORITY: 7 U.S.C. 135 et seq.; 15 U.S.C.
2601 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C.
241, 242b, 243, 246, 300j-1, 300j-2, 300j-3,
1857 et seq., 6901 et seq.; and 42 U.S.C. 9601
et seq.

SOURCE: 48 FR 12926, Mar. 28, 1983, unless
otherwise noted.

Text of 40 CFR Part 33

§ 33.001 Applicability and scope of this part.

(a) This part applies to all assistance agreements awarded on or after the effective date of this part. For assistance agreements awarded before the effective date, this part will apply only to those procurement actions initiated by the recipient on or after the date the recipient complies with the self-certification requirements in § 33.110 of this part.

(b) This part:

(1) Describes EPA's procurement system evaluation process.

(2) Identifies the minimum requirements for the procurement of supplies, services, and construction under EPA assistance agreements.

(3) Identifies an additional specification requirement for procurement under assistance agreements for the construction of treatment works awarded under 40 CFR Part 35, Subparts E and I.

(4) Identifies the procurement standards that institutions of higher education and other nonprofit organizations must follow.

(5) Identifies the provisions that recipients of EPA assistance agreements must include in their subagreements.

(6) Describes the procedures that EPA will use to handle protest appeals concerning the award of a subagreement by the recipient of an EPA assistance agreement.

(c) This part does not apply to work beyond the scope of the project for which an assistance agreement is awarded (i.e., ineligible work).

(d) This part does not apply to expenses for services for which the recipient will receive an allowance or a potential recipient will receive an advance of an allowance under 40 CFR Part 35, Subpart I.

(e) This part supplements the requirements in:

(1) 40 CFR Part 30 "General Regulation for Assistance Programs," and

(2) 40 CFR Part 32, "Debarments and Suspensions under EPA Assistance Programs."

(f) The following types of recipients must comply with the specified subparts in this part:

(1) Recipients of assistance agreements for the construction of treatment works awarded under 40 CFR

Explanation of Key Provisions

All technical assistance grants are considered to be "assistance agreements" and are therefore subject to all of the appropriate requirements in this regulation.

Grant recipients also must comply with 40 CFR Parts 30 and 32.

Text of 40 CFR Part 33

Explanation of Key Provisions

Part 35, Subparts E and I, must follow the requirements in Subparts A, B, C, F and G.

(2) Recipients of remedial action cooperative agreements under the Comprehensive Environmental Response, Compensation, Liability Act of 1980 (Superfund 42 U.S.C. 6901 et seq.) must follow the requirements in Subparts A, B, E, F and G.

(3) State and local government recipients for other than construction grants and CERCLA remedial action cooperative agreements must follow the requirements in Subparts A, B, F and G.

(4) Institutions of higher education, hospitals, and other nonprofit organizations must follow the requirements in Subparts A, B, D and G.

(g) In the construction of treatment works program under the Clean Water Act (33 U.S.C. 1251 et. seq.), it is EPA's policy to delegate determinations on individual projects to State agencies to the maximum extent possible (see 40 CFR Part 35, Subpart F). This part uses the term "award official." To the extent that the award official for a treatment works assistance agreement delegates responsibility for determining compliance with the requirements of this part (except for § 33.115 "Procurement system review," and Subpart G "Protests") to a State agency under a delegation agreement (40 CFR 35.1130), the term "award official" may be read "State agency."

(h) This part applies to a grant awarded under 40 CFR Part 35 Subpart E only if the recipient elects to follow the requirements in this part. If the recipient of a Subpart E grant does not elect to follow the requirements in this part, it is subject to the procurement requirements in 40 CFR Subpart E.

[48 FR 12926, Mar. 28, 1983; 48 FR 30364, July 1, 1983]

§ 33.005 Definitions.

(a) Words and terms not defined below shall have the meaning given to them in 40 CFR Part 30 and Part 35.

(b) As used in this part, the following words and terms mean:

Architectural or engineering (A/E) services. Consultation, investigations, reports, or services for design-type

These are the subparts that apply to nonprofit organizations and, thus, to technical assistance grant recipients.

Text of 40 CFR Part 33

Explanation of Key Provisions

projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the recipient is located.

Construction. Erection, building, alteration, remodeling, improvement, or extension of buildings, structures or other property. Construction also includes remedial actions in response to a release, or a threat of a release, of a hazardous substance into the environment as determined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Contractor. Any party to whom a recipient awards a subagreement.

Cost analysis. The review and evaluation of each element of subagreement cost to determine reasonableness, allocability and allowability.

Intergovernmental Agreement. Any written agreement between units of government under which one public agency performs duties for or in concert with another public agency using EPA assistance. This includes substate and interagency agreements.

Minority business enterprise. A minority business enterprise is a business which is: (1) Certified as socially and economically disadvantaged by the Small Business Administration, (2) certified as a minority business enterprise by a State or Federal agency, or (3) an independent business concern which is at least 51 percent owned and controlled by minority group member(s). A minority group member is an individual who is a citizen of the United States and one of the following:

- (i) Black American;
- (ii) Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America);
- (iii) Native American (American Indian, Eskimo, Aleut, native Hawaiian), or
- (iv) 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).

Text of 40 CFR Part 33

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.

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.")

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 drawing, specifications). This term does not include employment agreements or collective bargaining agreements.

Small business. A business as defined in section 3 of the Small Business Act, as amended (15 U.S.C. 632).

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.

Supplies. All property, including equipment, materials, printing, insurances, and leases of real property, but excluding land or a permanent interest in land.

Women's business enterprise. A women's business enterprise is a business which is certified as such by a State or Federal agency, or which meets the following definition: A women's business enterprise is an independent business concern which is at least 51 percent owned by a woman or women who also control and operate it. Determination of whether a business is at least 51 percent owned by a woman or women shall be made without regard to community property laws. For example, an otherwise qualified WBE which is 51 percent owned by a married woman in a community

Explanation of Key Provisions

Text of 40 CFR Part 33

property state will not be disqualified because her husband has a 50 percent interest in her share. Similarly, a business which is 51 percent owned by a married man and 49 percent owned by an unmarried woman will not become a qualified WBE by virtue of his wife's 50 percent interest in his share of the business.

Subpart A—Procurement System Evaluation

§ 33.105 Applicability and scope of this subpart.

(a) This subpart applies to all recipients of EPA assistance agreements.

(b) For procurements involving EPA funds, recipients shall use their own procurement policies and procedures if those policies and procedures reflect applicable Federal, State, and local laws and regulations, and at least meet the requirements set forth in this part.

(c) This subpart describes when EPA will review the recipient's procurement practices.

§ 33.110 Applicant and recipient certification.

(a) It is the applicant's and recipient's responsibility to evaluate its own procurement system and to determine whether its system meets the applicable requirements in this part (see § 33.001).

(b) After evaluating its procurement system, the applicant or recipient will complete the "Procurement System Certification" (EPA Form 5700-48). The applicant or recipient will either certify that:

(1) Its system will meet the intent of all the requirements in this part before any procurement action with EPA assistance is undertaken, or

(2) Its current system does not meet the intent of the requirements of this part and, therefore, the applicant will follow the requirements of 40 CFR Part 33 and allow EPA preaward review of proposed procurement actions that will use EPA funds. The additional requirements for EPA review and approval are contained in Appendix A to this part.

Explanation of Key Provisions

All applicants and recipients must complete EPA Form 5700-48, "Procurement System Certification" (see sample in Chapter 4).

Few, if any, technical assistance grant recipients will have an existing procurement system. Therefore, recipients must follow section 33.110(b) (2) and Appendix A of Part 33.

Text of 40 CFR Part 33

Explanation of Key Provisions

(c) The applicant must submit the signed certification form with the assistance application to the award official.

(d) The certification will be valid for two years or for the length of the project period specified in the assistance agreement, whichever is greater, unless the recipient substantially revises its procurement system or the award official determines that the recipient is not following the intent of the requirements in this part (see § 33.115(b)). If the recipient substantially revises its procurement system, the recipient must re-evaluate its system and submit a revised EPA Form 5700-48.

(e) Even when a recipient certifies its procurement system, the EPA award official retains the authority stated in:

(1) Section 33.210(h) "Recipient's procurement responsibilities," which requires the recipient to receive the award official's prior written approval if the recipient wants to use an innovative procurement method.

(2) Section 33.211 "Recipient reporting requirements," which requires the award official to notify the Department of Labor of certain construction subagreement awards, and obtain all bid or offer tabulations.

(3) Section 33.805(d) "Noncompetitive negotiation procurement method," to authorize a noncompetitive award.

(4) Section 33.820(b) "Additional procurement requirements," which requires the award official's prior approval for a sole source award over \$10,000 by an institute of higher education or other nonprofit organization.

(5) Section 33.915 "Award official approval," which requires the award official to approve the recipient's use of a procurement method other than formal advertising for a Superfund remedial action construction award, and

(6) Subpart G "Protests."

[48 FR 12926, Mar. 28, 1983; 48 FR 30364, July 1, 1983]

§ 33.115 Procurement system review.

(a) EPA will not substitute its judgment for that of the recipient unless the matter is primarily a Federal concern.

Recipients must be aware of the responsibilities retained by the EPA Award Officials as outlined in section 33.110 (e)(1,3,4,6).

Section 33.110 (e)(2) and (5) apply only to construction contractors. Technical assistance grant recipients will not be involved in construction activities.

Text of 40 CFR Part 33

Explanation of Key Provisions

(b) Even if a recipient has a certified procurement system, EPA reserves the right to review a recipient's procurement system or procurement action under an assistance agreement:

(1) To determine if the recipient is following the procurement requirements in this part; or

(2) When there is sufficient reason to believe that the recipient's system may be unacceptable based on:

(i) Information concerning the review or certification of the recipient's procurement system or actions by other Federal agencies or Congress;

(ii) Information from the recipient's cognizant audit agency;

(iii) Information from State agencies and organizations independent of the recipient's procurement activity;

(iv) Recipient responses to the procurement system certification form;

(v) Previous EPA experience with the recipient; or

(vi) Information from contractors or prospective contractors.

(c) If the award official determines that the recipient is not following the procurement requirements it certified it would follow, the award official shall revoke the recipient's certification and:

(1) Require that the recipient follow the procurement requirements in this part, including Appendix A, for future procurement actions and, if appropriate,

(2) Apply the sanctions in 40 CFR Part 30.

(d) The recipient may recertify its procurement system if it shows the award official that it has corrected the procurement deficiencies noted by the award official, and the award official accepts the recertification.

Subpart B—Procurement Requirements

§ 33.205 Applicability and scope of this subpart.

This subpart contains:

(a) The recipient's and EPA's responsibilities, and

(b) The minimum procurement standards for each recipient's procurement system.

Recipients must be aware of EPA's right to review the recipient's procurement system as provided in section 33.115(b).

Text of 40 CFR Part 33

§ 33.210 Recipient responsibility.

(a) The recipient is responsible for the settlement and satisfactory completion in accordance with sound business judgment and good administrative practice of all contractual and administrative issues arising out of subagreements entered into under the assistance agreement. This includes issuance of invitations for bids or requests for proposals, selection of contractors, award of subagreements, settlement of protests, claims, disputes and other related procurement matters.

(b) The recipient shall maintain a subagreement administration system to assure that contractors perform in accordance with the terms, conditions and specifications of their subagreements.

(c) The recipient shall review its proposed procurement actions to avoid purchasing unnecessary or duplicative items.

(d) The recipient shall consider consolidating its procurement or dividing it into parts to obtain a more economical purchase.

(e) Where appropriate, the recipient shall make an analysis of lease versus purchase alternatives in its procurement actions.

(f) A recipient of a remedial action cooperative agreement awarded under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 must obtain the EPA award official's approval to use a procurement method other than the formal advertising method for a construction award (see Subpart E).

(g) A recipient may request technical and legal assistance from the award official for the administration and enforcement of any subagreement awarded under this part. However, such assistance does not relieve the recipient of its responsibilities under this part.

(h) A recipient may use innovative procurement methods or procedures only if it receives the award officials' prior written approval.

[48 FR 12926, Mar. 28, 1983; 48 FR 30364, July 1, 1983]

Explanation of Key Provisions

Recipients of technical assistance grants must comply with the requirements of sound business judgement and good administrative practices listed in section 33.210 (a,b,c,d,e,g,h).

33.210 (f) applies only to construction awards. Technical assistance grant recipients will not be involved in making construction awards.

Text of 40 CFR Part 33

Explanation of Key Provisions

§ 33.211 Recipient reporting requirements.

Section 33.211 applies only to construction subagreements. Technical assistance grant recipients will not be entering into construction subagreements (text deleted).

§ 33.220 Limitation of subagreement award.

(a) The recipient shall award subagreements only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. A responsible contractor is one that has:

Recipients will be responsible for assuring that any contractors hired using technical assistance grant funds meet the qualifications listed in section 33.220(a) and IFR section 35.4065 and are not barred from EPA-funded work by the regulations in section 33.220 (b).

(1) Financial resources, technical qualifications, experience, organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these;

(2) Resources to meet the completion schedule contained in the subagreement;

(3) A satisfactory performance record for completion of subagreements;

(4) Accounting and auditing procedures adequate to control property, funds and assets, as required in this part and 40 CFR Part 30; and

(5) Demonstrated compliance or willingness to comply with the civil rights, equal employment opportunity, labor law and other statutory requirements under 40 CFR Part 30.

(b) The recipient shall not make awards to contractors who have been suspended, debarred, or voluntarily excluded under 40 CFR Part 32 nor shall it permit any portion of the work required by the subagreement to be performed at any facility listed on the EPA List of Violating Facilities (see 40 CFR Part 15).

§ 33.225 Violations.

The recipient shall refer violations of law to the local, State or Federal authority with jurisdiction over the matter (see 40 CFR 30.610).

[48 FR 12926, Mar. 28, 1983; 48 FR 30364, July 1, 1983]

Text of 40 CFR Part 30

Explanation of Key Provisions

§ 33.230 Competition.

(a) The recipient shall conduct all procurement transactions in a manner that provides maximum open and free competition.

(b) Procurement practices shall not unduly restrict or eliminate competition. Examples of practices considered to be unduly restrictive include:

- (1) Noncompetitive practices between firms;
- (2) Organizational conflicts of interest;
- (3) Unnecessary experience and bonding requirements;
- (4) State or local laws, ordinances, regulations or procedures which give local or in-State bidders or proposers preference over other bidders or proposers in evaluating bids or proposals; or
- (5) Placing unreasonable requirements on firms in order for them to qualify to do business.

(c) The recipient may use a prequalification list(s) of persons, firms or products if it:

- (1) Updates its prequalified list(s) at least every six months;
- (2) Reviews and acts on each request for prequalification made more than 30 days before the closing date for receipt of proposals or bid opening; and
- (3) Gives adequate public notice of its prequalification procedure in accordance with the public notice procedures in § 33.410 or § 33.510.

(d) A recipient may not use a prequalified list(s) of persons or firms if the procedure unnecessarily restricts competition. However, this restriction does not apply to § 33.525 "Optional selection procedure for negotiation and award of subagreements for architectural and engineering services."

EDITORIAL NOTE: For a class deviation document affecting § 33.230(b) (1) and (2), see 50 FR 24876, June 13, 1985.

§ 33.235 Profit.

(a) Recipients must assure that only fair and reasonable profits are paid to contractors awarded subagreements under EPA assistance agreements.

(b) The recipient shall negotiate profit as a separate element of price for each subagreement in which there is no price competition, or where price is based on cost analysis.

Recipients must encourage the maximum possible competition among potential contractors. Practices that are excessively restrictive or eliminate competition, as listed in section 33.230(b), must be avoided.

Section 33.230(c) and (d) apply to the use of prequalification lists. Technical assistance grant recipients will probably not use prequalification lists.

Only fair and reasonable profits may be paid to contractors under EPA assistance agreements. Profit must be negotiated separately in certain instances outlined in section 33.235(b). Profit shall be considered reasonable when included in a formally advertised, competitively bid, fixed price subagreement if two or more bids are received.

Text of 40 CFR Part 30

(c) Where the recipient receives two or more bids, profit included in a formally advertised, competitively bid, fixed price subagreement shall be considered reasonable.

(d) Off-the-shelf or catalog supplies are exempt from this section.

§ 33.240 Small, minority, women's, and labor surplus area businesses.

(a) It is EPA policy to award a fair share of subagreements to small, minority, and women's businesses. The recipient must take affirmative steps to assure that small, minority, and women's businesses are used when possible as sources of supplies, construction and services. Affirmative steps shall include the following:

(1) Including qualified small, minority, and women's businesses on solicitation lists;

(2) Assuring that small, minority, and women's businesses are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses;

(4) Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority, and women's businesses;

(5) Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, as appropriate; and

(6) If the contractor awards subagreements, requiring the contractor to take the affirmative steps in paragraphs (a) (1) through (5) of this section.

(b) [Reserved]

(c) EPA encourages recipients to procure supplies and services from labor surplus area firms.

§ 33.245 Privity of subagreement.

Neither EPA nor the United States shall be a party to any subagreement nor to any solicitation or request for proposals.

Explanation of Key Provisions

Recipients of technical assistance grants are not required to comply with section 33.240. Instead, they must comply with the requirements of 40 CFR 33.815(f) (2).

Text of 40 CFR Part 30

Explanation of Key Provisions

§ 33.250 Documentation.

(a) Procurement records and files for procurements in excess of \$10,000 shall include the following:

- (1) Basis for contractor selection;
- (2) Written justification for selection of the procurement method;
- (3) Written justification for use of any specification which does not provide for maximum free and open competition;
- (4) Written justification for the type of subagreement;
- (5) Basis for award cost or price, including a copy of the cost or price analysis made in accordance with § 33.290 and documentation of negotiations; and
- (6) Written justification for rejecting bids.

(b) Recipients must state the reasons for rejecting any or all bids and the justification for procurements on a noncompetitively negotiated basis and make them available for public inspection.

EDITORIAL NOTE: For a class deviation document affecting § 33.250, see 50 FR 24876, June 13, 1985.

§ 33.255 Specifications.

(a) Recipients must incorporate in their specifications 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, unless the features are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment or to promote innovative technologies. The description shall 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.

(b) The recipient shall avoid the use of detailed product specifications if at all possible.

(c) When in the judgment of the recipient it is impractical or uneconomical to make a clear and accurate description of the technical requirements, recipients may use a "brand

The minimum contract amount for the purposes of this section is \$25,000 for the Technical Assistance Grant Program. All technical assistance grant recipients whose procurements exceed \$25,000 must comply with this section.

Section 33.255(a) requires that the recipient's specifications for materials, products, or services not be written to unduly restrict competition.

Section 33.255(b),(c) pertains primarily to product specifications. Technical assistance grant recipients will generally not use grant funds for purchase of products.

Text of 40 CFR Part 30

Explanation of Key Provisions

name or equal" description as a means to define the performance or other salient requirements of a procurement. The recipient need not establish the existence of any source other than the named brand. Recipients must clearly state in the specification the salient requirements of the named brand which must be met by offerors. (An additional specification requirement for recipients of assistance for the construction of treatment works under 40 CFR Part 35, Subparts E and I is contained in § 33.710.)

§ 33.260 Intergovernmental agreements.

Section 33.260 addresses State and local intergovernmental agreements and does not apply to the technical assistance grant program (text deleted).

§ 33.265 Bonding and insurance.

Section 33.265 applies to construction subagreements. Construction activities will not be funded by technical assistance grants (text deleted).

§ 33.270 Code of conduct.

(a) Recipients shall maintain a written code or standards of conduct which shall govern the performance of its officers, employees, or agents engaged in the award and administration of subagreements supported by EPA funds. No employee, officer or agent of the recipient shall participate in the selection, award or administration of a subagreement supported by EPA funds if a conflict of interest, real or apparent, would be involved.

Technical assistance grant recipients need not have a written code of conduct. See 40 CFR 33.815(e). Instead, recipients must comply with the conflict of interest provisions in 40 CFR 33.270 and other conflict of interest requirements in 40 CFR 30.613.

(b) Such a conflict would arise when:

(1) Any employee, officer or agent of the recipient, any member of their immediate families, or their partners have a financial or other interest in the firm selected for award, or

(2) An organization which may receive or has been awarded a subagreement employs, or is about to employ, any person under paragraph (b)(1) of this section.

Section 33.270 specifies a potential conflict of interest among the grant recipient or their families and an employee, officer, or agent and forbids their participation in the selection, award, or administration of a subagreement.

Text of 40 CFR Part 30

Explanation of Key Provisions

(c) The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or other parties to subagreements.

(d) Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

(e) To the extent permitted by State or local law or regulations, the recipient's code of conduct shall provide for penalties, sanctions or other disciplinary actions for violations of the code by the recipient's officers, employees or agents or by contractors or their agents.

§ 33.275 Federal cost principles.

The following cost principles apply to assistance agreements and subagreements:

(a) State and local governments must comply with OMB Circular A-87 to determine allowable costs.

(b) Educational institutions must comply with OMB Circular A-21 to determine allowable costs and with OMB Circular A-88 for indirect cost rates.

(c) Nonprofit institutions must comply with OMB Circular A-122 to determine allowable costs.

(d) All other recipients, contractors and subcontractors must comply with the cost principles contained in the Federal Procurement Regulations (41 CFR 1-15.2 and, if appropriate, § 1-15.4) to determine allowable costs.

§ 33.280 Payment to consultants.

(a) For all EPA assistance agreements, EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained

Section 33.275 lists the costs principles, that apply to the different types of recipients. A summary of the cost principles in OMB Circular A-122 is provided at the end of this Appendix.

This provision will seldom be applicable to technical assistance grant recipients.

Text of 40 CFR Part 33

Explanation of Key Provisions

by recipients or by a recipient's contractors or subcontractors to the maximum daily rate for a GS-18. (Recipients may, however, pay consultants more than this amount.) This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; recipients will pay these in accordance with their normal travel reimbursement practices.

(b) Subagreements with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

[48 FR 12926, Mar. 28, 1983; 48 FR 30364, July 1, 1983]

§ 33.285 Prohibited types of subagreements.

The cost-plus-percentage-of-cost (e.g., a multiplier which includes profit) and the percentage-of-construction-cost types of subagreements shall not be used.

These are two types of subagreements which cannot be used. EPA will not pay any costs associated with either of these two subagreements.

§ 33.290 Cost and price considerations.

(a) The recipient shall conduct a cost analysis of all negotiated change orders and all negotiated subagreements estimated to exceed \$10,000.

(b) The recipient shall conduct a price analysis of all formally advertised procurements estimated to exceed \$10,000 if there are fewer than three bidders.

(c) For negotiated procurement, contractors and subcontractors shall submit cost or pricing data in support of their proposals to the recipient.

Cost analysis is discussed in greater detail in Chapter 5 and Appendix A of this manual. Recipients who cannot certify their procurement systems must ensure that cost data is submitted on EPA Form 5700-41 (see Appendix A of Part 33).

§ 33.295 Subagreements awarded by a contractor.

A contractor must comply with the following provisions in its award of subagreements. (This section does not apply to a supplier's procurement of materials to produce equipment, materials and catalog, off-the-shelf, or manufactured items.)

(a) 40 CFR Part 32 (Debarment and Suspension Under EPA Assistance Programs);

(b) The limitations on subagreement award in § 33.220(a) (1) through (5);

Section 33.295 applies to contractors who elect to subcontract some of their work out to other firms or individuals.

Text of 40 CFR Part 33

Explanation of Key Provisions

(c) The profit requirements in § 33.235;

(d) The requirements for small, minority, women's and labor surplus area businesses in § 33.240;

(e) The specification requirements of § 33.255;

(f) The requirements of Subpart C of this part, if appropriate;

(g) The Federal cost principles in § 33.275;

(h) The prohibited types of subagreements in § 33.285;

(i) The cost and price considerations in § 33.290, and

(j) The applicable subagreement provisions in Subpart F of this part.

SMALL PURCHASES

§ 33.305 Small purchase procurement.

If the aggregate amount involved in any one procurement transaction does not exceed \$10,000, including estimated handling and freight charges, overhead and profit, the recipient may use small purchase procedures.

EDITORIAL NOTE: For a class deviation document affecting § 33.305, see 50 FR 24876, June 13, 1985.

§ 33.310 Small purchase procedures.

Small purchase procedures are relatively simple procurement methods that are sound and appropriate for a procurement of services, supplies or other property costing in the aggregate not more than \$10,000.

EDITORIAL NOTE: For a class deviation document affecting § 33.310, see 50 FR 24876, June 13, 1985.

§ 33.315 Requirements for competition.

(a) Recipients shall not divide a procurement into smaller parts to avoid the dollar limitation for competitive procurement.

(b) Recipients shall obtain price or rate quotations from an adequate number of qualified sources.

Procurements of \$25,000 or less may use the small purchase procurement method. (This amount has been raised to \$25,000 for the Technical Assistance Grants Program.)

Recipients must ensure competition in the procurement process. "An adequate number of qualified sources" from whom recipients must obtain price or rate quotations is usually three.

Text of 40 CFR Part 33

Explanation of Key Provisions

FORMAL ADVERTISING

§ 33.405 Formal advertising procurement method.

(a) The requirements in §§ 33.405 through 33.430 apply to all formally advertised subagreements in excess of \$10,000. Formal advertising means the public solicitation of sealed bids and the award of a subagreement based on a fixed price (lump sum, unit price, or a combination of the two) to the lowest, responsive, responsible bidder.

(b) Formal advertising requires at a minimum:

(1) A complete, adequate and realistic specification or purchase description of what is required;

(2) Two or more responsible bidders which are willing and able to compete effectively for the recipient's business;

(3) A procurement that lends itself to the award of a fixed-price subagreement; and

(4) That the selection of the successful bidder be made principally on the basis of price.

§ 33.410 Public notice and solicitation of bids.

The recipient shall give adequate public notice of the solicitation, inviting bids and stating when and how the bidding documents may be obtained or examined.

§ 33.415 Time for preparing bids.

The recipient must allow adequate time between the date the public notice is first published and the date by which bids must be submitted.

§ 33.420 Adequate bidding documents.

Recipient's bidding documents shall include:

(a) A complete statement of work to be performed including, where appropriate, design drawings and specifications and the required performance schedule;

(b) The terms and conditions of the subagreement to be awarded, including payment, delivery schedules, point of delivery and acceptance criteria;

(c) A clear explanation of the recipient's method of bidding and the method of evaluating bid prices, and its basis and method for awarding the subagreement;

Formal advertising is used when the recipient knows exactly what it needs and is able to convey its needs to prospective bidders. Awards must be based on price. Technical assistance grant recipients are not required to use this method (40 CFR 33.815 (b)).

Adequate public notice requires advertising in professional journals, newspapers, or publications of general circulation over a reasonable area for at least 30 days (see Appendix A of Part 33).

At least 30 days is required between the date of public notice and the date bids are due (see Appendix A of Part 33).

Text of 40 CFR Part 33

Explanation of Key Provisions

(d) Any other responsibility requirements or evaluation criteria which the recipient will use in evaluating bidders;

(e) The prevailing wage determination, made under the Davis-Bacon Act, if applicable; and

(f) The deadline and place to submit bids and a copy of § 33.295, Subparts F and G and, if appropriate, EPA Form 5720-4 "Labor Standard Provisions for Federally Assisted Construction Contracts."

(48 FR 12926, Mar. 28, 1983; 48 FR 30364, July 1, 1983)

§ 33.425 Public opening of bids.

The recipient shall publicly open bids at the place, date and time announced in the bidding documents.

§ 33.430 Award to the lowest, responsive, responsible bidder.

(a) The recipient shall evaluate all bids in accordance with the methods and criteria in the bidding documents.

(b) The recipient shall award a fixed-price subagreement to the lowest, responsive, responsible bidder. Where specified in the bidding documents, recipients shall consider factors such as discounts, transportation costs and life cycle costs to determine the low bid. Payments discounts may be used to determine the low bid only when prior experience of the recipient indicates that it generally accepts such discounts.

(c) The recipient may reject all bids only when it has sound, documented business reasons which are in the best interest of the program for which EPA assistance is awarded (see § 33.250 "Documentation").

COMPETITIVE NEGOTIATION

§ 33.505 Competitive negotiation procurement method.

(a) The requirements in §§ 33.505 through 33.525 apply to all competitively negotiated subagreements in excess of \$10,000.

(b) Recipients may use competitive negotiation only if conditions are not appropriate for the use of the formal advertising method of procurement (see § 33.405).

Competitive negotiation may be used if the formal advertising method is not feasible (see Chapter 5). In most instances, technical assistance grant recipients will use this method to hire contractors.

Text of 40 CFR Part 33

Explanation of Key Provisions

§ 33.510 Public notice.

(a) The recipient must give adequate public notice for competitively negotiated procurements.

(b) The notice of a request for proposals must state how to obtain associated documents, including a copy of § 33.295, Subparts F and G, the basis for subagreement award, and, if appropriate, EPA Form 5720-4 "Labor Standard Provisions for Federally Assisted Construction Contracts."

(c) Requests for proposals must be written, contain enough information to enable a prospective offeror to prepare a proposal, contain all evaluation criteria and the relative importance attached to each, and clearly state the deadline and place to submit proposals.

[48 FR 12926, Mar. 28, 1983; 48 FR 30364, July 1, 1983]

§ 33.515 Evaluation of proposals.

(a) Recipients must uniformly and objectively evaluate all proposals submitted in response to the request for proposals.

(b) Recipients must base their determinations of qualified offerors and acceptable proposals solely on the evaluation criteria stated in the request for proposals.

§ 33.520 Negotiation and award of subagreement.

(a) Unless the request for proposals states that award may be based on initial offers alone, the recipient must conduct meaningful negotiations with the best qualified offerors with acceptable proposals within the competitive range, and permit revisions to obtain best and final offers. The best qualified offerors must have equal opportunities to negotiate or revise their proposals. During negotiations, the recipient must not disclose the identity of competing offerors or any information from competing proposals.

(b) The recipient must award the subagreement to the responsible offeror whose proposal is determined in writing to be the most advantageous to the recipient, taking into consideration price and other evaluation criteria set forth in the request for proposals.

Grant recipients must provide documents which identify the criteria for the subagreement award.

Grant recipients can use only the evaluation criteria stated in the request for proposals to determine the most qualified contractor.

The best qualified contractors must have equal opportunities to negotiate or revise their proposals. Grant recipients shall not disclose the identity of applicants nor disclose any information from competing proposals during negotiations.

Text of 40 CFR Part 33

Explanation of Key Provisions

(c) The recipient must promptly notify unsuccessful offerors that their proposals were rejected.

(d) The recipient must document its procurement file to indicate how proposals were evaluated, what factors were used to determine the best qualified offerors within the competitive range, and what factors were used to determine the subagreement award.

[48 FR 12926, Mar. 28, 1983; 48 FR 30364, July 1, 1983]

§ 33.525 Optional selection procedure for negotiation and award of subagreements for architectural and engineering services.

(a) The recipient may evaluate and select an architect or engineer using the procedures in this section in place of the procedures in § 33.520, "Negotiation and award of subagreement."

(b) The recipient may use either a prequalified list developed in accordance with § 33.230(c) or responses to requests for statement of qualifications to determine the most technically qualified architects or engineers.

(c) After selecting and ranking the most qualified architects or engineers, the recipient will request technical proposals from those architects or engineers and inform them of the evaluation criteria the recipient will use to rank the proposals.

(d) The recipient shall then select and determine, in writing, the best technical proposal.

(e) After selecting the best proposal, the recipient shall attempt to negotiate fair and reasonable compensation with that offeror.

(f) If the recipient and the offeror of the best proposal cannot agree on the amount of compensation, the recipient shall formally terminate negotiations with that offeror. The recipient shall then negotiate with the offeror with the next best proposal. This process will continue until the recipient reaches agreement on compensation with an offeror with an acceptable proposal. Once the recipient terminates negotiations with an offeror, the recipient cannot go back and renegotiate with that offeror.

[48 FR 12926, Mar. 28, 1983; 48 FR 30364, July 1, 1983]

The grant recipient must promptly notify unsuccessful applicants that their proposals were rejected. The grant recipient must document how proposals were evaluated, what factors were used to determine the best qualified contractor, and what factors were used to determine the subagreement award.

Architecture and engineering (A/E) firms may be among those firms bidding on subagreements with technical assistance grant recipients. However, recipients are not likely to develop the prequalification lists discussed in section 33.525(b). Because A/E firms are unlikely to be the only applicants, this optional method may not be used.

Text of 40 CFR Part 33

Explanation of Key Provisions

NONCOMPETITIVE NEGOTIATION

§ 33.605 Noncompetitive negotiation procurement method.

Recipients may use noncompetitive negotiation to award a subagreement if the other three procurement methods are inappropriate because:

(a) The item is available only from a single source;

(b) A public exigency or emergency exists and the urgency for the requirement will not permit a delay incident to competitive procurement;

(c) After solicitation from a number of sources, competition is inadequate; or

(d) The EPA award official authorizes noncompetitive negotiation, subject to the limitation in § 33.715(a)(2).

Subpart C—Requirements for Recipients of Assistance Agreements for the Construction of Treatment Works

§ 33.705 Applicability and scope of this subpart.

§ 33.710 Buy American.

§ 33.715 Use of the same architect or engineer during construction.

Subpart D—Requirements for Institutions of Higher Education and Other Nonprofit Organizations

§ 33.805 Applicability and scope of this subpart.

Recipients who are subject to the provisions of OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" are not subject to all of the requirements in this part.

§ 33.810 Nonapplicable subagreement clauses.

The following clauses in Subpart F of this part do not apply to institutions of higher education and other nonprofit organizations:

(a) Energy efficiency (§ 33.1021);

(b) Changes (§ 33.1030.3);

(c) Differing site conditions (§ 33.1030.4); and

The noncompetitive negotiation method is allowed only in the limited circumstances outlined in section 33.605(a,b,c,d). Noncompetitive negotiation is unlikely to be an appropriate method for most technical assistance grant recipients to apply in hiring a contractor.

This subpart applies to EPA's Wastewater Treatment Construction Grants Program and does not apply to Superfund (text deleted).

Technical assistance grant recipients meet the definition of "Other Non-Profit Organizations" in Subpart D and thus are not subject to all of the requirements in Part 33 Subpart D.

Text of 40 CFR Part 33

Explanation of Key Provisions

(d) Price reduction for defective cost or pricing data (§ 33.1030,8).

[48 FR 12926, Mar. 28, 1983; 48 FR 30365, July 1, 1983]

§ 33.815 Nonapplicable procurement provisions.

The following procurement provisions do not apply to institutions of higher education and other nonprofit organizations:

- (a) Subparts C and E;
- (b) Sections 33.405 through 33.430 "Formal advertising;"
- (c) Sections 33.505 through 33.525 "Competitive negotiation;"
- (d) Section 33.605 "Noncompetitive negotiation" (see § 33.820(b));
- (e) The requirement in § 33.270(a) "Code of conduct" to have a written code of conduct;
- (f) The provisions of § 33.240 "Small, minority, women's, and labor surplus area businesses" which:
 - (1) Encourage the award of a fair share of contracts to women's and labor surplus area businesses;
 - (2) Require the specific affirmative action steps in § 33.240(a)(1) through (a)(6); however, nonprofit organizations are required to make positive efforts to use small businesses and minority owned businesses as sources of supplies and services;
 - (g) Subpart G "Protests."

§ 33.820 Additional procurement requirements.

(a) Recipients must exclude contractors that develop or draft specifications, requirements, statements of work, invitation for bids, or requests for proposals from competing for awards resulting from the prior effort.

(b) For all proposed sole source subagreements and where only one bid or proposal is received, the recipient must request the award official's prior approval to award the subagreement if the aggregate expenditure is expected to exceed \$10,000.

Technical assistance grant recipients must make positive efforts to use small and minority-owned businesses as sources of supplies and services. To meet this requirement, recipients must file EPA Form SF 334 (see Chapter 6) to ensure that EPA is in compliance with congressional reporting requirements.

In cases where there is only one bid or proposal received and for subagreements originating from one source, the recipient must obtain approval from the Award Official prior to awarding the subagreement if the total expenditure is expected to exceed \$25,000.

Text of 40 CFR Part 33

Explanation of Key Provisions

Subpart E—Requirements for Recipients of Remedial Action Cooperative Agreements Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

§ 33.905 Applicability and scope of this subpart.

§ 33.910 Preference for formal advertising.

§ 33.915 Award official approval.

Subpart F—Subagreement Provisions

§ 33.1005 Applicability and scope of this subpart.

(a) This subpart applies to all EPA recipients and describes the minimum content of each subagreement (contract and subcontract).

(b) Nothing in this subpart prohibits a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party to a subagreement.

§ 33.1010 Requirements for subagreement clauses.

Recipients shall include clauses that meet the requirements of §§ 33.1015 through 33.1021, and the appropriate clauses in § 33.1030, in each procurement subagreement.

§ 33.1015 Subagreement provisions clause.

Each subagreement must include provisions defining a sound and complete agreement, including the:

(a) Nature, scope, and extent of work to be performed;

(b) Timeframe for performance;

(c) Total cost of the subagreement; and

(d) Payment provisions.

§ 33.1016 Labor standards provisions.

§ 33.1019 Patents data and copyrights clause.

Except for construction grant subagreements, all subagreements shall include notice of EPA requirements and regulations pertaining to reporting and patent rights under any suba-

Subpart E applies to construction subagreements. Construction subagreements will not be funded by technical assistance grants (text deleted).

Subpart F describes clauses that must be contained in all subagreements between technical assistance grant recipients and their contractors.

Section 33.1016 does not apply to technical assistance grants (text deleted).

Section 33.1019 applies to patents and copyrights involving research, development, experimental, or demonstration work. Technical assistance grants will usually not be used to pay for the kind of work that might result in patentable or copyrighted information or products.

Text of 40 CFR Part 33

Explanation of Key Provisions

greement involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the conduct of work under a subagreement. This notice shall also include EPA requirements and regulations pertaining to copyrights and rights in data contained in 40 CFR Part 30.

§ 33.1020 Violating facilities clause.

Subagreements in excess of \$100,000 shall contain a provision which requires contractor 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 EPA regulations (40 CFR Part 15) which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

§ 33.1021 Energy efficiency clause.

Subagreements shall comply with mandatory standards and policies on energy efficiency contained in the State's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ 33.1030 Model subagreement clauses.

Recipients must include, when appropriate, the following clauses or their equivalent in each subagreement. Recipients may substitute other terms for "recipient and" "contractor" in their subagreements.

1. SUPERSESSION

The recipient and the contractor agree that this and other appropriate clauses in 40 CFR 33.1030 apply to that work eligible for EPA assistance to be performed under this subagreement and that these clauses supersede any conflicting provisions of this subagreement.

2. PRIVACY OF SUBAGREEMENT

This subagreement is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this subagreement or any lower tier sub-

Section 33.1020 applies to subagreements in excess of \$100,000. Subagreements under technical assistance grants will not exceed \$100,000, except in very rare circumstances (see Chapter 3 of this manual).

Some States require energy efficiency clauses. Section 33.1021 is unlikely to apply to most technical assistance subagreements.

Technical assistance grant recipients must include in any subagreements, the clauses (or their equivalents) numbered 1, 2, 6, 7, 9, 10, 11, 13, and 14 in section 33.1030. Clauses 3(b), (c) and 13(a) must also be included in subagreements. Clauses 3(a), 4, 5, 12, and 13(b) apply only to construction subagreements. Clause 8 applies only to subagreements involving \$100,000 or more. Subagreements under technical assistance grants will not exceed \$100,000, except in very rare circumstances (see Chapter 3 of this manual).

Text of 40 CFR Part 33

Explanation of Key Provisions

agreement. This subagreement is subject to regulations contained in 40 CFR Part 33 in effect on the date of the assistance award for this project.

3. CHANGES

(b) *The following clause applies only to subagreements for services.* (1) The recipient may at any time, by written order, make changes within the general scope of this subagreement in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost or time required to perform any services under this subagreement, whether or not changed by any order, the recipient shall make an equitable adjustment and modify this subagreement in writing. The contractor must assert any claim for adjustment under this clause in writing within 30 days from the date it receives the recipient's notification of change, unless the recipient grants additional time before the date of final payment.

(2) No services for which the contractor will charge an additional compensation shall be furnished without the written authorization of the recipient.

(c) *The following clause applies only to subagreements for supplies.* (1) The recipient may at any time, by written order and without notice to the sureties, change the general scope of this subagreement in any one or more of the following:

(i) Drawings, designs or specifications where the supplies to be furnished are specifically manufactured for the recipient;

(ii) Method of shipment or packing; and

(iii) Place of delivery.

(2) If any change causes an increase or decrease in the cost or the time required to perform any part of the work under this subagreement, whether or not changed by any such order, the recipient shall make an equitable adjustment in the subagreement agreement price or delivery schedule, or both, and modify the subagreement in writing. The contractor must assert any claim for adjustment under this clause within 30 days from the date the contractor receives the recipient's notification of change. If the recipient decides that the facts justify such action, the recipient may receive and act upon any such claim asserted at any time before final payment under this subagreement. Where the cost of property made obsolete or excess as a result of a change is included in the contractor's claim for adjustment, the recipient has the right to prescribe the manner of disposition of such

Clause 3(a) applies only to construction subagreements and, therefore, does not apply to technical assistance grants (text deleted).

While the recipient of a technical assistance grant may, at any time, change the scope of services to be performed by a contractor, the recipient must equitably adjust the subagreement's provisions for paying the contractor if these changes alter the costs or time required by the contractor to do work. The contractor may initiate a request for such an adjustment, but must do so within 30 days of notification of changes in the scope of work. The contractor may not perform services that will require compensation in excess of what is provided in the subagreement unless he or she has written authorization.

The recipient of a technical assistance grant may change certain aspects (i - iii) of the products expected from a contractor by written order at any time. However, equitable compensation must be provided if costs on time required of the contractor change. The contractor's requirements for requesting such an adjustment are also the same as in 3(a).

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property. Nothing in this clause shall excuse the contractor from proceeding with the subagreement as changed.

4. DIFFERING SITE CONDITIONS

Clause 4, differing site conditions for construction subagreements, does not apply to technical assistance grants (text deleted).

5. SUSPENSION OF WORK

Clause 5, suspension of work under construction subagreements, does not apply to technical assistance grants (text deleted).

6. TERMINATION

(a) This subagreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this subagreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

The subagreement may be terminated by the grant recipient or contractor if the other party fails to fulfill its obligations, provided that just cause for termination is established and notification requirements are observed.

(b) This subagreement may be terminated in whole or in part in writing by the recipient for its convenience, provided that the contractor is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

(c) If termination for default is effected by the recipient, an equitable adjustment in the price provided for in this subagreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the recipient because of the contractor's default. If termination for default is effected by the contractor, or if termination for convenience is effected by the recipient, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which had become firm prior to the termination.

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(d) Upon receipt of a termination action under paragraphs (a) or (b) above, the contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the recipient all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the contractor in performing this subagreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the recipient may take over the work and may award another party a subagreement to complete the work under this subagreement.

(f) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the recipient. In such event, adjustment of the subagreement price shall be made as provided in paragraph (c) of this clause.

7. REMEDIES

Unless otherwise provided in this subagreement, all claims, counter-claims, disputes and other matters in question between the recipient and the contractor arising out of, or relating to, this subagreement or the breach of it will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the recipient is located.

8. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

[Note: The following clause applies to (1) any subagreement negotiated between the recipient and its contractor in excess of \$100,000; (2) negotiated subagreement amendments or change orders in excess of \$100,000 affecting the price of formally advertised, competitively awarded, fixed price subagreement, or (3) any lower tier subagreement or purchase order in excess of \$100,000 under a subagreement other than a formally advertised, competitively awarded, fixed price subagreement. This clause does not apply to subagreements awarded on the basis of effective price competition.]

(a) The contractor and subcontractor, where appropriate, assure that the cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated subagreements, lower tier subagreements and change orders is based on current, accurate and complete data supported by their books and records. If the recipient or EPA determines that any price (including profit) negotiated in connection with this subagreement, lower tier subagreement or amendment thereunder was increased by any significant sums because the data provided was

Clause 8, price reduction for defective cost on pricing data, does not apply to technical assistance grants which do not exceed \$100,000.

Text of 40 CFR Part 33

incomplete, inaccurate or not current at the time of submission, then such price or cost or profit shall be reduced accordingly and the recipient shall modify the subagreement in writing to reflect such action.

(b) Failure to agree on a reduction shall be subject to the remedies clause of this subagreement.

[Note: Since the subagreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with lower tier subagreements, the contractor may wish to include a clause in each lower tier subagreement requiring the lower tier subcontractor to appropriately indemnify the contractor. It is also expected that any lower tier subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data submitted by lower tier contractors.]

9. AUDIT; ACCESS TO RECORDS

(a) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this subagreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR Part 30 in effect on the date of execution of this subagreement. The contractor shall also maintain the financial information and data used in the preparation or support of the cost submission required under 40 CFR 33.290 for any negotiated subagreement or change order and a copy of the cost summary submitted to the recipient. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the recipient, and (the State) or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The contractor will provide proper facilities for such access and inspection.

(b) If this is a formally advertised, competitively awarded, fixed price subagreement, the contractor agrees to make paragraphs (a) through (g) of this clause applicable to all negotiated change orders and subagreement amendments affecting the subagreement price. In the case of all other types of prime subagreements, the contractor agrees to make paragraphs (a) through (g) applicable to all subagreements he awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (g) of this clause applicable to all change orders directly related to project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

Explanation of Key Provisions

The grant recipient shall maintain financial information and data pertinent to the subagreement as required under 40 CFR Part 30, generally, and under 40 CFR 33.290 for cost submission requirements. The grant recipient shall provide authorized agencies or their representatives access to financial documents.

Text of 40 CFR Part 33

Explanation of Key Provisions

(d) The contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

(e) Records under paragraphs (a) and (b) above shall be maintained by the contractor during performance on EPA assisted work under this subagreement and for the time periods specified in 40 CFR Part 30. In addition, those records which relate to any controversy arising under an EPA assistance agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained by the contractor for the time periods specified in 40 CFR Part 30.

(f) Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

(g) This right of access clause applies to financial records pertaining to all subagreements (except formally advertised, competitively awarded, fixed price subagreements) and all subagreement change orders regardless of the type of subagreement, and all subagreement amendments regardless of the type of subagreement. In addition this right of access applies to all records pertaining to all subagreements, subagreement change orders and subagreement amendments.

(1) To the extent the records pertain directly to subagreement performance;

(2) If there is any indication that fraud, gross abuse or corrupt practices may be involved; or

(3) If the subagreement is terminated for default or for convenience.

10. COVENANT AGAINST CONTINGENT FEES

The contractor assures that no person or selling agency has been employed or retained to solicit or secure this subagreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this assurance, the recipient shall have the right to annul this agreement without liability or, at its discretion, to deduct from the subagreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

The grant recipient must assure that no one has been employed to secure this subagreement for contingent fees. If this assurance is violated, recipients shall have the right to annul the agreement without liability, or recover the contingent fee.

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Explanation of Key Provisions

11. GRATUITIES

(a) If the recipient finds after a notice and hearing that the contractor or any of the contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the recipient, the State or EPA in an attempt to secure a subagreement or favorable treatment in awarding, amending or making any determinations related to the performance of this subagreement, the recipient may, by written notice to the contractor, terminate this subagreement. The recipient may also pursue other rights and remedies that the law or this subagreement provides. However, the existence of the facts on which the recipient bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this subagreement.

(b) In the event this subagreement is terminated as provided in paragraph (a), the recipient may pursue the same remedies against the contractor as it could pursue in the event of a breach of the subagreement by the contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the recipient) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

12. BUY AMERICAN

13. Responsibility of the Contractor

(a) The following clause applies only to subagreements for services. (1) The contractor is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports and other services furnished by the contractor under this subagreement. If the subagreement involves environmental measurements or data generation, the contractor shall comply with EPA quality assurance requirements in 40 CFR 30.503. The contractor shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and other services.

(2) The contractor shall perform the professional services necessary to accomplish the work specified in this subagreement in accordance with this subagreement and applicable EPA requirements in effect on the date of execution of the assistance agreement for this project.

(3) The owner's or EPA's approval of drawings, designs, specifications, reports and incidental work or materials furnished hereunder shall not in any way relieve the contractor of responsibility for the technical adequacy of his work. Neither the

The recipient may terminate this subagreement if it is determined that the contractor offered gratuities in an attempt to secure favorable treatment related to the performance of the subagreement.

Clause 12, Buy American, is not applicable to Superfund (text deleted).

Text of 40 CFR Part 33

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owner's nor EPA's review, approval, acceptance or payment for any of the services shall be construed as a waiver of any rights under this agreement or of any cause for action arising out of the performance of this subagreement.

(4) The contractor shall be, and shall remain, liable in accordance with applicable law for all damages to the owner or EPA caused by the contractor's negligent performance of any of the services furnished under this subagreement, except for errors, omissions or other deficiencies to the extent attributable to the owner, owner-furnished data or any third party. The contractor shall not be responsible for any time delays in the project caused by circumstances beyond the contractor's control.

(5) The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this subagreement or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment or work.

(b) *The following clause applies only to subagreements for construction.*

Clause 13(b) does not apply to technical assistance grants since construction activities will not be undertaken (text deleted).

14. FINAL PAYMENT

Upon satisfactory completion of the work performed under this subagreement, as a condition before final payment under this subagreement or as a termination settlement under this subagreement the contractor shall execute and deliver to the owner a release of all claims against the owner arising under, or by virtue of, this subagreement, except claims which are specifically exempted by the contractor to be set forth therein. Unless otherwise provided in this subagreement, by State law or otherwise expressly agreed to by the parties to this subagreement, final payment under this subagreement or settlement upon termination of this subagreement shall not constitute a waiver of the owner's claims against the contractor or his sureties under this subagreement or applicable performance and payment bonds.

[48 FR 12926, Mar. 28, 1983; 48 FR 30365, July 1, 1983]

The contractor shall provide to the grant recipient a release of all claims against the recipient as a condition of final payment.

Subpart G—Protests

§ 33.1105 Applicability and scope of this subpart.

This subpart sets forth EPA's administrative process for the rapid resolution of protest appeals filed with the award official.

Text of 40 CFR Part 33

Explanation of Key Provisions

§ 33.1110 Recipient protest procedures.

(a) Recipients must establish their own procedures for prompt consideration of initial protests concerning their solicitations or subagreement awards. A "protest" is a written complaint concerning the recipient's solicitation or award of a subagreement. It must be filed with the recipient by a party with a direct financial interest adversely affected by a recipient's procurement action (see § 33.1130 "Review of protest appeal").

(b) The recipient should review each protest received to determine whether it is appropriate to defer the protested procurement action.

(c) If the recipient does not defer the procurement action, it assumes the risk that the award official may disallow the cost of the protested procurement action if the protest appeal is upheld.

[48 FR 12928, Mar. 28, 1983; 48 FR 30365, July 1, 1983]

§ 33.1115 Protest appeal.

(a) A party with a financial interest which is adversely affected by the recipient's decision on the initial protest may file a "protest appeal" with the award official.

(b) A "protest appeal" is a written complaint filed with the award official regarding the recipient's determination of a protest.

§ 33.1120 Limitations on protest appeals.

(a) The award official shall not accept a protest appeal until the protester has exhausted all administrative remedies at the recipient level.

(b) A protest appeal is limited to the following:

(1) Issues arising under the procurement provisions of this part, or

(2) Alleged violations of State or local law or ordinances where the award official determines that there is an overriding Federal requirement.

(c) A recipient of a lower tier subagreement (subcontract) may only file a protest appeal for issues which relate to the award of a subagreement by a contractor (see § 33.295 "Subagreements awarded by a contractor").

Although not required to do so, technical assistance grant recipients generally should defer awards of subagreements until they can make determinations on any protests.

The Award Official will not accept any protest appeals until the grant recipient has ruled on the protest.

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Explanation of Key Provisions

§ 33.1125 Filing requirements.

(a) Protest appeals must be filed with the Assistant General Counsel for Grants for headquarters-awarded assistance agreements and with the Office of Regional Counsel for regionally awarded assistance agreements.

(b) A protest appeal must:

- (1) Be written;
- (2) Include a copy of the recipient's determination of the protest;
- (3) State the basis for the appeal; and
- (4) Request a determination under this subpart.

(c) Upon filing a protest appeal with the Regional Counsel or Assistant General Counsel for Grants, as appropriate, the party filing the protest appeal must concurrently transmit a copy of all protest documents and any attachments to all other parties with a direct financial interest which may be adversely affected by the determination of the protest appeal.

(d) The award official will only consider written protest appeals received by the appropriate Counsel's office within seven calendar days after the adversely affected party receives the recipient's determination of protest. However, the adversely affected party can meet the seven-day notice requirement by telegraphing the Counsel within the seven-calendar-day period of its intent to file a protest appeal, provided the adversely affected party submits a complete protest appeal within seven calendar days of the date it sends the telegram. If the seventh day falls on a Saturday, Sunday or holiday, the next working day shall be the last day to submit a protest appeal.

(e) Any party which submits a document to the award official during the course of a protest appeal must simultaneously furnish all other affected parties with a copy of the document.

[48 FR 12926, Mar. 28, 1983; 48 FR 30365, July 1, 1983]

§ 33.1130 Review of protest appeal.

(a) If the recipient does not receive the initial protest before bid opening or the closing date for receipt of proposals, the award official may dismiss

Section 33.1125 describes the administrative process involved in filing a protest appeal.

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as untimely any protest appeal based upon alleged improprieties in the solicitation which were clearly apparent before bid opening or before the deadline for receipt of initial proposals. In negotiated procurements, protests of alleged improprieties which were incorporated in a new solicitation must have been received by the recipient by the closing date for receipt of proposals for the new solicitation.

(b) In cases not involving improprieties in the solicitation, the award official may dismiss as untimely a protest appeal if the adversely affected party did not file the initial protest with the recipient within seven calendar days of the date the basis for the protest was known or should have been known, whichever is earlier.

§ 33.1140 Deferral of procurement action.

When the award official receives a protest appeal and the recipient has not deferred the procurement action under § 33.1110(b), the award official must promptly request that the recipient defer the protested procurement action until the award official notifies the recipient of the formal or informal resolution of the appeal. The request shall be limited to the award of the subagreement or subitem which is the basis of the protest appeal.

The Award Official, after receiving a protest appeal, will request the grant recipient to defer awarding the subagreement until the appeal is reviewed.

§ 33.1145 Award official's review.

(a) The award official may establish rules of procedures or deadlines for the submission of materials or the arrangement of protest appeal conferences.

(b) The award official may summarily dismiss an appeal without proceedings under this subpart if:

(1) The protest appeal is not reviewable, see § 33.1130, or addresses issues other than those allowed under § 33.1120(b);

(2) The protester substantially fails to comply with the procedural requirements of this subpart; or

(3) The protester does not agree to the recipient's request for a reasonable extension of the bid and bond period.

(c) The award official may summarily deny a protest appeal without proceedings under this subpart if, after considering the facts in a light most

Section 33.1145 describes the administrative process conducted by the Award Official in reviewing a protest appeal.

Text of 40 CFR Part 33

Explanation of Key Provisions

favorable to the protester, the award official believes that the protest lacks merit.

(d) The award official will give both the recipient and the protester, as well as any other party with a financial interest which may be adversely affected by the determination of protest, an opportunity to present arguments in support of their views in writing or at a conference.

(e) After the announced date for receipt of written arguments, the record shall be closed.

(f) The award official shall review the record considered by the recipient and any other documents or arguments presented by the parties to determine whether the recipient has complied with the procurement requirements of this part and has a rational basis for its determination of protest.

(g) The award official's determination shall constitute final EPA action from which there shall be no further administrative appeal. No party may appeal an award official's determination of appeal to the EPA Board of Assistance Appeals.

(h) Nothing in this subpart precludes the award official from reviewing the recipient's procurement action. (See § 33.115.)

(i) Noncompliance with the award official's determination of protest shall be cause for an action against the recipient under 40 CFR Part 30 or 32.

(j) If an appeal involves legal issues not explicitly addressed by this part, the award official shall resolve the issue by referring to other protest determinations under this section and decisions of the Comptroller General of the United States or of the Federal courts addressing Federal requirements comparable to procurement requirements of this part.

Text of 40 CFR Part 33

APPENDIX A—PROCEDURAL REQUIREMENTS FOR RECIPIENTS WHO DO NOT CERTIFY THEIR PROCUREMENT SYSTEMS, OR FOR RECIPIENTS WHO HAVE THEIR PROCUREMENT CERTIFICATIONS REVOKED BY EPA

(a) The following procedural requirements apply to recipients who:

(1) Do not certify to EPA that their procurement system meets the minimum procurement requirements in this part, or

(2) Have their procurement certification revoked by the award official, as stated in § 33.115(c).

(b) Those recipients must comply with the requirements in this part plus the following procedural requirements. These procedural requirements supplement the requirements in the sections cited.

(1) To comply with § 33.250, "Documentation," the recipient must submit to the award official, unless he instructs otherwise, the records required by this section.

(2) To comply with § 33.290, "Cost and price considerations," the recipient's contractors and subcontractors must submit their cost or price data on EPA Form 5700-41, "Cost or Price Summary Format for Subagreements Under U.S. EPA Grants," or in another format which provides information similar to that required by EPA Form 5700-41.

(3) To comply with § 33.415, "Time for preparing bids," the recipient must allow at least 30 days between the date when it first publishes the public notice and the date by which bids must be submitted.

(4) To comply with § 33.410, "Public notice and solicitation of bids," the recipient must publish the notice in professional journals, newspapers, or publications of general circulation over a reasonable area for at least 30 days before bid opening.

(5) To comply with § 33.510, "Adequate public notice," the recipient must publish the notice in professional journals, newspapers, or publications of general circulation over a reasonable area for at least 30 days before the deadline for receipt of proposals. The recipient may use posted public notices or written notification directed to interested persons, firms or professional organizations.

[48 FR 12926, Mar. 28, 1983; 48 FR 30365, July 1, 1983]

EDITORIAL NOTE: For a class deviation document affecting Appendix A paragraphs (b) (3) and (4) to this Part 33, see 50 FR 24876, June 13, 1985.

Explanation of Key Provisions

Applicants must follow the procedures outlined in this Appendix if they do not have a procurement system as indicated on the "Procurement System Certification" form (EPA Form 5700-48). The majority of technical assistance grants recipients will have to meet the applicable requirements of this Appendix.

Recipients must submit EPA Form 5700-41 "Cost and Price Summary" to their TAG Project Officer, if requested. Otherwise, recipients should keep this form in their files.

OFFICE OF MANAGEMENT AND BUDGET - Circular A-122
Selected Excerpts - Cost Principles

Text of OMB Circular A-122

Explanation of Key Provisions

OFFICE OF MANAGEMENT AND BUDGET

Circular A-122, "Cost Principles for Nonprofit Organizations"

[Note: This reprint incorporates corrections published at 48 FR 17185, Tuesday, March 17, 1981.]

AGENCY: Office of Management and Budget.

This text includes excerpts from Circular A-122. Sections relevant to cost principles for nonprofit organizations have been included.

I. Background of Circular A-122

Circular A-122, "Cost Principles for Nonprofit Organizations," establishes uniform rules for determining the costs of grants, contracts, and other agreements.

In general, the Circular provides that, to be recovered from the Federal government, costs incurred by grantees and contractors must be necessary, reasonable, and related to the federally-sponsored activity. In addition, costs must be legal, proper, and consistent with the policies that govern the organization's other expenditures.

The disallowance of lobbying costs in this revision is comparable to the disallowance by Circular A-122 of other costs which are not reimbursed on grounds of public policy, such as advertising, fundraising expenses and entertainment. In each of these instances, a determination has been made that it would not be appropriate or cost-efficient to permit Federal tax dollars to be used for these purposes. In any event, it should be noted that lobbying costs are currently unallowable; as indicated throughout, this revision is intended to clarify and make more uniform the meaning and application of that bar.

This text is taken from the preamble of the revision to Circular A-122.

II. General Principles

A. Basic Considerations.

1. *Composition of total costs.* The total cost of an award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

This text is taken from Attachment A of Circular A-122.

Text of OMB Circular A-122

2. Factors affecting allowability of costs.
To be allowable under an award, costs must meet the following general criteria:

- a. Be reasonable for the performance of the award and be allocable thereto under these principles.
- b. Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.
- c. Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the organization.
- d. Be accorded consistent treatment.
- e. Be determined in accordance with generally accepted accounting principles.
- f. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period.
- g. Be adequately documented.

3. Reasonable costs. A cost is reasonable if, in its nature or 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 costs. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the 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 organization or the performance of the award.
- b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.
- c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Government.
- d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

4. Allocable costs.

- a. A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Government award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

Explanation of Key Provisions

Text of OMB Circular A-122

- (1) Is incurred specifically for the award.
 - (2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received, or
 - (3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.
- b. Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

Explanation of Key Provisions

OFFICE OF MANAGEMENT AND BUDGET - Circular A-122
Selected Excerpts - Lobbying

Text of OMB Circular A-122

Explanation of Key Provisions

OFFICE OF MANAGEMENT AND BUDGET

Circular A-122; Cost Principles for Nonprofit Organizations—"Lobbying" Revision

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Publication of Revision to the Circular.

SUMMARY: This notice sets forth the final version of the Office of Management and Budget's (OMB) "Lobbying" revision to Circular A-122, "Cost Principles for Nonprofit Organizations." The revision makes unallowable for Federal reimbursement the costs associated with most kinds of lobbying and political activities, but does not restrict lobbying or political activities paid for with non-Federal funds.

III. Summary of the Revision

This text includes excerpts from the revision of Circular A-122. Sections relevant to lobbying procedures for nonprofit organizations have been included.

Part III, "Summary of the Revision" is taken from the preamble of the revision to Circular A-122. The most significant revisions include the following:

- Federal, state or local electioneering and support of such entities as campaign and political action committees;
- Most direct lobbying of Congress and, with the exceptions noted below, State legislation, to influence legislation;
- Lobbying of the Executive Branch in connection with decisions to sign or veto enrolled legislation;
- Efforts to utilize state or local officials to lobby Congress or State legislatures;
- Grassroots lobbying concerning either Federal or State legislation; and
- Legislative liaison activities in support of unallowable lobbying activities.

Text of OMB Circular A-122

1. Insert a new paragraph in attachment B, as follows: "B21 Lobbying"

a. Notwithstanding other provisions of this Circular, costs associated with the following activities are unallowable:

a.(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;

a.(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

a.(3) Any attempt to influence: (i) The introduction of Federal or state legislation; or (ii) the enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence State or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

a.(4) Any attempt to influence: (i) The introduction of Federal or state legislation; or (ii) the enactment or modification of any pending Federal or state legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or

a.(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

b. The following activities are excepted from the coverage of subparagraph a:

Explanation of Key Provisions

The actual revisions to Circular A-122 relevant to lobbying are included below.

Text of OMB Circular A-122

b.(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a grant, contract or other agreement through hearing testimony, statements or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.

b.(2) Any lobbying made unallowable by section a.(3) to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement.

b.(3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

Explanation of Key Provisions

APPENDIX E

CHECKLISTS FOR TECHNICAL ASSISTANCE GRANT

APPLICANTS AND RECIPIENTS

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Checklist for Technical Assistance Grant Applicants and Recipients

APPLYING FOR A GRANT:

- _____ (1) File a letter of intent with EPA.
- _____ (2) Complete the grant application package:
 - ◆ EPA Form 5700-33, "State and Local Nonconstruction Programs," the grant application form;
 - ◆ Part IV of EPA Form 5700-33 form;
 - Qualifications of the Applicant;
 - Scope of Services; and
 - ◆ EPA Form 5700-48, "Procurement System Certification."
- _____ (3) Contact the appropriate State office (see Appendix C) to comply with the intergovernmental review process, if appropriate.
- _____ (4) Send a completed and signed grant application to EPA.
- _____ (5) If the grant is awarded, sign and return the grant agreement to EPA within three calendar weeks.
- _____ (6) If necessary, file the necessary documents for incorporation with the appropriate State agency upon receipt of notification of award and prior to signing the grant agreement.

HIRING A TECHNICAL ADVISOR:

- _____ (1) Select a procurement method:
 - ◆ Small purchase;
 - ◆ Competitive negotiation;
 - ◆ Formal advertising; or
 - ◆ Noncompetitive negotiation.

Prepare for the files a memorandum outlining the reasons for selecting the chosen procurement method.
- _____ (2) Prepare a Request for Proposals (RFP) if using competitive negotiation.
- _____ (3) Publish public notice advertising for technical advisor or distribute information to interested parties.
- _____ (4) Send out RFP.

Appendix E

_____ (5) Evaluate all proposals.

- ◆ Require all prospective advisors to provide a conflict of interest/disclosure statement.
- ◆ Determine whether applicants are listed on EPA's master list of suspended or debarred contractors.

_____ (6) Negotiate with technical advisor candidates if using competitive negotiation and select the technical advisor.

- ◆ Prepare a written record summarizing all negotiations for the file.
- ◆ Obtain all cost data from applicants on an EPA Form 5700-41 and perform a cost analysis if the procurement exceeds \$25,000.
- ◆ Document for the files the reasons for selecting the successful proposal and the reasons for rejecting others.

_____ (7) Prepare the subagreement. Document for the files all reasons for selecting a particular type of contract.

MANAGING A GRANT:

_____ (1) Establish and maintain a financial management system (ongoing).

_____ (2) Set up a recordkeeping system for the grant award (ongoing).

_____ (3) Establish a property management system, if necessary (ongoing).

_____ (4) Submit EPA Form 6005-1, "Reporting Requirements on Minority and Women Business Enterprise Utilization" (quarterly until all grant monies spent).

_____ (5) Submit EPA Form SF 270, "Request for Reimbursement" (at least quarterly).

_____ (6) Submit progress reports (quarterly).

_____ (7) Submit EPA Form SF 269, "Financial Status Report" (annually).

_____ (8) Submit final report for review 90 days prior to end of approved project period.

_____ (9) Submit final report within 90 days of the end of the project.

_____ (10) Compile equipment report listing all items acquired with grant funds at completion of project.

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