



Classification No.: 5700.8
Approval Date: 02/23/2009
Review Date: 02/23/2012

EPA Policy on Assessing Capabilities of Non-Profit Applicants for Managing Assistance Awards

1. PURPOSE.

This Order establishes internal controls for determining the administrative and programmatic capability of non-profit organizations applying for EPA assistance agreements. This Order also enhances post-award oversight by requiring EPA award officials to take appropriate remedies against non-profit recipients that materially fail to comply with the terms and conditions of assistance agreements.

2. AUTHORITY.

The authority for this Order is 2 CFR Parts 180 and 1532, 2 CFR Part 215 and 40 CFR Part 30.

3. BACKGROUND.

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

Recognizing that it is preferable to address such issues before, rather than after, an assistance agreement is awarded, this Order prescribes uniform pre-award procedures for evaluating the administrative and programmatic capability of non-profit applicants. It also establishes uniform post-award procedures for addressing a material failure to comply by non-profit recipients. Taken together, these procedures strengthen Agency oversight by helping to prevent or rectify financial mismanagement or poor performance by non-profit recipients.

4. REGULATORY FRAMEWORK.

These procedures are based on existing regulatory requirements. Specifically, 40 CFR 30.14 authorizes EPA to impose pre-award conditions on a non-profit applicant that has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in 40 CFR Part 30 and 2 CFR Part 215, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible. Further, 40 CFR 30.62 provides EPA with remedies to deal with non-profit recipients that mismanage assistance agreements either administratively or programmatically. Finally, under 2 CFR Parts 180 and 1532, EPA may suspend or debar non-profit applicants or recipients that pose a serious business risk to the Government.

5. APPLICABILITY AND EFFECTIVE DATE.

a. The requirements in Section 8 (a) of this Order for assessing the programmatic capability of non-profit applicants (defined in section 7(c)) apply to all funding recommendations/decision memoranda for non-competitive awards submitted to the Grants Management Offices on or after March 1, 2009.

b. The requirements in Section 8 (b) and (c) of this Order for assessing the administrative capability of non-profit applicants apply to funding recommendations/decision memoranda for assistance agreements, incremental funding actions, and supplemental funding amendments to non-profit organizations submitted to the Grants Management Offices on or after March 1, 2009.

c. The requirements in Section 9 of this Order regarding the evaluation of applicants for competitive awards apply to competitive announcements issued on or after March 1, 2009.

d. The requirements in Sections 10, 11 and 14 of this Order for Suspension and Debarment referral and post-award remedies apply to EPA's management of all non-profit assistance agreements in effect on or after March 1, 2009.

6. POLICY.

It is EPA policy to make assistance awards to non-profit organizations provided they have the administrative capability to safeguard EPA funds and the programmatic capability to perform the proposed work effectively. Further, it is EPA policy to address, to the maximum extent practicable, deficiencies in the administrative or programmatic capability of non-profit organizations at the pre-award phase. Additionally, it is EPA policy to promptly address a material failure to comply by non-profit recipients, including, where appropriate, referring them to EPA's Suspension and Debarment program for possible action under 2 CFR Parts 180 and 1532.

7. DEFINITIONS.

a. The term “administrative capability” means the capability of an applicant or recipient to develop and implement administrative systems required by 40 CFR Part 30, including systems related to financial management, property management, procurement standards, financial reporting, record-keeping, and submission of administrative reports/certifications for grant closeout.

b. The term “programmatic capability” generally means the technical capability of an applicant or recipient to successfully perform and manage a project taking into account factors such as the applicant’s:

(i) past performance in successfully completing and managing federally and/or non-federally funded assistance agreements similar in size, scope, and relevance to the proposed project, (ii) past performance in meeting reporting requirements on federally and/or non-federally funded assistance agreements including submitting acceptable final technical reports under the agreements, (iii) organizational experience and plan for timely and successfully achieving the objectives of the project, and (iv) staff (including paid employees and volunteers) expertise/qualifications, staff knowledge, and resources or the ability to obtain them, to successfully achieve the goals of the project.

c. The term “non-profit organization” means any corporation, trust, association, cooperative, or other organization which:

(1) is operated primarily for scientific, educational, service, charitable or similar purposes in the public interest;

(2) is not organized primarily for profit;

(3) uses its net proceeds to maintain, improve, and/or expand its operations; and

(4) is subject to 40 CFR Part 30.

The term does not include: colleges and universities as defined under 2 CFR Part 220 or non-profit research foundations affiliated with such colleges and universities; State, local, and federally-recognized Indian Tribal governments; hospitals; and organizations considered as similar to commercial concerns 2 CFR Part 225.

d. The pre-award threshold is the dollar amount of the federal share of an assistance agreement above which a pre-award review for administrative capability is required for an initial award under Section 8 (b) of this Order. The current pre-award threshold is \$200,000, meaning a new, or incrementally-funded, award with \$200,001 or more in federal funds is subject to the pre-award review for administrative capability.¹ Based upon a review of the effectiveness of this Order by the Office of Grants and Debarment, the Assistant Administrator for Administration

¹ The threshold began in calendar year 2005 at \$200,000 and has not been changed.

and Resources Management, or designee, will, after consultation with the Grants Management Council, determine the pre-award threshold for subsequent years.

e. The term “Grants Management Offices (GMOs)” refers to the Headquarters and regional offices responsible for the business management aspects associated with the review and negotiation of applications and the award of assistance agreements. In the regions, GMOs report organizationally to the Assistant Regional Administrator; in Headquarters, the GMOs report to the Director of the Grants and Interagency Agreement Management Division (GIAMD).

f. The term “Grantee Compliance Database” refers to the database used to record and track post-award advanced monitoring activities and pre-award activities completed by EPA, and other audits and reports provided to EPA.

8. EVALUATION OF NON-PROFIT APPLICANTS FOR NON-COMPETITIVE AWARDS.

a. Review for Programmatic Capability

(1) Before sending a non-profit funding recommendation (or decision memorandum, as appropriate) to the GMO, Program Offices must assess the applicant’s programmatic capability. This involves consideration of programmatic capability factors such as those described in Section 7 (b) of this Order. At a minimum, it must include an analysis of information from the application and the Grantee Compliance Database. If the assessment identifies weaknesses in programmatic capability, the Program Office may not approve the application for funding until it determines that the applicant has taken, or is on schedule to take, satisfactory corrective action.

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

b. Pre-Award Review: Administrative Capability Questionnaire

(1) The following requirements apply to: fully-funded new awards above the pre-award threshold; and, incrementally funded new awards where the total federal share exceeds the pre-award threshold. The requirements in this section (8(b)) do not apply to supplemental funding actions.

(A) Program Offices must notify their GMO as soon as a decision is made to recommend funding to a non-profit applicant.

(B) After receiving notification from the Program Office under paragraph (1)(A),

and subject to any guidance issued by the Director, National Policy, Training and Compliance Division (NPTCD), under section 15, GMOs must notify NPTCD to: request the applicant complete the Administrative Capability Form contained in Appendix A to this Order and provide supporting documents; and conduct a review of this information. If the GMO, based upon an evaluation of the completed Administrative Capability Form and after checking the Grantee Compliance and closeout databases, determines that the applicant lacks the necessary administrative capability, the award official must impose pre-award conditions under section 10(b), or special award conditions under Section 10(d), of this Order. If the GMO finds that the applicant has the necessary administrative capability, the GMO notifies NPTCD of the pre-award certification and no pre-award or special award conditions are required.

(C) A determination by a GMO that a particular applicant has the necessary administrative capability will generally remain in effect for four years. During that time, other GMOs may rely on that determination without requiring the applicant to complete and submit the Administrative Capability Form unless there is adverse, new information available to the Agency, including information in the Grantee Compliance Database, bearing on the applicant's administrative capability.

(1) **Renewal.** Near the end of the four year period, if the Director, NPTCD finds, after reviewing the Grantee Compliance Database and the results of previous administrative post-award monitoring and other relevant information, that the applicant had a satisfactory record of administrative capability, the Director may, in accordance with NPTCD guidance, recertify the applicant for another four years without requiring it to complete and submit the Administrative Capability Form.

(2) **Recertify.** If the applicant's record of administrative capability is found to be unsatisfactory, or the certification lapses without intervening administrative post-award monitoring, the applicant will be subject to a new review under paragraph (1)(B).

c. Other Pre-Award Reviews for Administrative Capability

(1) The following requirements apply to: fully-funded new awards that do not exceed the pre-award threshold; incrementally-funded new awards where the expected total federal share does not exceed the pre-award threshold; fully-funded new awards or incrementally funded new awards to non-profit applicants whose certification under Section 8(b) is in effect; and all monetary funding amendments.

(A) GMOs must review the Grantee Compliance Database for information

bearing on the applicant's administrative capability. If the review indicates that the applicant lacks administrative capability, the award official must impose pre-award or special award conditions under Section 10 of this Order.

(2) An EPA Project Officer or GMO may recommend to NPTCD the review of an applicant for awards below the threshold where there is concern over the applicant's administrative capability. Such reviews are subject to the requirements in Section 8(b) of this Order.

(3) In cases where a novation is pending to a non-profit applicant, the GMO should confer with NPTCD for further guidance. Determinations on the necessity of pre-award reviews will be made on a case-by-case basis.

(4) In addition to the requirements in Section 8(c)(1)(A), above, supplemental funding actions are subject to the monitoring requirements of EPA Order 5700.6A2, "Policy on Compliance Review and Monitoring."

d. Program Office Notification

GMOs must promptly notify the Program Office of findings under paragraphs b. and c. that an applicant lacks administrative capability.

9. EVALUATION OF APPLICANTS FOR COMPETITIVE AWARDS.

a. Competitive announcements under which non-profit organizations may compete for an award must contain ranking factor(s) for evaluating applicants on their programmatic capability to successfully carry out and manage the proposed project. The ranking factor(s), which is included in Section V of the announcement, must evaluate applicants on programmatic capability criteria such as those described in Section 7(b). The programmatic capability criteria included under the ranking factor(s) must be given significant weight in the evaluation process.

b. The type of competitive announcement used will determine which applicants will be evaluated based on the programmatic capability ranking factor(s). If a Request For Initial Proposal (RFIP) type of announcement is used then generally only those applicants whose initial proposal merited further consideration and who are asked to submit detailed proposals will be evaluated on the programmatic capability ranking factor(s) (e.g., programmatic capability does not need to be evaluated as part of the evaluation of the initial proposal submitted). If a Request For Application/Request For Proposal (RFA/RFP) type of announcement is used, then the programmatic capability ranking factor(s) will apply to the evaluation of all applications/proposals submitted in response to the announcement.

c. Section IV of competitive announcements must require applicants to submit information relating to the programmatic capability criteria to be evaluated under the ranking factor(s) in Section V of the announcement. The announcement must also indicate that in evaluating an

applicant for programmatic capability purposes under the relevant ranking factor(s), EPA will consider information provided by the applicant and may consider information from other sources including Agency files.

d. The requirements for pre-award administrative capability reviews in Section 8 (b) and (c) of this Order also apply to funding recommendations for new fully-funded or incrementally funded competitive awards to non-profit organizations and to supplemental and incremental funding amendments to competitive non-profit awards. Accordingly, competitive announcements that may involve new individual non-profit awards must contain a provision in Section VI of the announcement, Award Administration Information, addressing these requirements. The provision must explain that non-profit applicants which qualify for funding under the announcement may, depending on the size of the award, be required to fill out and submit to the GMO, with supporting documents, the Administrative Capability Form contained in Appendix A to this Order.

e. EPA's Grants Competition Advocate is authorized to issue guidance as may be necessary to implement this Section

10. PRE-AWARD OR SPECIAL AWARD CONDITIONS.

a. If EPA identifies weaknesses under Section 8 (b) or (c) of this Order in the administrative capability of an applicant recommended for award, the award official must notify the applicant in writing (with a cc: to the EPA project officer) of the weaknesses which require correction or the imposition of pre-award conditions. These conditions must require the applicant to address the weaknesses to the Agency's satisfaction within a specified time and inform the Agency, in writing, of the corrective actions taken.

b. The GMO must assess whether the applicant's corrective actions are satisfactory. If so, the GMO may recommend pre-award certification and EPA may make the award. If the corrective actions are found to be deficient or the applicant does not respond within the specified time, the award official must provide written notice to the applicant (with a cc: to the EPA project officer and NPTCD) of the deficiencies and advise that an award will not be made.

c. Award officials must inform the Director, NPTCD, in writing of decisions to deny awards under paragraph b. If the Director finds that a particular applicant has been denied awards in more than one instance due to an unwillingness to develop adequate administrative capability, the Director will refer the matter to the Director of the Suspension and Debarment Division for consideration under 2 CFR Parts 180 and 1532.

d. In exigent circumstances, as an alternative to establishing pre-award conditions described under paragraphs (a) and (b), award officials may make an award with special conditions prohibiting the recipient from drawing down EPA funds until it corrects identified weaknesses under a specified timetable. For Headquarters awards, this approach requires the approval of both the Program Office Senior Resource Official and the Director, NPTCD. For Regional

awards, this approach requires the approval of both the approving official and the Regional Senior Resource Official, with written notice to the Director, NPTCD.

11. REMEDIES FOR POST-AWARD NON-COMPLIANCE.

EPA award officials must take one or more of the remedies under 40 CFR § 30.62 when a non-profit recipient materially fails to comply with the terms and conditions of an assistance agreement. These remedies include: (A) temporarily withholding cash payments; (B) disallowing costs; (C) wholly or partly suspending or terminating the current award; (D) withholding further awards for the project or program; and (E) other remedies that may be legally available. The award official must notify the recipient in writing (with a cc: to the EPA Project Officer) of the action taken, the reasons for the action, and the steps it must take to come into compliance.

12. DISPUTES.

In accordance with the dispute process at 40 CFR § 30.63, the award official must: afford applicants the opportunity to contest disagreements over programmatic capability under Section 8 (a) of this Order or decisions to impose pre-award or special award conditions under Section 10 of this Order; and afford applicants and recipients the opportunity to contest adverse actions under Section 11 of this Order. If EPA pursues suspension or debarment action, the procedures in 2 CFR Parts 180 and 1532 will apply.

13. DOCUMENTATION.

GMOs and Program Offices must maintain in the official project file written documentation of the results of all reviews, evaluations, and determinations under this Order.

14. INTEGRITY CONSIDERATIONS.

If a GMO or Program Office has concerns as to a non-profit applicant's or recipient's integrity based on fraud, waste, or abuse in applying for assistance or carrying out the project or a willful failure to perform, the award official must notify the Office of Inspector General and the Director, NPTCD, and also refer the matter to the Director of the Suspension and Debarment Division for consideration under 2 CFR Parts 180 and 1532.

15. NATIONAL POLICY, TRAINING AND COMPLIANCE DIVISION GUIDANCE.

The Director, NPTCD, is authorized to issue such guidance as may be necessary to coordinate GMO and Program Office reviews under this Order, to provide for the collection of administrative capability information consistent with the Paperwork Reduction Act and for the reporting of administrative-capability determinations in the Grantee Compliance Database, and to avoid duplication of effort in the performance of administrative capability pre- or post-award reviews, including the establishment of a certification/re-certification system for applicants under Section 8 (b) of this Order.

16. WAIVERS.

In response to a written request from an award official or Program Office approving official, the Director, NPTCD, may issue written waivers from the requirements of this Order based on reasons of national security or unusual or compelling urgency or where a waiver would be in the public interest.

17. CONGRESSIONAL EARMARKS.

Congressional earmarks to non-profit applicants or recipients are not exempt from the provisions of this Order. Congressional earmarks include assistance agreements/funding amendments that: 1) stem from legislative action by Congress or direction from a Congressional Committee, as reflected in appropriation or authorizing legislation or applicable legislative history; and 2) are appropriate to honor under applicable Executive Branch policies. Award officials must consult with the Office of the Chief Financial Officer (OCFO), the Office of General Counsel (OGC) and the Office of Congressional and Intergovernmental Relations (OCIR) on proposed decisions under Section 10 of this Order to impose pre-award or special award conditions involving Congressional earmark projects. Program Office approving officials must also consult with OCFO, OCIR and OGC on proposed determinations that a non-profit applicant for an earmark project lacks programmatic capability.

18. REVIEW.

The Office of Grants and Debarment will review this Order to ensure its continued effectiveness in accordance with Goal 3, Objective 3.3 of EPA's 2009-2013 Grants Management Plan.

19. ROLES AND RESPONSIBILITIES.

a. Program Offices are responsible for: assessing and documenting the programmatic capability of applicants for non-competitive awards (Section 8a., Section 13) and competitive awards (Section 9, Section 13); notifying the awarding GMO of a pending award that exceeds the threshold; and, for consulting with OCFO, OGC and OCIR on proposed adverse programmatic capability determinations for Congressional earmarks (Section 17).

b. GMOs are responsible for: requesting NPTCD to conduct and document pre-award reviews for administrative capability; documenting corrective actions and making recommendations for pre-award certification (Section 8b.- d., Section 13); ensuring non-profit recipients complete "mandatory Grants Management Training for Non-Profit Applicants and Recipients" prior to recording an "affirmation of acceptance" in IGMS; and, consulting with NPTCD on the necessity of further pre-award review of applicants subject to novations.

c. The Director, NPTCD, is responsible for:

- (i) developing implementing guidance;
- (ii) developing Grantee Compliance Database reporting requirements;

- (iii) managing the certification/recertification system for pre-award administrative capability reviews (Section 8b., Section 15);
- (iv) making referrals to the Suspension and Debarment Division (Section 10c.);
- (v) evaluating the effectiveness of this Order, including recommendations on revising the threshold, within three years of issuance; and,
- (vi) issuing determinations on requests for waivers (Section 16);
- (vii) making determinations on the necessity of further pre-award reviews for applicants subject to novations.

d. Award officials are responsible for: imposing pre-award conditions or making awards with special conditions (Section 10a.,b., and d.); notifying the Director, NPTCD, of award denials (Section 10c.); handling disputes (Section 12); informing the Director, NPTCD, the Office of Inspector General and the Director, Suspension and Debarment Division, of integrity concerns (Section 14); and consulting with OCIR, OGC and OCFO on proposed pre-award/special award conditions for Congressional earmarks (Section 17).

e. The Grants Competition Advocate is responsible for issuing guidance on evaluating the programmatic capability of applicants for competitive awards (Section 9d.).