

U.S. DEPARTMENT OF COMMERCE
Office of Inspector General



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RELEASE**

***NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION***

*NMFS's Habitat Conservation Program Awards
Were Not Competitively Selected,
CFDA No. 11.463*

Audit Report No. STL-10953-9-0001 / March 1999

Office of Audits, Seattle Regional Office



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EXECUTIVE SUMMARY

The Office of Inspector General conducted an audit of the fiscal year 1997 procedures and practices for soliciting, reviewing, and selecting applications for financial assistance under the National Oceanic and Atmospheric Administration's National Marine Fisheries Service's (NMFS) Habitat Conservation Program, classified as No. 11.463 in the *Catalog of Federal Assistance*. This audit was conducted as part of a Department-wide review of Commerce's discretionary financial assistance program initiated at the request of the Chairman of the Senate Committee on Commerce, Science, and Transportation.

Discretionary financial assistance programs are those programs for which federal agencies have the authority to independently determine the recipients and funding levels of the awards. These programs involve a significant portion of the Commerce Department's budget and operations, approximately \$1 billion annually. If not properly administered, they are susceptible to fraud, waste, and misuse of funds.

Through the Habitat Conservation Program, NMFS provides grants and cooperative agreements for biological, economic, and other research projects on the coastal environment to benefit U.S. fisheries. In fiscal year 1997, the program awarded two cooperative agreements, three continuation amendments to existing cooperative agreements, one grant, and one continuation amendment to an existing grant, totaling \$6,546,958. All seven awards were made noncompetitively in response to unsolicited proposals. Five of the awards, totaling \$6,317,178, were made on the basis of legislative mandates. One award, totaling \$154,780 was made on the basis of language contained in the fiscal year 1997 appropriations conference report. The original awards for the continuation amendments were also made noncompetitively in response to unsolicited proposals.

We examined NMFS's criteria, procedures and practices for the solicitation, review, and selection of Habitat Conservation Program awards and found that did not comply with departmental and NOAA requirements and were not adequate to guide agency officials in making merit-based discretionary funding decisions. We found that the program was not administered as a competition-based financial assistance program, as encouraged by federal laws and regulations and mandated by Commerce policies and procedures. In addition, we examined the written justifications prepared for the seven noncompetitive awards made in fiscal year 1997 and found two to be inadequate. The justifications for the remaining five awards contained the legislative authorization for the awards or adequately explained the recipient's unique capabilities for completing the proposed project.

Specifically, we found that NMFS:

- Did not comply with the Department's requirement that merit-based evaluation criteria against which program applications for financial assistance could be reviewed, be developed and published. (See page 8.)

- Did not comply with the Department's requirement that a notice be placed in the *Federal Register*, at least annually, announcing the availability of funds and soliciting award applications, and specifying the criteria and the process to be used in reviewing and selecting applications for funding. (See page 8.)
- Did not comply with the Department's requirements that (1) all financial assistance awards be made on the basis of a competitive review process, unless a special waiver is obtained, and (2) the competitive review process meet minimum standards established by the Department. (See page 8.)

As a result of these deficiencies, NMFS cannot provide reasonable assurance that noncompetitive awards made under the program are merit-based and represent the most effective means of achieving program objectives.

Lacking competitive award procedures, there is a greater potential for NMFS to make questionable or even inappropriate noncompetitive program awards in instances where competition from other sources is available. NMFS risks foregoing the receipt of research proposals from a broad range of eligible applicants thus may lose opportunities to increase the effectiveness of the Habitat Conservation Program.

We also found that the NOAA grants office did not provide adequate oversight of NMFS's administration of the program. (See page 14.)

In its response to the draft report, NOAA stated that the agency agrees that more awards should be granted competitively for all discretionary funding programs and that a rigorous solicitation process should be used. NOAA also stated that the agency is continuing to look at its current processes and will provide more specific comments and details as part of the audit action plan submitted in response to the final report (see Appendix III).

We recommend that the Assistant Administrator for Fisheries ensure that financial assistance awards under the Habitat Conservation Program are made through a competitive merit-based process, unless otherwise mandated by law or adequately justified, and that the award process complies with Department policies and procedures and includes the following four elements:

- (1) Widespread solicitation of eligible applications and disclosure of essential application and program information in written solicitations;
- (2) Independent application reviews that consistently apply written program evaluation criteria;
- (3) Written justifications for award decisions that deviate from recommendations made by application reviewers.

- (4) Adequate written justifications for noncompetitive awards which document appropriate market search efforts to validate the determination that there is only one source for the anticipated award. The market search should include, at a minimum, a preaward notice in the *Federal Register* stating that the agency expects to make a noncompetitive award and inviting other qualified parties to inquire.

We also recommend that the Chief Financial Officer/Chief Administrative Officer, as the Director of the Office of Finance and Administration, which includes the Grants Management Division, require that grants officer reviews of proposed noncompetitive awards include procedures designed to objectively determine compliance with Department and NOAA competitive requirements.

Our recommendations appear on pages 15 and 16.

INTRODUCTION

The National Oceanic and Atmosphere Administration's (NOAA) mission is to describe and predict changes in the Earth's environment and to conserve and manage wisely the nation's coastal resources. The National Marine Fisheries Service's (NMFS) mission is to provide stewardship of living marine resources for the benefit of the nation through their science-based conservation and management and promotion of the health of their environment. NOAA, through NMFS, administers the Habitat Conservation Program, classified as No. 11.463 in the *Catalog of Federal Domestic Assistance*. The program's objectives are to provide grants and cooperative agreements for biological, economic, and other research of the coastal environment to benefit the U.S. fisheries.

The Habitat Conservation Program did not have legislation authorizing a financial assistance program and did not receive specific annual appropriations or funding allotments. Program awards have always been made noncompetitively in response to unsolicited proposals. The fiscal year 1997 awards, totaling \$6,546,958, were funded with funds transferred from the Highway Trust Fund, funds received in a damage settlement from an oil spill, and appropriations provided to NMFS for its various fishery programs. The awards were made under the authorities of the Coastal Wetlands Planning, Protection, and Restoration Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Fish and Wildlife Coordination Act.

The Coastal Wetlands Planning, Protection, and Restoration Act of 1990 directed the U.S. Army Corps of Engineers to establish a task force composed of representatives of five federal agencies and the State of Louisiana to develop a comprehensive approach to preventing the loss of and restoring coastal wetlands in Louisiana. The task force was required to prepare a comprehensive Coastal Restoration Plan for Louisiana by the end of 1993, which provides the basis for selecting priority projects for implementation. This task force must annually prepare and transmit to Congress a priority list of Louisiana wetland restoration projects. The Act created the Coastal Wetlands Trust Fund, which is supported by a tax on small engines and equipment. Of the amount appropriated, 70 percent is to be available to fund wetland restoration projects and associated activities in Louisiana. NMFS represents NOAA on the task force and, during fiscal year 1997, sponsored five wetland restoration projects through this program.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes Commerce to fund projects to protect and restore wetlands and other coastal habitats. CERCLA authorizes NOAA to assess and claim damages from responsible parties for damages to natural resources from oil spills. The law requires NOAA to use the assessed funds to restore the damaged resources to their natural state.

The Fish and Wildlife Coordination Act, as amended, authorizes the Secretary of Commerce to provide assistance to federal, state, and public and private agencies and organizations in the development, protection, rearing, and stocking of species of wildlife, resources thereof, and their habitat, and in controlling losses to the same from disease or other causes.

NMFS made seven awards under the Habitat Conservation Program in fiscal year 1997. All seven awards were made noncompetitively to organizations that had submitted unsolicited proposals. Unsolicited proposals are applications for financial assistance that are not submitted in response to a formal solicitation notice published in the *Federal Register*. Two of the proposals were submitted in response to specific requests from NMFS. The projects and the organizations to be funded had been identified by NMFS beforehand. NMFS did not request the five proposals submitted by the State of Louisiana. The projects contained in these five proposals were identified and authorized by the Louisiana Coastal Wetlands Conservation and Restoration Task Force, of which the State of Louisiana and the Department of Commerce are members.

The awards consisted of two cooperative agreements, three continuation amendments to existing cooperative agreements, one grant, and one continuation amendment to an existing grant. The awards were made to two states and a zoological society. The original awards for which continuation amendments were used were also made noncompetitively in response to unsolicited proposals. NMFS chose the cooperative agreement as its award mechanism for two of the three new awards because program officials planned to be substantially involved in the projects. For the remaining three cooperative agreements, NMFS chose a continuation amendment to an existing agreement because the project had been funded in a previous year.

Five awards totaling \$6,317,178 were made to the State of Louisiana using funds transferred from the Highway Trust Fund as legislatively mandated under the Coastal Wetlands Planning, Protection, and Restoration Act. One award for \$75,000 was made to the State of Rhode Island under authority of CERCLA with funds assessed under the Acts. The remaining award for \$154,780 was made under authority of the Fish and Wildlife Coordination Act with fiscal year 1997 NMFS appropriated funds provided to its Office of Protected Species.

Discretionary assistance programs are those for which federal agency officials have the authority to decide (1) which eligible applicants will receive awards, and (2) how much financial assistance that will be awarded. Competition is generally recognized as the most effective means of ensuring that financial assistance awards are made on the basis of merit. One of the purposes of the Federal Grant and Cooperative Agreement Act (31 U.S.C. §6301) is to encourage competition in the award of federal financial assistance to the maximum extent practicable.

The Office of Management and Budget (OMB) has issued guidelines on administering competition-based financial assistance programs for use by federal agencies. An interagency study group, convened in 1979 by the OMB to examine competition in financial assistance programs, determined that financial assistance award processes, to ensure effective competition, should include three basic elements. These elements, which were discussed in OMB's June 1980 report, *Managing Federal Assistance in the 1980's*, are still applicable, and include:

- Widespread solicitation of eligible applicants and disclosure of essential application and program information in written solicitations;
- Independent application reviews that consistently apply written program evaluation criteria; and
- Written justification for award decisions that deviate from recommendations made by application reviewers.

Also, OMB has issued the following circulars which set forth the policies and procedures to be followed in administering federal financial assistance programs:

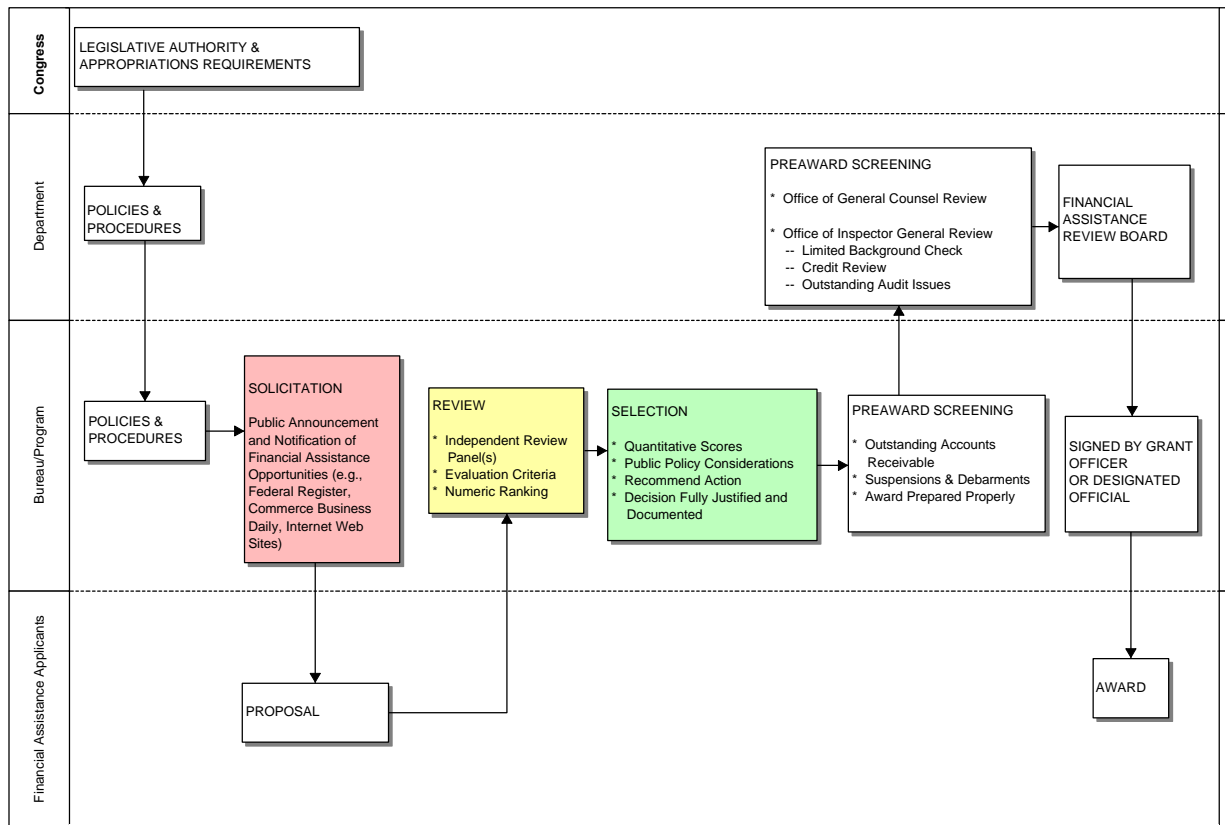
- OMB Circular A-89, *Federal Domestic Program Information*, implements The Federal Program Information Act (P.L. 95-220) requiring agencies to systematically and periodically collect and distribute current information to the public on federal domestic assistance programs, which is accomplished through the semiannual publication of the *Catalog of Federal Domestic Assistance*.
- OMB Circulars A-102, *Grants and Cooperative Agreements with State and Local Governments*, requires agencies to provide the public with advance notice in the *Federal Register*, or by other appropriate means, of their intended funding priorities for discretionary assistance programs unless such priorities are established by federal statute. Under A-102, when time permits, an agency must provide the public with an opportunity to comment on funding priorities. Finally, A-102 requires all grant awards over \$25,000 to be review for consistency with agency priorities by a policy level official.
- OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*, requires agencies to provide the public with advance notice of their intended funding priorities for discretionary assistance programs unless such priorities are established by federal statute.
- OMB Circular A-123, *Management Accountability and Control*, implements the Federal Managers Financial Integrity Act (P.L. 97-255) requiring agencies to establish management controls for federal programs and operations, including financial assistance programs, that provide reasonable assurance that activities are effectively and efficiently managed to achieve agency goals.

Commerce has relied on OMB's guidelines and circulars in developing and issuing policies and procedures for its discretionary funding programs. Department Administrative Order (DAO) 203-26, *Department of Commerce Grants Administration*, requires that (1) all Commerce financial assistance awards be made on the basis of competitive reviews unless a special waiver is obtained, (2) competitive review processes meet minimum standards outlined in the DAO, and (3) all Commerce agencies publish, at least annually, a notice in the *Federal Register* announcing

the availability of funding, soliciting award applications, and specifying the criteria and the process to be used in reviewing and selecting applications for funding. Also, agency-initiated noncompetitive or unsolicited awards should be adequately justified in writing as part of an internal control system defined in OMB Circular A-123 and required by DAO 203-26, Section 4.02 i.

The chart presented on the following page depicts the basic process and controls for the solicitation, evaluation, and selection of financial assistance awards as set forth in DAO 203-26. The processes we reviewed during our audit are color coded for this chart and the NOAA process chart located in Appendix I.

Department of Commerce Financial Assistance Awards Process



PURPOSE AND SCOPE

This audit was conducted as part of a comprehensive review of the Department of Commerce's discretionary funding programs initiated at the request of the Chairman of the Senate Commerce, Science, and Transportation Committee. The Chairman requested that the Inspectors General of the Departments of Commerce and Transportation and the National Science Foundation review the discretionary funding programs of their respective agencies to assess the manner in which discretionary funding decisions are made. More specifically, the Chairman requested that each IG review and report on the criteria developed, either statutorily or administratively, to guide agency officials in making discretionary spending decisions, and on the extent to which the criteria are appropriately applied.

We are conducting our Department-wide review in two phases: a survey phase and an individual program audit phase. During the survey phase, we identified and examined the body of laws, regulations, and guidance applicable to the administration of federal financial assistance programs. We also examined the authorizing legislation, provided by Department officials, for each Commerce financial assistance program and classified each program as either a "full discretion" program or a "limited discretion" program, based on the extent to which the legislation limits the agency's authority to independently determine the recipients and funding levels of the awards made under the program. Finally, we examined the fiscal year 1997 appropriations legislation to identify legislatively mandated awards and reviewed accompanying conference and committee reports to identify projects recommended for funding. Five awards totaling \$6,317,178 were made to the State of Louisiana using funds transferred from the Highway Trust Fund as legislatively mandated under the Coastal Wetlands Planning, Protection, and Restoration Act.

During the second phase of our review, we are conducting individual audits of the award solicitation, review, and selection processes of each program we have classified as a "full discretion" program, including the Habitat Conservation Program. We are evaluating the adequacy of each program's established award procedures and the criteria for evaluating individual applications. For those programs with procedures deemed to be adequate, we are ascertaining whether they were followed in making awards in fiscal year 1997. For those programs with procedures considered to be inadequate or lacking, we are reviewing how the fiscal year 1997 award decisions were made. Finally, we are examining the legislatively mandated projects identified for each program and determining their significance and impact on fiscal year 1997 award decisions. We plan to issue individual reports, with any appropriate recommendations, on each program, followed by a capping report summarizing the results of the individual audits and providing recommendations for the Department and/or its bureaus.

On July 21, 1998, the Acting Inspector General and the Chief Financial Officer and Assistant Secretary for Administration testified before the Senate Commerce, Science, and Transportation Committee on the Department's discretionary funding programs. The Acting IG reported on the survey phase of the OIG's review, and discussed some of the preliminary observations from the individual program audits.

This performance audit focused on all awards made during fiscal year 1997 under the Habitat Conservation Program. Specifically, we:

- Reviewed the program authorization and other information published in the CFDA and provided by NOAA's Office of Legislative Affairs to identify criteria for funding decisions.
- Reviewed policies and procedures for soliciting, reviewing and selecting applications for funding (see Appendix I for flowchart of process). We also reviewed NOAA's *Grants and Cooperative Agreements Manual* as it applied to the solicitation, review, and selection process and assessed whether it was adequate and in accordance with DAO 203-26, *Department of Commerce Grants Administration* and Office of Federal Assistance Financial Assistance Notice No.17, *Department of Commerce Guidelines for the Preparation of Federal Register Notices Announcing the Availability of Financial Assistance Funds -- Requests for Applications*.
- Compared NOAA/NMFS procedures with its practices to determine if the process contained adequate internal controls to provide for competitive, merit-based awards.
- Examined pertinent documents in individual program award files to determine if departmental and NOAA policies and procedures were followed.
- Interviewed NOAA/NMFS program office officials concerning NOAA/NMFS's solicitation, review, and selection procedures.
- Examined fiscal year 1997 appropriations legislation to identify legislatively mandated projects and the accompanying committee and conference reports to identify projects recommended for funding under this program.

We did not rely on computer-based data supplied by NOAA and OEAM as a basis for our audit findings and recommendations. We therefore conducted neither tests of the reliability of the data, nor of the controls over the computer-based system that produced the data.

We performed the audit fieldwork at NOAA's Grants Management Division in Silver Spring, Maryland and our office in Seattle, Washington, during May and June 1998. We conducted the audit in accordance with generally accepted government auditing standards, and under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated May 22, 1980, as amended.

FINDINGS AND RECOMMENDATIONS

We found that NMFS's criteria, procedures and practices for the solicitation, review, and selection of the Habitat Conservation Program awards did not comply with departmental and NOAA requirements and were not adequate to guide agency officials in making merit-based discretionary funding decisions. NMFS did not administer the program as a competition-based financial assistance program. NMFS has not developed and published merit-based evaluation criteria against which funding applications could be reviewed, did not annually announce the program in the *Federal Register*, and makes all awards under this program noncompetitively in response to unsolicited proposals.

In addition, we reviewed the noncompetitive justifications for the seven awards made in fiscal year 1997 and found two of them to be inadequate because NMFS did not provide sufficient support for the unique applicant capabilities cited and/or did not demonstrate that cited legislative authorities limited awards to specific recipients. NMFS's practices do not comply with Department and NOAA requirements to seek maximum program competition. We also found that reviews performed by the NOAA grants office of the proposed awards did not question NMFS's lack of competitive award procedures or the validity of the noncompetitive award justifications. As a result, NOAA/NMFS cannot provide reasonable assurance that noncompetitive awards made under the program are merit-based and represent the most effective means of achieving program objectives

I. Habitat Conservation Program Is Not Administered As a Competition-Based Financial Assistance Program

NMFS's Habitat Conservation Program is not administered as a competition-based financial assistance program, as encouraged by federal laws and regulations and mandated by Department of Commerce policies and procedures. All of the awards made under the program were made noncompetitively in response to unsolicited proposals. We examined the written justifications prepared for the seven noncompetitive awards made in fiscal year 1997 and found two to be inadequate. Competition for the remaining five awards was not appropriate because NMFS provided evidence of the legislative authorities supporting NMFS's decision to make awards to specific applicants. Specifically, we found that NMFS:

- Did not comply with the Department's requirement that merit-based evaluation criteria against which program applications for financial assistance could be reviewed, be developed and published.
- Did not comply with the Department's requirement that a notice be placed in the *Federal Register*, at least annually, announcing the availability of funds and soliciting award applications, and specifying the criteria and the process to be used in reviewing and selecting applications for funding.

- Did not comply with the Department's requirements that (1) all financial assistance awards be made on the basis of a competitive review process, unless a special waiver is obtained, and (2) the competitive review process meet minimum standards established by the Department.

As a result of these deficiencies, NMFS cannot provide reasonable assurance that noncompetitive awards made without adequate justification are merit-based and represent the most effective means of achieving program objectives.

A. NMFS did not develop and publish merit-based evaluation criteria

The NOAA *Grants and Cooperative Agreements Policy Manual*, Chapter 1, Section A.4., requires that applications for financial assistance be reviewed by a panel of independent reviewers in accordance with published criteria. The manual states that the criteria used for evaluating applications must be published as part of the request for applications and prohibits scoring against unpublished criteria. However, NMFS did not develop and publish merit-based evaluation criteria against which competing program applications could be reviewed.

In particular, the agency did not place a notice in the *Federal Register* announcing the availability of funding, soliciting competing applications for funding, and specifying the criteria and the process to be used in reviewing and selecting applications for funding under the Habitat Conservation Program for fiscal year 1997. Also, the NMFS Habitat Conservation Program summary, published in the *Catalog of Federal Domestic Assistance*, did not cite program-specific evaluation criteria. The summary simply states that proposals will be initially evaluated by the appropriate NMFS Office, or a component laboratory, and are subject to review for technical merit, soundness of design, competency of the applicant to perform the proposed work, potential contribution of the project to national or regional goals, and appropriateness and reasonableness of proposed costs. In order to be adequate to facilitate a merit-based evaluation process, criteria used to evaluate applications for federal financial assistance must not be general in nature, but as specific as possible with weights assigned to each criterion.

B. Solicitation and review process did not comply with competitive requirements

Department Administrative Order 203-26, Section 4.02.b., requires Department bureaus to publish an annual notice in the *Federal Register* for each financial assistance program announcing the availability of funding, soliciting applications for funding, and specifying the criteria and the process to be used in reviewing and selecting applications for funding. Section 4.02.f. also encourage the bureaus to publish notices in other widely distributed publications, such as the *Commerce Business Daily*, to ensure widespread notice of funding opportunities. Bureaus can also prepare and send requests for proposals directly to organizations known or believed to be qualified. Also, NOAA's *Grants and Cooperative Agreements Policy Manual*,

Chapter 1, Section A.4., states that it is NOAA's policy to seek maximum competition for its discretionary grants and cooperative agreements. To accomplish this, the manual states that when appropriate, program offices should publish requests for applications in the *Federal Register* or otherwise solicit applications from all eligible organizations.

In addition, Department Administrative Order 203-26, Section 4.02.a., requires the establishment of selection criteria for use in evaluating applications submitted for new awards. Section 4.02.h. requires awards be made on the basis of competitive review, and Section 4.02.h.1.(e) requires the use of the selection criteria in evaluating individual applications. Unless a program receives a waiver of competitive review requirements, awards under the program are generally required to be made on the basis of competitive review.

However, despite the Department and NOAA policies, NMFS did not announce the Habitat Conservation Program in the *Federal Register* or *Commerce Business Daily*, and did not establish merit-based criteria for evaluating proposals. By not announcing the program and establishing award selection criteria as required, NMFS did not comply with Department as well as its own policies and missed an important opportunity to seek potential program competition. In addition, NMFS may have encouraged the use of noncompetitive awards by not developing selection criteria for use in making awards for program needs when the anticipated awards cannot be properly exempted from competitive review requirements.

Although NMFS did not announce the Habitat Conservation Program in the *Federal Register*, it still could have placed preaward notices in the *Federal Register* announcing its intent to fund specific program projects and requesting proposals or inviting inquiries from interested organizations. However, NMFS did not publish individual preaward notices in the *Federal Register* for any of the seven awards NMFS funded on the basis of noncompetitive justifications. In our opinion, the publishing of preaward notices would have provided (1) the public with an opportunity to comment on proposed projects, (2) other qualified recipients an opportunity to submit proposals for funding, and (3) NMFS officials with independent support for determining whether a recipient is uniquely qualified to perform proposed projects.

C. Two noncompetitive awards under the program lacked adequate justification

In fiscal year 1997, NOAA/NMFS awarded two cooperative agreements, three continuation amendments to existing cooperative agreements, one grant, and one amendment to an existing grant under the Habitat Conservation Program, totaling \$6,546,958. These awards were made to two states and a zoological society. A list of the awards is provided as Appendix II. All of the awards were made noncompetitively to organizations that had submitted unsolicited proposals for NMFS funding consideration. Also, we noted that NMFS made one of the awards on the basis of language contained in the fiscal year 1997 Senate appropriations conference report. However, the award was not specifically contained in the fiscal year 1997 Appropriations Act and was, therefore, not legislatively mandated. We understand that NMFS would want to

consider conference report language as it is an expression of congressional interest and intent. However, NMFS was not required to make the awards without any consideration of competition or other merit-based criteria. We also concluded that NMFS had no basis for not competing two of the seven awards.

We examined the written justifications for the noncompetitive awards and noted that NMFS justified all of the awards on the basis that each proposed recipient possessed unique capabilities that made it the best or the only organization qualified to do the work. None of the noncompetitive justifications cited general market surveys performed to determine if other institutions were interested or capable of performing similar work. Five of the written justifications referred to language contained in Coastal Wetlands Planning, Protection, and Restoration Act. One award referred to language contained in the Comprehensive Environmental Response, Compensation, and Liability Act and the Clear Water Act. Program personnel stated that one additional award was made on the basis of fiscal year 1997 Senate appropriations conference report language but it was not mentioned in that award's written justification. However, this award was not specifically contained in the fiscal year 1997 Appropriations Act and was, therefore, not legislatively mandated.

Two awards, totaling \$154,780, had inadequate noncompetitive justifications because NMFS did not provide support for the unique capabilities cited or did not correctly demonstrate that the awards were legislatively mandated. Specifically, the awards included \$75,000 to the State of Rhode Island and \$154,780 to the Valley Zoological Society.

Competition for the remaining five awards was not appropriate because NMFS provided evidence of the legislative authority supporting NMFS's decision to make awards to the State of Louisiana as authorized under the Coastal Wetlands Planning, Protection, and Restoration Act.

The following is a synopsis of the seven noncompetitive awards.

State of Louisiana

NMFS received five unsolicited proposals from the State of Louisiana totaling \$6,317,178. NOAA/NMFS awarded the full amount as two new cooperative agreements (Nos. NA77FZ0156 and NA77FZ0254) and three amendments to existing cooperative agreements (Nos. NA47FZ0477, NA57FZ0321, and NA47FZ0099) to the state in fiscal year 1997 using funds transferred from the Highway Trust Fund for the protection and restoration of wetlands. The awards required \$2,284,312 in matching contributions from the state, bringing the project budgets to \$8,601,490. The purpose of the awards was to fund projects authorized under the Coastal Wetlands Planning, Protection, and Restoration Act. The project periods were limited to one year.

The written noncompetitive justifications stated that the awards were part of the legislative mandate under the Coastal Wetlands Planning, Protection, and Restoration Act. Under the Act, the federal government is to provide funds specifically to the State of Louisiana for wetland restoration projects. Competition was not appropriate as NMFS

provided evidence that the Coastal Wetlands Planning, Protection, and Restoration Act directed the funding of projects to the State of Louisiana.

Valley Zoological Society

The fiscal year 1996 Senate appropriations conference report states that NMFS was to continue to provide funding in fiscal year 1997 for ongoing efforts at Rancho Nuevo, and the fiscal year 1997 Senate appropriations conference report states that NMFS was to continue to fund the efforts at Rancho Nuevo. Based on the conference report language NMFS allocated funds for this project and requested that the Valley Zoological Society submit a project proposal for funding consideration. NMFS received an unsolicited proposal from the Valley Zoological Society for \$154,780. NOAA/NMFS awarded a \$154,780 amendment (No. NA66FZ0468) to an existing grant to the society in August 1997 using funds provided in its fiscal year 1997 appropriations. The grant amendment did not require a matching contribution. The award's purpose was to support basic operations and expansion of facilities to protect the nesting grounds of the Kemp's Ridley sea turtles located in Rancho Nuevo, Mexico. The project period was limited to one year.

The written noncompetitive justification states that the Valley Zoological Society, in conjunction with Mexico's Instituto Nacional de Pesca, has operated the day-to-day activities of the U.S. program to protect the Kemp's Ridley nesting beach at Rancho Nuevo since 1989. In addition, the Society's principal investigator served as the U.S. field assistance coordinator for this project, has 18 years of experience running this camp, directs annual surveys of Kemp's Ridley nesting activities, is a member of the Kemp's Ridley Working Group which is responsible for implementing the recovery plan for this species, serves as deputy director of the Gladys Porter Zoo, is fluent in Spanish, and has established long standing personal relationships with authorities in Mexico. The justification also noted that the proximity of the zoo to the Mexican border enhances the efficiency and cost effectiveness of transporting personnel and equipment to the camp at Rancho Nuevo.

The noncompetitive justification was inadequate because the project is not contained in the fiscal year 1997 Appropriations Act and therefore is not legislatively mandated, and NMFS did not provide evidence, such as the results of a published solicitation, that the Valley Zoological Society was the only entity capable of performing the award.

State of Rhode Island

NMFS received funds in a damage settlement from an oil spill in Rhode Island under the Clean Water Act and CERCLA. NMFS identified a need for a shellfish project in Rhode Island and requested that the State of Rhode Island Department of Environmental Management submit a project proposal for funding consideration. NMFS received an unsolicited proposal from the State of Rhode Island's Department of Environmental Management for \$75,000. NOAA/NMFS awarded a \$75,000 grant (No. NA76FZ0114)

to the department in December 1996 using funds NOAA assesses from responsible parties for injuries to natural resources under the Clear Water Act and CERCLA. The grant did not require a matching contribution. The award's purpose was to establish quahog (hard clam) spawner sanctuaries. The project period was limited to one year.

The written noncompetitive justification states that the Rhode Island Department of Environmental Management is uniquely qualified to implement the project because it is the sole fishery management authority in Rhode Island waters, no other entity can legally authorize transplanting of shellfish from closed areas in Narragansett Bay, the Rhode Island Department of Environmental Management has had an ongoing shellfish transplant program for over ten years, and no other entity can enforce the harvest prohibition within the sanctuary. The justification also states that the award was made to compensate the public for losses associated with an oil spill in Narragansett Bay, Rhode Island; under the Clear Water Act and CERCLA, NOAA is required to use the assessed funds to restore the damaged resource to its natural state; an oil spill caused damages to the quahog (hard clam) fishery in Narragansett Bay; NOAA determined that a grant should be awarded to establish two quahog spawner sanctuaries in the bay; and after the clams are transplanted to the sanctuaries the fishery will be closed to harvesting for two years.

The noncompetitive justification was inadequate because NMFS did not provide evidence, such as the results of a published solicitation, that the State of Rhode Island was the only entity capable of performing the award.

Unsolicited proposals are applications for financial assistance that are not submitted in response to a formal solicitation notice published in the *Federal Register*. Because unsolicited proposals are a means by which unique or innovative ideas can be made available to accomplish specific projects, scientific organizations like NOAA and NMFS encourage their submission. DAO 203-26, Section 4.02.i., allows the receipt of unsolicited proposals, but states that no unsolicited proposal may be funded outside the competitive process if that proposal falls within the program goals of a competitive program. In addition, the receipt of a technically acceptable unsolicited proposal does not, in itself, justify a noncompetitive award. DAO 203-26, Section 4.02.i., also states that the decision to fund an unsolicited proposal must be fully justified and included in the official grant file.

While NMFS wrote noncompetitive justifications for the seven awards, the justifications for the Valley Zoological Society and State of Rhode Island awards do not cite any factual basis for the assertions that four applicants possessed unique capabilities. Since NMFS also did not comply with the Department's requirement that a notice be published in the *Federal Register* soliciting applications for fiscal year 1997 awards under the Habitat Conservation Program, it lacked support for its claims that the organizations that submitted unsolicited proposals were the only ones that could perform the work. Instead, the justifications contained statements by program office officials that are based on knowledge accumulated through their past working relationships with recipients. Without documented support, a belief that an organization possesses unique qualifications does not justify making a noncompetitive award because there may be other

qualified applicants unknown to program officials. Such a belief should still be tested through a competitive review process that includes widespread solicitation of eligible applicants, through announcement in the *Federal Register* and other means.

We believe the justification for a noncompetitive award should include a documented market search to verify or confirm that there is only one source. The market search should include, at a minimum, a preaward notice in the *Federal Register* stating that the agency expects to make a noncompetitive award and inviting other interested and qualified parties to inquire. Such a practice would be similar to the requirements in the *Federal Acquisition Regulation (FAR)* for contracting (see 48 FAR, Part 6.302). In addition, the review process for a noncompetitive award should ensure that the proposal meets program goals. NMFS did not publish individual preaward notices for the four awards.

II. NOAA Reviews Of Proposed NMFS Awards Are Not Effective

Reviews performed by the NOAA grants office of the seven proposed noncompetitive awards did not question NMFS's lack of competitive award procedures or the validity of the noncompetitive award justifications. The NMFS's Office of Habitat Conservation and the Office of Protected Resources forwarded, as required, justifications and related documents for the proposed noncompetitive awards to the grants office for review and approval. However, the grants office's review of the proposed awards did not ensure the NMFS program office's compliance with applicable Department and NOAA competitive requirements.

DAO 203-26, Section 4.01., requires that each organization unit establish a central liaison to ensure that its programs comply with federal, departmental, and organization grant requirements and to review grant documents for compliance. The NOAA Office of Finance and Administration, which includes the Grants Management Division, fulfills that responsibility for NOAA.

The grant files do not indicate whether the Grants Management Division questioned why the NMFS program office did not prepare and submit the required annual *Federal Register* program announcement. The files also do not show whether the grants office determined if the noncompetitive justifications were factually based or if the program office had made any attempt to identify other qualified sources before submitting the noncompetitive awards. Grants Management Division personnel stated that they relied on and accepted as valid the technical descriptions of perceived unique capabilities presented in the program office's award justifications. They further stated that while they reviewed the justifications to determine if they addressed one or more of the acceptable reasons for a noncompetitive award, they did not verify the information because the office has no authority over the offices submitting the justifications, they can not make field trips to verify information, and scientists involved would not consider them qualified to make the type of scientific determinations included in the noncompetitive justifications. Therefore, we believe the reviews were not effective in ensuring the program office's compliance with Department and NOAA policies on competition.

III. Conclusions

We concluded that NMFS's fiscal year 1997 award process under the Habitat Conservation Program was not adequate to guide officials in making merit-based discretionary funding decisions because NMFS did not develop and publish merit-based evaluation criteria and the noncompetitive awards of one grant and an amendment to an existing grant did not comply with Department and NOAA policies of seeking maximum competition. Also, NMFS's written justifications for the awards did not cite any factual basis for its claims that the two applicants had unique capabilities and did not correctly demonstrate that the awards were legislatively mandated. Despite these facts, the NOAA grants office did not question the awards. By not following competitive procedures, NOAA/NMFS could make questionable or even inappropriate noncompetitive program awards in instances where competition is available. In addition, by not seeking competition, NMFS misses the opportunity to consider proposals containing the ideas, designs, technology, or services that other qualified organizations can produce and thus lose an opportunity to increase program quality.

NOAA Response

In its response to the draft report, NOAA stated that the agency agrees that more awards should be granted competitively for all discretionary funding programs and that a rigorous solicitation process should be used. NOAA also stated that the agency is continuing to look at its current processes and will provide more specific comments and details as part of the audit action plan submitted in response to the final report.

OIG Comments

NOAA's concurrence that more awards should be competitively awarded is a positive reaction to this report. We look forward to the Habitat Conservation Program moving in that direction. We have modified our recommendations in response to discussions with NOAA officials regarding the draft report to clarify that we did not intend to suggest that *all* awards must be made competitively. We understand that an unsolicited research proposal may very well be justified for noncompetitive funding on an exception basis. However, we are emphasizing that an entire program should not be administered on a noncompetitive basis, as this one is, unless mandated by law.

IV. Recommendations

We recommend that the Assistant Administrator for Fisheries ensure that financial assistance awards under the Habitat Conservation Program are made through a competitive merit-based process, unless otherwise mandated by law or adequately justified, and that the award process complies with Department policies and procedures and includes the following four elements:

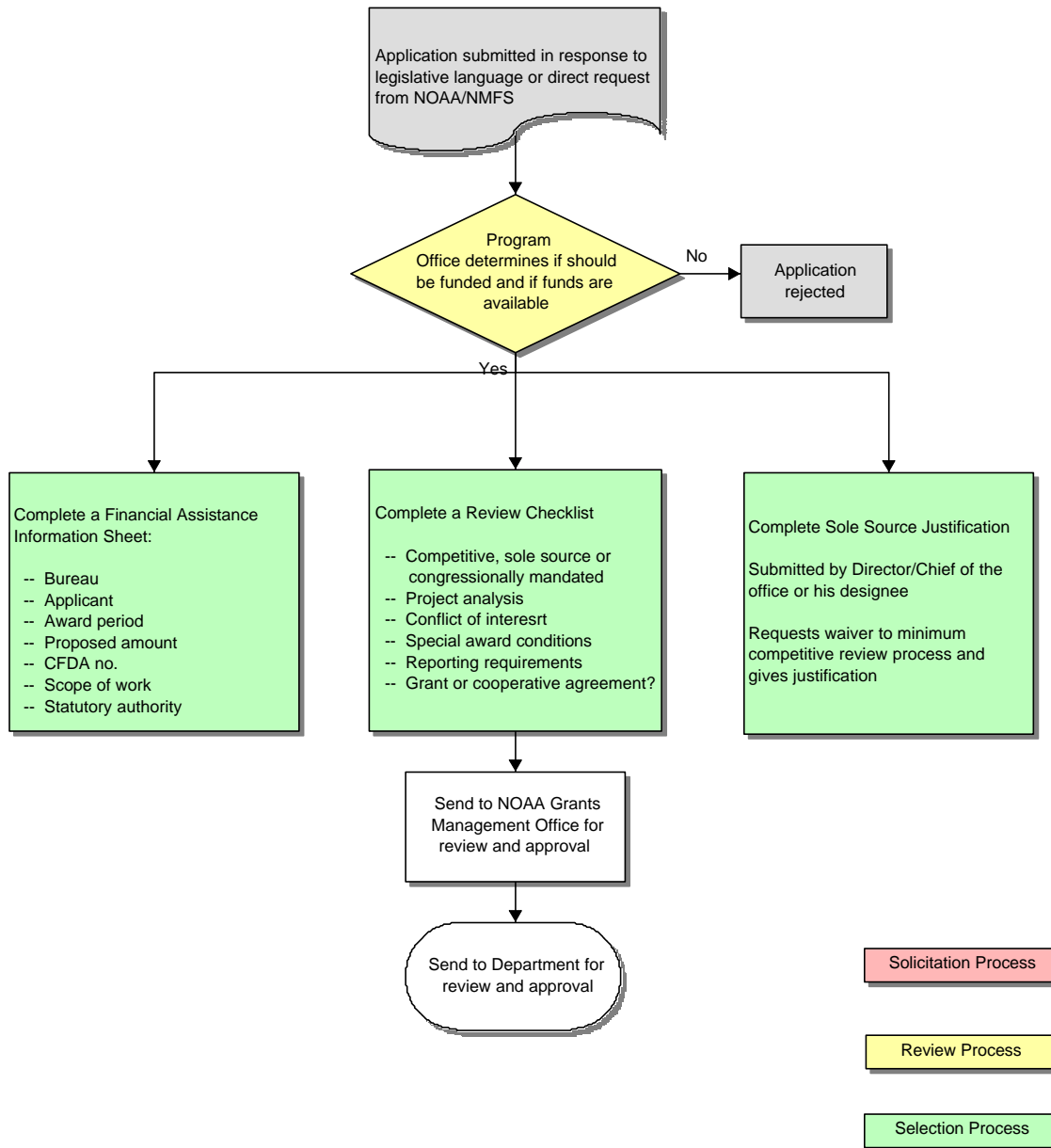
- (1) Widespread solicitation of eligible applications and disclosure of essential application and program information in written solicitations;

- (2) Independent application reviews that consistently apply written program evaluation criteria;
- (3) Written justifications for award decisions that deviate from recommendations made by application reviewers; and
- (4) Adequate written justifications for noncompetitive awards which document appropriate market search efforts to validate the determination that there is only one source for the anticipated award. The market search should include, at a minimum, a preaward notice in the *Federal Register* stating that the agency expects to make a noncompetitive award and inviting other qualified parties to inquire.

We also recommend that the Chief Financial Officer/Chief Administrative Officer, as the Director of the Office of Finance and Administration, which includes the Grants Management Division, require that grants officer reviews of proposed noncompetitive awards include procedures designed to objectively determine compliance with Department and NOAA competitive requirements.

APPENDIX I

NOAA/NMFS Procedures for Review and Selection of Awards



APPENDIX II

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**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
HABITAT CONSERVATION PROGRAM**

Awards and Amendments for Fiscal Year 1997

<i>Number</i>	<i>Type</i>	<i>Recipient</i>	<i>Type of Work</i>	<i>Amount</i>
NA77FZ0156	New Cooperative Agreement	State of Louisiana	Coastal Wetlands Planning	\$3,090,000
NA77FZ0254	New Cooperative Agreement	State of Louisiana	Coastal Wetlands Planning	648,570
NA47FZ0477	Amendment to Cooperative Agreement	State of Louisiana	Coastal Wetlands Planning	1,656,101
NA57FZ0321	Amendment to Cooperative Agreement	State of Louisiana	Coastal Wetlands Planning	782,507
NA47FZ0099	Amendment to Cooperative Agreement	State of Louisiana	Coastal Wetlands Planning	140,000
NA76FZ0114	New Grant	State of Rhode Island	Quahog Fishery	75,000
NA66FZ0468	Amendment to Grant	Valley Zoological Society	Ridley Turtles	154,780
<i>Total</i>				\$6,546,958



Appendix III

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
CHIEF FINANCIAL OFFICER/CHIEF ADMINISTRATIVE OFFICER

MAR 25 1999

MEMORANDUM FOR: Johnnie Frazier
Acting Inspector General

FROM: Paul F. Roberts *Paul F. Roberts*

SUBJECT: Office of Inspector General Draft Reports -
NOAA's Discretionary Funding Programs

Thank you for the opportunity to review and comment on the draft audits reports prepared by the Office of the Inspector General relating to NOAA's discretionary funding programs.

NOAA agrees that more awards should be granted competitively for all discretionary funding programs and that a rigorous solicitation process should be used. NOAA is committed to ensuring an awards program that is consistent with Department of Commerce policies and responsive to our research needs. We will continue to look at our current processes and I will provide more specific comments and details as part of the audit action plans submitted in response to the final reports.



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