

COMPETITION GUIDANCE
FOR
OFFICE OF THE ADMINISTRATOR
PROJECT OFFICERS

Section 1.0 General Information

1.1 Purpose

The Office of the Administrator (AO) Grant Coordinators' Workgroup has responded to a need for guidance to its project officers in conducting assistance (grant and cooperative agreement) competition as mandated in the Agency's "Policy for Competition in Assistance Agreements" dated September 12, 2002 (See Attachment 14). This guidance is designed to establish uniform procedures and practices within AO for competition in the award of its assistance agreements and is not a substitute for applicable regulations.

1.2. Applicability

It is AO's policy to promote competition in the award of its assistance agreements to the maximum extent practicable. When assistance agreements are awarded competitively, it is AO's policy that the competitive process be fair and open and that no applicant receive a competitive advantage. This guidance should be applied to all grants and cooperative agreements except those that are subject to the provisions of the Agency "Policy for Competition in Assistance Agreements," Section 6, Paragraph b. (See Attachment 14). If an AO program office chooses to conduct competitions for programs that are exempt under Section 6, paragraph b of the Agency Policy for Competition in Assistance Agreements, it must do so in a manner consistent with this guidance and the Agency Policy for Competition in Assistance Agreements.

1.3 Effective Date

This guidance is effective for new assistance agreements and monetary amendments awarded after **September 30, 2002**.

1.4 AO Funding Opportunities

AO's funding opportunities for assistance programs are identified for the public in the Catalog of Federal Domestic Assistance (CFDA). Each year, AO program offices work with the Grants Administration Division to update existing CFDA descriptions and provide descriptions for new programs. CFDA descriptions include a list of eligible applicants, an explanation of activities that may be funded, a list of annual funding priorities, an estimate of fiscal year funding availability, an average range of funding for each award, and an estimated number of awards to be made for each fiscal year.

1.5 References

- The Agency Policy for Competition in Assistance Agreements dated September 12, 2002
- 40 CFR Part 30 and 31 (Website Address: <http://www.access.gpo.gov/nara/cfr/>)
- Managing Your Financial Assistance Agreement; Project Officer Responsibilities, February 2001 (EPA 3-day basic training course) (Website Address: <http://intranet.epa.gov/ogd/>)
- Federal cost principles under OMB Circulars A-21, A-87, and A-122
Website Address: <http://www.whitehouse.gov/omb/grants/index.html>
- Federal Grant and Cooperative Agreement Act (FGCAA) of 1977, as amended, 31 U.S.C. Section 6301(3), Public Law 95-224, February 3, 1978.
(Website Address: <http://thomas.loc.gov/>)
- EPA Competition website: <http://intranet.epa.gov/ogd/compet/index.htm>

1.6 Length of Process

Allow approximately 6 months lead time starting from publication of the solicitation for assistance agreements(s) to be evaluated and awarded. Planning is essential.

1.7 Project Officer Responsibilities

The competitive process is basically composed of four phases: the pre-award phase, the application phase, the negotiation phase, and the award phase. Although activities are presented in terms of project officer responsibilities, there should be a team approach with appropriate collaboration and exchange of information between the project officer and the Grants Administration Division (GAD).

Project officers participate in numerous pre- and post-award activities. Project officers must exercise their professional judgment with respect to their areas of responsibility. They serve as

counterparts to the applicant or grantee project director. Project officers have both general functions regarding grant programs and specific functions regarding the programmatic administration of individual grants.

(A) General functions include conducting or assisting in the:

7. Development of grant program regulations, guidelines, and application instructions.
8. Establishment of goals for new programs or activities, or changes in existing grant programs, and development of implementation plans, where appropriate.
9. Development and distribution of program announcements and other information to stimulate competition and assure a fair opportunity for qualified applicants.
10. For cooperative agreements only, establishment of the extent and ways in which the Agency will be substantially involved in achieving the objectives of the agreement.

(B) Specific functions include:

1. Ensure fairness to all applicants.
2. Assisting in application review and other pre-award activities, including the:
 - a) Establish review panel and provide guidance to the review committee regarding program policy, goals and objectives, specific areas of need, and any other relevant issues. (See 3.2.2 and 3.2.3 for information on establishing review panels.)
 - b) Presentation of relevant committee comments and concerns to negotiating and awarding officials.
 - c) Assuring that the budget, financial plan, and business administration aspects of the application reflect project needs and program requirements, in coordination with the grants management specialist.
 - d) Supplying programmatic or technical information to the grants management specialist who is negotiating the grant budget.
 - e) Resolution with applicant of any programmatic concerns or deficiencies prior

to award, and recommendations to the GAD of any special conditions to be associated with the award.

f) Documentation in the Decision Memorandum of summary data on the competitive process. Specifically, the total number of applications received, the total number of applications selected for funding, and the total dollar value of each award resulting from the competition.

g) Debriefing (usually provided by way of the reviewers' written comments) of unsuccessful applicants regarding programmatic deficiencies, identifying application's strengths and weaknesses noted during the review process, to assist them in competing more effectively in the future. The debriefing must be requested by applicant in writing.

Section 2.0 Pre-Award Phase

2.1 Distinguishing Procurement and Assistance Relationships

The Federal Grant and Cooperative Agreement Act (FGCAA) requires executive agencies to distinguish procurement (contract) relationships from assistance (grant and cooperative agreement) relationships. The FGCAA requires:

- 1) use of a **contract** whenever the principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the **direct benefit or use of the Federal Government**; and
- 2) use of an **assistance agreement** whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local government or other recipient in order **to accomplish a public purpose** of support or stimulation authorized by Federal statute.

- A. The project officer must:
- 1) determine whether an assistance agreement is the proper legal instrument to use (acquisition vs. assistance). If assistance, then
 - 2) recommend the use of either grant or cooperative agreement. If cooperative agreement, determine extent of Federal involvement.
- B. The project officer, working with his program management officials, determines if proposed project(s):
- 1) addresses common environmental objectives and is, therefore, part of an “assistance program” as defined in the Agency Policy for Competition in Assistance Agreements and this guidance.
 - 2) meets the requirements for non-competition. (See Attachment 9 - Non-Competitive Justifications: Special Considerations. Also Attachment 14 - Sections 7 and 8 of the Order)
 - 3) if competed, determines competitive process to be used – simplified competition, managed competition, or open competition.
- NOTE: One time “assistance program” grants, while they must be identified and competed, do not require the Program Office to seek a separate CFDA number.
- C. The project officer should prepare a project schedule of activities related to process with due dates, (e.g., issue solicitation - 03/15/02; send proposals to reviewers - 06/01/02, etc).

2.2 Information for Potential Competition Applicants

2.2.1 Developing the Solicitation or Statement of Work

The statement of work is the definitive description of the eligible activities that the Program Office proposes to support and identifies the program priorities. It functions as the basis of a competitive program announcement. Additionally, it serves to protect the Agency’s interests, and is an indispensable tool in the resolution of disputes, in the event of performance problems,

claims, or litigation.

Among the factors to be considered are: the intent of the proposed grant opportunity; specific objectives to be accomplished; funds available; restrictions on the use of the assistance; schedule of award; and the process of selecting proposals. These factors and other pertinent information regarding the proposed assistance opportunity must be presented to potential applicants and other interested persons in a detailed format that provides a clear and concise description of the proposal the Government desires to fund, and the method of application. (See Attachment 1 - Preparing the Funding Opportunity Announcement)

The statement of work should be written in a manner that eliminates restrictive features and promotes competition to the maximum extent practicable. For example, constructing a work statement for a competitive funding opportunity on the basis of a specific approach/idea submitted in a proposal for a previous announcement may restrict competition. If the work statement contains program objectives based on the previously submitted proposal, the offeror of the proposal will likely have a competitive advantage, and the number of potential applicants who can respond to the specific objective may be reduced. Offices should take great care to be as clear and comprehensive as possible in describing the funding opportunity so as to limit the need for potential applicant consultation with the project officer.

2.2.2 Developing Evaluation and Selection Criteria

- (A) Evaluation criteria selected for competitive reviews of applications should represent the key areas of importance and emphasis to be considered in the selection decision.
- (B) There is no specific requirement for the minimum number of evaluative factors. Project officers should develop criteria based on the stated priorities of the funding opportunity. Each criterion and sub-criterion should have an associated relative weighting factor. For example, a numerically weighted review may allow applicants the ability to earn a maximum of 100 points. If the criteria are not all equal in importance, a relative point value is assigned to each criterion and sub-criterion, in descending order of priority, with the total scoring adding to 100. *(See Attachment 4 - Developing Guidance for Reviewers, Sample Point System Evaluation Form)*
- (C) The criteria should be as specific as feasible. Factors for consideration when developing criteria include:
 - 4) how well qualified the project's personnel should be;
 - 5) the adequacy of the applicant's facilities and resources;
 - 6) the adequacy of the project plan or methodology;

- 7) the cost-effectiveness of the project;
 - 8) how closely the project's objective fits the objectives for which applications are being requested.
- (D) Project officers may also choose to select based on evaluation of prior experience, documented past performance, compliance with application requirements, and the recipient organization's management capability.
- (E) An applicant's budget proposal should also be evaluated for reasonableness of total projected costs to the Agency over the life of the project.
- (F) The Program office must publish the criteria for evaluating applications in the program announcement. If the criteria are not all equal in importance, their relative weights should also be published in descending order of priority with a notation to that effect. If any other criteria will be applied (e.g., diversity in geographic location or distribution of projects amongst Agency priorities), they should be described and their effect stated (e.g., removal from further consideration, extra points, etc.).
- (G) *Scoring and Comments.* Project officers may evaluate applications or initial and final proposals based on: points; low, medium and high rating systems; narrative systems; or similar methods. For the purposes of this guidance, we refer to numerical rating systems. (See Attachment 2 - Environmental Education Grants Program Solicitation Notice, Page 45542-3)
1. Project officers may consider developing formatted score sheets to assist reviewers in identifying and evaluating applicants responses to key evaluation and selection factors, sub-factors, and other stated priorities.
 2. Each reviewer should score each application against the published criteria. **Scoring against unpublished criteria or priorities is prohibited.** The project officer's procedures may omit the scoring of applications which a majority of reviewers has recommended for disapproval. In such cases, the project officer should document the reasons for disapproval and exclusion from further consideration.
 3. Reviewers should be required to make written narrative comments to supplement the numerical scoring on each application. The written narrative comments may later serve as the basis for debriefing unsuccessful applicants and dispute resolution. Narrative comments may also be included in formal Agency responses to Freedom of Information Act requests without attribution to

reviewers. (See Attachment 4 - Developing Guidance for Reviewers, Sample Narrative Evaluation Form)

2.2.3 Developing Information for the Program Announcement

Program announcements invite competing applications for one or more stated program objectives. Applications may not be solicited formally or informally on an individual basis in the absence of a program solicitation. For open competitions, publication of the program announcement should take place at least 60 days before the deadline for submitting applications.

EPA Policy for Competition In Assistance Agreements, Section 11 details the requirements for Agency RFAs and RFIPs, when applicable. Currently, there is no standard format for composition of Program Announcements, however, Section 11 of the policy does establish minimum content requirements for program announcements. (See Attachment 1 - Preparing the Funding Opportunity Announcement). *Attachment 2* provides a sample of an actual Program Announcement of competitive funding opportunity published in the Federal Register.

(A) Cooperative Agreements

The program announcement should disclose the possibility that the resulting award might be a cooperative agreement. In that event, if feasible, the program announcement shall also describe the anticipated substantial Federal involvement in performance. (This does not prevent the award of a cooperative agreement under a program announcement that mentioned only grants. Nor does it prevent the award of a grant under a program announcement that mentioned only cooperative agreements.)

2.2.4 Other Information

In addition to the items specified above, project officers should make available to the public:

1. a copy of, or reference to, the authorizing statutes for the program.
2. a statement that applications may be held for future consideration, subject to the availability of funds. PO should limit time to a reasonable period, not more than one year.

2.3 Publicizing the Program Announcement

2.3.1 Purpose

The purpose of this section is to identify primary and alternative sources for publicizing program announcements of competitive funding opportunities.

2.3.2 Disseminating Information about Competitive Funding Opportunities.

- (A) At present, the two primary vehicles for publishing AO Program Announcements of funding availability are the *individual AO Program Websites* and the *Federal Register*. The GAD has announced that it will also establish a link from its website to the various AO Program Websites.
1. The AO Program Websites are:
 - Office of Small and Disadvantaged Business Utilization: www.epa.gov/osdbu
 - Office of Environmental Education: www.epa.gov/enviroed
 - Office of Children's Health Protection:
<http://yosemite.epa.gov/ochp/ochpweb.nsf/homepage>
 - Office of Policy, Economic and Innovation: <http://www.epa.gov/opei/>
 - Office of Civil Rights
 - Office of Cooperative Environmental Management
 - Office of Congressional and Intergovernmental Relations
 2. All competitive program announcements whose value meets or exceeds the competition threshold must, at a minimum, be posted on the individual AO Program Website. The complete program announcement should be posted unless it is considered a "standing announcement" as provided in paragraph (3) below.
 3. At this time, there is no requirement to publish program announcements in the *Federal Register*. (See Attachment 10 - Federal Register Document Drafting). However, project officers have found in the past that posting in the Federal Register is an effective mechanism for disseminating information on funding opportunities. It is anticipated that *FedBizOpps* will be available for publication of funding opportunities in the near future. Upon availability, it may be designated as the Agency's primary vehicle for publishing Program Announcements of funding availability.
 4. Some programs have a repeating cycle of two or more essentially identical competitions per year at the same time in each year. For example, a program may have standing deadlines of February 1, June 1, and October 1 of each year. These programs are encouraged to publish the full announcement only once (with updates published, as necessary, to address changed information) rather than publishing a complete program announcement for each separate competition.

However, when using these “standing announcements,” project officers should publish a notice at least annually to alert potential new applicants to the availability of funding.

5. Project officers are encouraged to promote the widest possible dissemination of information through publication of program announcements in brochures, professional journals, news releases, targeted mailings, electronic notification and other media (e.g., newspapers and magazines), as appropriate, and to maximize their use of the Internet for this purpose.

Project officers should also include a brief statement in each announcement that informs the public of the electronic posting of all AO competitive funding opportunities on the *individual AO Program-specific website*.

6. When multiple media sources are used to disseminate information about funding opportunities, project officers must ensure that potential variations in the information provided and the timing of information released do not create an unfair advantage to the users of one media source over another.

(B) After preparing the Program Announcement as described in Section 2.2.1 of this guide, the project officer must provide:

1. *Notification to the Competition Advocate.* The Project officer shall provide written notification to the Competition Advocate of the location(s) of posting of the Program Announcement. The notification must be provided simultaneous with submission of the Program Announcement for publication. A copy of the notification shall also be included in the Project officer’s grant file.

2.3.3 Pre-Application Consultation with Applicants

Project officers should publish as much information as practicable to reduce the need for his/her consultation by applicants. If the Program office does provide consultation, it shall give consistent interpretations and ensure that such interpretations are distributed/publicized to all applicants in the same manner as the original announcement.

If the project officer chooses to accept questions via the phone from prospective applicants, he/she must make sure those same questions and answers are immediately available to all concerned via a Q/A page on his/her program website. The PO may not provide information to a particular applicant or other interested person, unless such information is available to all parties.

2.3.4 Deadlines for Submission of Applications.

- (B) Deadlines. Applications would be considered as meeting an announced deadline if they are:
1. postmarked by the U.S. Postal Service, hand-delivered, or electronically delivered to the Agency, on or before the deadline date at a place specified in the program announcement; or
 2. include official delivery service documentation indicating EPA acceptance from a delivery service, on or before the deadline date established in the RFA or RFIP received; or
 3. sent on or before the deadline date and received by the Program Office in time for the objective review under Section 3.0. (Applicants should be cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.) (*Reference: EPA Policy for Competition in Assistance Agreements, Section 11(c).*)
- (B) Late applications. Applications which do not meet the criteria in paragraph A. of this section are considered late applications. The project officer is responsible for:
4. notifying late applicants that their application will not be considered in the current competition, unless an extension has been authorized, and
 5. either returning the application or advising of its disposition.
- (C) Extension of deadlines. The project officer may extend the deadline for all applicants whenever appropriate. All applicants must be notified of such extensions. (*Reference: EPA Policy for Competition in Assistance Agreements, Section 11(d).*)

2.4. Pre-Application Assistance

2.4.1 Purpose

The primary purpose of pre-application assistance is to help applicants submit complete, accurate applications, thereby increasing their chances of successfully competing for funding. While pre-application assistance is not required, many Agency Program project officers have

found pre-proposal conferences to be an effective mechanism for resolving questions which arise while applicants are developing their submissions.

This section describes an optional method for providing pre-application assistance that has proven effective.

2.4.2 Pre-proposal Conference.

The pre-proposal conference is typically conducted in the form of a teleconference which allows the Government to answer the questions of applicants in an open and equitable manner. In some cases, the conference may help to identify errors or omissions in the RFA or RFIP and to avoid post-award problems that can be anticipated. **The conference is not a substitute for formally amending a Program Announcement and should not be used to introduce proposal requirements not contained in the original announcement.**

- (A) The project officer should include in the Program Announcement notification of the pre-proposal conference and ask applicants to submit letters of intent to apply. (See Attachment 12 - Grant Information Conference Calls Sessions)
- (B) Those submitting letters of intent are provided the specific details regarding the date, time, location and/or phone number of the conference.

(C) Project Officer Responsibilities - Pre-proposal Conference Call

The project officer is responsible for arranging the conference call and for presiding over it. To ensure that the proceedings are conducted in a fair and equitable manner, the project officer must:

1. Provide adequate notice to participants advising them of the time, place, purpose, and scope of the conference call;
2. Encourage submission of relevant questions for inclusion in the agenda before the conference call date to allow the Agency to develop responses;
3. Prepare an agenda that may allow for presentations by knowledgeable Agency officials, and provides an opportunity for attendees to ask and receive answers to all pertinent questions;
4. Determine any controls which are to be placed on attendees' questions and Agency answers;
5. Open and close the proceedings;
6. Remind participants that the conference call proceedings do not alter the RFA or RFIP in any way. Necessary changes will be issued through a formal amendment;

(B) Conference Call Topics

Generally, topics of discussion may include:

1. Application terms and conditions;
2. Technical objectives, reporting requirements, and schedules;
3. Proposal submission requirements;
4. Proposal evaluation and selection ;
5. Funding arrangements.

The project officer must avoid providing any specific directions to potential applicants on

what to include in their proposals. The purpose of the conference call is to clarify uncertainties regarding the Program Solicitation. Therefore, remarks and explanations at the conference call must not alter the terms of the original announcement.

If the pre-proposal conference call is conducted, the project officer must prepare a record of the conference call proceedings, including a list of all questions and answers and distribute it in the same manner as the original announcement.

Section 3.0 Application Phase

3.1 Competing Assistance Agreements

3.1.1 Purpose

The purpose of this section is to outline the processes and procedures associated with competitive selection of recipients for discretionary assistance agreement awards.

3.1.2 Synopsis of the Selection Process

The basic process for selecting recipients of funding opportunities may be summarized as follows:

6. Program announcement of the funding opportunity is advertised. The announcement includes: a detailed description of the project the Government desires to fund; procedures for applying; the evaluation, eligibility, and selection criteria used in reviewing applications; and, the date, time, location for submission of applications or initial/final proposals.
7. PO or designate review all incoming applications/proposals to ensure they meet the administrative requirements of the solicitation. Applications and/or initial/final proposals which have been received timely and are compliant with the solicitation requirements are referred to the Review Panel. (See 3.2.6)
8. The Review Panel convenes to evaluate applications or initial proposals based on the evaluation and selection criteria disclosed in the announcement. Upon completion of the evaluation, the applications are scored and ranked to identify those which merit further consideration. Project officers are encouraged to obtain management (OD, DD) approval on the results of the evaluation and ranking by the Review Panel.

9. Project officer begins discussions with selected applicant(s) to disclose specific concerns identified by the Review Panel, of a budgetary or technical nature, regarding its application or initial proposal. A final application which incorporates any necessary revisions resulting from the discussions will be required. Although the revisions may affect budgetary adjustments, they may not *substantively* change the applicant's original technical approach.
10. Upon receipt, review, and acceptance of the revisions to the selected applicant(s) final proposal, the project officer should request submission of a formal application. The formal application includes the final approved workplan, budget, and all fully-executed assurances and certifications.
11. Project officer prepares funding package for each selected applicant and forwards to appropriate Decision Official for signature. After obtaining the Decision Official's signature, the complete package is forwarded to the Grants Administration Division recommending award of the assistance agreement to the selected applicant(s).

3.1.3 Receipt and Handling of Applications

- (A) To ensure fairness and maintain the integrity of the process, project officers should carefully control and protect applicant proposals. The project officer should:
 - (1) Prepare and maintain, in the project officer's grant file, a record of the proposals received indicating the date and time of receipt. If facsimile or electronic transmissions are permitted, the project officer must ensure that procedures and controls are sufficient to receive, identify, record, and protect the proposals such that they are delivered prior to the closing date and time for submission.
 - (2) Upon receipt, project officers should perform an initial screening of each applicant's submission to ensure compliance with the Program Announcement requirements.
 - (3) If practicable, project officers may elect to send acknowledgment of receipt of proposals to applicants. (*See Attachment 5 - Sample Letter, Acknowledgment of Receipt of Proposal*)
 - (4) Store proposals in a safe and secure location.

- (5) Prevent unauthorized disclosure by restricting access only to Agency award officials, reviewers, and Program personnel whose specific purpose is to assess the merit of the application.

3.1.4 Late Submissions, and Modifications of Proposals.

- (A) Generally, an application or proposal received after the date and time specified for receipt in the Program Announcement should not be considered for selection. (*Reference: Section 2.304*)

When a late proposal is received and it is clear from available information that it cannot be considered for award, the project officer must promptly notify the applicant that the proposal was received late and cannot be considered. (See Attachment 5 - Receiving and Processing of Applications, Sample Screen Out Letter to Unsuccessful Applicant)

- (B) Modifications to an applicants' proposal are permitted, but must be received on, or prior to, the date and time established for receipt of proposals.

3.2 Competitive Review Process

The competitive review process is an objective method of evaluating the technical and business merit of competing applications/proposals in accordance with established evaluation and selection criteria. During the review process, the applications are scored and subsequently ranked for competition in the award process. These rankings are the primary determinant used by AO Program Offices in selecting applications for funding.

3.2.1 Purpose

The purpose of this section is to provide guidance for empaneling reviewers, and conducting objective reviews/evaluations of applications or proposals submitted in response to AO announcements of competitive funding opportunities.

3.2.2 Review Systems

- (A) Consideration of the type and volume of applications received and the range of necessary expertise should be reflected in the selection of an appropriate review mechanism. (See Attachment 3 - Planning for Peer Reviews)
- (B) There are two basic systems of review: panel and external reviews.
 - 1. **Panel reviews.** In a typical panel review, the project officer convenes the panel and distributes all relevant materials. The project officer briefs reviewers on their responsibilities and the scope of review and coordinates the results of the review. The project officer is also responsible for answering any questions the reviewers may have on Agency policies and program issues. The project officer may also participate in the initial panel meeting to discuss competition requirements and budget evaluation issues. Reviewers should be required to provide the Agency with written representation of the absence of a conflict of interest and an assurance that all materials provided will be kept confidential. Reviewers who receive an application for review which presents a conflict should be instructed to notify the agency immediately and return the application (See Section 3.2.4).
 - 2. **External reviewers** work independently rather than as a part of a group. External reviewers are generally used when it is not possible or practical to convene the necessary number of experts to review an application, or in situations in which a conflict of interest exists, making it impractical for the application to undergo panel review. External reviewers do not meet to discuss the applications. They submit the results of their reviews to the project officer by mail or electronically. In all other respects, external reviewers function in essentially the same way as a panel. Project officers should provide external reviewers with a written scope of work detailing the evaluation and selection process and the external reviewers' responsibilities. External reviewers should be required to provide the Agency with written representation of the absence of a conflict of interest and an assurance that all materials provided will be kept confidential. External reviewers who receive an application for review which presents a

conflict should be instructed to notify the agency immediately and return the application. (See Section 3.2.4)

3. Consideration of the type and volume of applications received and the range of necessary expertise should be reflected in the decision to convene a review panel; or, to use external reviewers as an adjunct to, or in lieu of, the work of the review panel.

3.2.3 Recruiting and Selecting Reviewers.

- (A) The responsibility for recruiting and selecting reviewers usually falls to the project officer. Reviewers should be sufficiently independent of the entities applying for assistance and must otherwise be able to render an objective and unbiased evaluation and selection. Generally, objective reviewers should be individuals who have sufficient understanding of the criteria against which applications will be judged.

Other considerations in selecting reviewers may include: an appropriate ratio of federal and non-federal employees serving as reviewers; and balance of the panel with respect to gender, ethnicity, and geographic area. Additionally, during the process of constructing the list of qualified reviewers, the project officer should compare the list of applications to the list of potential reviewers and identify any conflicts of interest, as well as identify any ineligible reviewers.

- (B) The reviewers may not include anyone who, on behalf of the Federal Government, performed or is likely to perform any of the following duties for any of the applications or projects in the competition:
 3. stimulating the submission of the application;
 4. providing substantive technical assistance to the applicant;
 5. reviewing or making recommendations concerning the application in any capacity except as an objective reviewer;

The reviewers may not include anyone involved in any other circumstance that would indicate a bias.

3.2.4 Conflicts of Interest

- (F) *Disqualification.* If a reviewer has a conflict of interest, within the meaning of 18 U.S.C

. 208, in an assigned application, he or she shall not participate in, or even remain present, during the review of that application. (See Attachment 3 - Developing Guidance for Reviewers, Sample Conflict of Interest/Confidentiality Form)

For the purpose of this section, a person has a conflict of interest in an application if that person or his or her spouse, parent, minor child, or partner:

- 1) serves as an officer, director, trustee, partner, or employee of the applicant, its parent or subsidiary organization;
- 2) is negotiating (or has an arrangement concerning) prospective employment (or other similar association) with the applicant, its parent or subsidiary organization; or
- 3) has a financial interest in the application or in the applicant, its parent or subsidiary organization.

(G) *Notice to Reviewers.* It is the responsibility of the reviewer to notify the project officer of any potential Conflict of Interest situations. However, project officers are encouraged to canvass reviewers to solicit verification of the absence of any possible conflict of interest, prior to distribution of the application(s) for evaluation. (*See Attachment 3 - Developing Guidance for Reviewers, Case Study: My Nobel or Theirs*)

(H) Federal employees as well as people from outside the Federal Service may serve as reviewers. Outside reviewers provide an independent perspective.

3.2.5 Evaluation Plan.

(A) To assist reviewers, project officers may consider developing an evaluation plan for each competition. (See Attachment 4 - Developing Guidance for Reviewers). Typically, such an evaluation plan includes:

1. the procedures for review, including a schedule for the orientation and review meetings;
2. the reviewer roster for the competition;
3. assurance that each reviewer on the reviewer roster will review the list of applications assigned to him or her, either before reporting for the review, if possible, or prior to the beginning of the review, so that conflicts of interest can

- be identified;
4. a description of the method for ranking applications for funding;
 5. a statement of the basis for recommending applications for selection, including the method for considering published priorities, if applicable; and
 6. application technical review forms.
- (B) Since panel review must be documented in the project officer's grant file, project officers may wish to develop evaluation forms to facilitate that requirement. These forms should detail all selection criteria and sub-factors for ranking the application. The evaluation form should allow the reviewer to indicate whether or not the application is in compliance, and any comments the reviewer may have on particular aspects of the application. *(See Attachment 4 - Developing Guidance for Reviewers)*

3.2.6 Conducting the Review

Evaluation of applications or initial/final proposals must be conducted in strict accordance with the evaluation criteria disclosed in the application. Decisions may not be made on the basis of undisclosed threshold or evaluation criteria.

- (A) Review panels may be comprised of the cognizant project officers and other individuals who are familiar with the Program area and the type of proposals being reviewed.
1. The project officers should provide specific instructions to reviewers regarding the handling of, and procedures for evaluating applications or proposals. *(See Attachment 4 - Developing Guidance for Reviewers)*
- (B) Recommendations. The project officer's procedures may require the reviewers to recommend approval or disapproval for each application, and may permit the reviewers to recommend deferral of an application for later consideration, subject to the availability of funds. *(See Attachment 7 - Recommending Awards)*
- (C) *Simplified Competition.* For awards of \$75,000 or less, which solicit applications through alternative means of notification, the project officer may use the procedures described in this section or, may establish an informal process for reviewing and selecting applications, provided the process is unbiased, and does not rely on undisclosed evaluation criteria.

3.2.7 Ranking Applications

Project officers may structure the review and evaluation process to lead to rankings of applications or initial and final proposals or to a list of qualified applications to be forwarded to the approval official.

- (A) For each competition, the project officer shall prepare a ranking of all *panel scores* for the applications that have been scored by the reviewers. In preparing this ranking, the project officer shall use only the scores given by the reviewers. Neither those scores nor the ranking itself may be adjusted to reflect the opinions of people who were not reviewers.

The panel score is derived from a consensus of the scores from each reviewer on the panel that reviewed a particular application.

- (B) If applications competing against each other were divided among two or more review groups, the project officer should prepare a single consolidated ranking. In doing so, the project officer may elect to use either the raw scores of individual reviewers or the panel score for each applicant, to offset any tendency by one review group to score higher or lower than another.

3.2.8 Selection Decision

- (A) The ranking or final list should be forwarded to the approval official for review and comment. An approval official must review the ranked list or list of qualified applications and determine which to approve. The approval official may take into account the following as listed in the solicitation:
 - (1) effectiveness of collaborative activities and partnerships, as needed to successfully develop or implement the project;
 - (2) importance of the activity or product;
 - (3) effectiveness of the delivery mechanism (i.e., workshop, conference, etc);
 - (4) cost effectiveness of the proposal;
 - (5) geographic distribution of projects; and

- (6) others, as documented by the approval officials.
- (B) If the approval official disagrees with the recommendations of reviewers and selects an application out of rank order or a proposal that is not on the list of qualified proposals, the approval official must document in the decision memorandum the basis for that selection.
 - (1) A departure from the recommendations of reviewers cannot be based on undisclosed evaluation criteria.
 - (2) A similar process as outlined by the project officer must be used to determine which initial/final proposal to approve.

3.2.9 Negotiation Phase

- (A) Project officers may establish a cut-off point on the rank order list, based on the availability of funding for the program, and elect to limit discussions to those applications that are ranked high enough to be reasonably considered for funding.
- (B) Discussions are conducted to disclose specific concerns identified by the Review Panel, of a budgetary or technical nature, regarding an applicant's proposal. The primary purpose of the discussions is to establish the appropriate funding level, resolve identified problems, and agree on any necessary special terms or conditions.
- (C) Discussions may involve a series of exchanges between the project officer and applicant(s), as necessary, to assist the applicant in fine tuning its proposal. Topics may include: individual budget items, scope of program activities, any special terms or conditions, disposition of program income, cost sharing and indirect costs.
- (D) Project officers may request submission of a final proposal which incorporates revisions resulting from the discussions and cost analysis. Upon receipt, review, and acceptance of the revisions to the selected applicant(s) final proposal, the project officer should request submission of a formal application.

3.2.10 Cost Analysis.

- (A) The project officer is responsible for reviewing the program budget and eliminating unallowable costs or unproductive activities, deflating unreasonably high cost estimates (e.g., costs for unreasonably high personnel salaries), and trimming any unproductive

activities. Project officers also have the option of awarding larger sums to programs they perceive to be underbudgeted.

- (B) Project officers should perform a cost analysis on those applications selected for funding. The cost analysis is performed to determine whether the proposed costs of an applicant's budget are allowable, allocable, and reasonable. (See Attachment 11 - Cost Review Guidance)
- (C) If there are cost-related concerns about the application being considered for funding, contact may be made with the applicant to get more detailed information before a funding decision is made. This *clarification contact* generally takes the form of a phone call. If the project officer requires a written response from an applicant, the response should usually only address the specific item(s) needing clarification. A clarification contact does not mean that an applicant will be funded.

3.2.11 Notifying Unsuccessful Applicants

- (A) Project officers should notify unsuccessful applicants, in writing, within 60 days after selections are made that their applications were not selected for award. (*See Attachment 5 - Receiving and Processing of Applications - Sample Rejection Letter to Unsuccessful Applicant*)
 - 1. If requested by an applicant, the project officer should provide a written explanation as to why the application was not selected. Generally, the explanation includes a summary of the strengths and weaknesses resulting from the competitive review of their application.
 - 2. The notification is usually sent to the person signing the unsuccessful application or the project director named in the application.
- (B) If an application is recommended for approval but is not funded, the project officer should advise applicants that their application will be held should funds become available within a specified period of time as stated in the solicitation. The Competition Advocate must be notified.

3.2.12 Notification to the Grants Competition Advocate (GCA)

The project officer shall forward to the GCA upon completion of the competition process, whether full and open, managed, or simplified competition, where applicable, the following: the RFA number, RFA title, number of applications submitted, number of

applications funded, and amount of each funded application.

3.2.13 File Documentation.

(A) File Documentation is essential. Program offices must maintain complete records of the competition process. The project officer must maintain a complete written record of the process used to select recipients including:

1. which reviewers reviewed each application;
2. the reviewers' scoring sheets and narrative comments;
3. ranked lists or lists of qualified applications or final proposals;
4. funding recommendations and decisions.
5. signed copy of reviewers' conflict of interest form

(B) *Records Retention.* The AO project officers must keep records in-house for at least three (3) years after closeout of the agreement. Thereafter, the records shall be forwarded to the Federal Records Center where they will be maintained, in accordance with the Federal Records and Paperwork Reduction Acts, for a period of not less than seven years. All records must be kept in hard copy until such time as a decision has been formally made by the Agency regarding electronic records.

Section 4.0 Other Than Full and Open Competition

The purpose of this section is to identify, within AO programmatic exceptions to the competition policy and provide guidance on preparing documentation for the decision memorandum. **The SRO for AO requires that the Office of the Administrator program offices compete at least 10% of its non-competitive assistance agreements below the threshold each fiscal year.**

4.1 Exceptions to Competitive Process

See Attachment 8 - Exempt Programs List and Attachment 14, Section 6(b) of the Order

4.2 Non-competitive Justification for Assistance Programs

- (A) Project officers may request exemption from competition for an assistance program otherwise covered by the policy, if one or more of the following applies:
- (1) Unusual and Compelling Urgency: The requestor must specify a date certain when the award must be made and discuss fully the irreparable harm that will result if the required award date is not met. *Neither time constraint nor the potential loss of funding constitutes adequate justification by itself if the constraints are due to a lack of advance planning.*
 - (2) National Security Interests: The requestor must explain how competing this grant or cooperative agreement would compromise national security interests.
 - (3) Competition is not in the Public Interest: The requestor must explain how and why competition is not in the public interest.
- (B) All Non-Competitive Justifications for Assistance Programs require the written approval of the Senior Resource Official, in addition to the approvals required under EPA Order 5700.5, Policy for Competition in Assistance Agreements, Section 7(b). (See Attachment 9 - Non-Competitive Justifications: Special Considerations)
1. The Project officer must prepare a written request which states the exception under which the exemption is requested, and includes a supporting justification statement.
 2. The Associate Administrator or Office Director for the AO program office must submit the request in writing through AO's Senior Resource Official (SRO) who will then forward the request to the Grants Competition Advocate, who will forward a recommended decision to the Assistant Administrator for OARM.
 3. The Grants Competition Advocate will post final decisions by the AA for OARM on the grants competition website. Approved exemptions must be referenced in the decision memoranda for all awards under the program.

4.3 Non-Competitive Justification for Individual Awards.

The Program Offices may make individual awards of assistance agreements, that are not part of an assistance program, on a non-competitive basis if one or more of the criteria listed below apply. The competition policy requires that a detailed justification explaining why competition

is inappropriate be included in the award Decision Memorandum. The following situations are provided as typical situations that may preclude competition.

4.3.1 Decision Memorandum Documentation

When citing one of the exemptions, Decision Memorandum documentation is critical. Therefore, AO suggest the following minimum documentation be included in the Decision Memorandum:

1. For an individual award that is not part of an assistance program and EPA funds available for the award are less than or equal to the competition threshold (currently \$75K) , a Program Office may award an assistance agreement non-competitively only if one or more of the following criteria are met:

The EPA funds available for the award:

- ▶ ***are less than or equal to the competition threshold (\$75K) and the scope of work for the project can be completed with the amount of funds awarded.***
- ▶ ***This exception may not be used to justify two or more non-competitive awards of less than or equal to the competition threshold to the same applicant to carry out activities that are part of the same or a larger project.***

Decision Memo Documentation: The Decision Memo should contain the following certifications:

- ▶ 1) funds available for the award are \$ _____ which does not exceed the competition threshold;
- ▶ 2) the project can be completed with the funds awarded; and
- ▶ 3) this project is not part of a larger effort or part of an assistance program as defined in the Section 5(a) of the Competition Policy.

2. *The Program Office has determined through research, contacting organizations, pre-solicitation conferences, meetings or notices, or similar means, that there is only one responsible source that can adequately perform the work to fulfill project objectives.*

This determination must be approved by the Office Director or and this approval cannot be redelegated further.

Decision Memo Documentation: The Decision Memo should contain the following information:

- ▶ 1) what skills are needed to fulfill project objectives;
- ▶ 2) what qualifications does the proposed recipient possess that makes it the only organization that can adequately perform the work;
- ▶ 3) what research was conducted to determine that the proposed recipient was the only responsible source with the ability to adequately perform the work to fulfill project objectives. Provide names of individuals and/or firms which were contacted.

3. *The award cannot be delayed due to unusual and compelling urgency or the interests of national security.*

Decision Memo Documentation:

- ▶ 1) the Decision Memo should document the urgent circumstances that are compelling the Agency to make this award without competition
- ▶ 2) unusual and compelling urgency cannot be cited due to lack of planning or lack of action on the part of the recipient and/or the Agency,.
- ▶ 3) likewise, if citing the interests of national security as justification for non-competition, the decision memo should state the reasons for citing this exception.

4. *The award is required by a Federal statute, executive order, or international agreement to identified recipients.*

Decision Memo Documentation:

- ▶ 1) The decision memo should specifically cite the statute, executive order or international agreement for which this exception is cited.
- ▶ 2) It is recommended that a copy of pertinent portions of the cited document be included in the funding package.

4. The award is to an organization that represents the interests of co-regulators or co-implementors (State, Tribal or Local governments) in the execution of national environmental programs. (The membership of such organizations is generally composed of officials of the co-regulator or co-implementor entities, e.g., State or Tribal program directors or commissioners.)

Decision Memo Documentation: Documentation should include:

- ▶ 1) a discussion on the mission of the recipient organization;
- ▶ 2) a description of its membership (who should primarily be co-regulators or co-implementors);
- ▶ 3) a description of the national environmental program supported; and
- ▶ 4) a description of how the project will support that program.

6. *The award is to fund an unsolicited proposal that is unique or innovative and does not resemble the substance of a pending or contemplated competitive solicitation.*

No EPA employee may take action to directly or indirectly encourage the submission of unsolicited proposals in order to avoid competition under this policy.

Decision Memo Documentation: Documentation should include:

- ▶ 1) a statement that the award is an unsolicited proposal that does not resemble the substance of a pending or contemplated competitive solicitation;
- ▶ 2) a description of the *unique* or *innovative* project that is proposed; and
- ▶ 3) a statement that no EPA employee has taken action to directly or indirectly encourage the submission of the unsolicited proposal.

7. *The Lead Agency Program Official with the concurrence of the Grants Competition Advocate, determines that competition is not in the public interest.*

Decision Memo Documentation:

- ▶ 1) Citing this exception requires the preparation of a separate memorandum from the Program Director to AO's Senior Resource Official (Ray Spears) and GAD's Grant Competition Advocate (GCA)(Pat Patterson). Documentation should include:

- ▶ a) the rationale for citing this exception;
- ▶ b) information on the proposed recipient's expertise;
- ▶ c) why the proposed recipient was selected; and
- ▶ d) a discussion on the harm to the public if this grant is delayed due to competition.

▶ **Concurrence from the SRO and the GCA must be obtained *prior* to negotiating a work plan with the proposed recipient.**

- ▶ 2) Approved exemptions must be referenced in the decision memoranda and a signed copy of the SRO/GCA approval must be included in the funding package.

4.4 Simplified Competition

- (A) For small awards that are exempt from the requirements for competition, Program Offices are encouraged to use a competitive process. If a Program Office volunteers to do so, it may:
- (1) informally solicit applications or initial proposals from eligible organizations that can adequately perform the work to fulfill the program or project objectives.
 - (2) such organizations can be contacted through written correspondence or e-mails
 - (3) for one award, the Program Office should contact at least three eligible organizations. For multiple awards, the Program Office should contact twice as many organizations as are expected to receive awards.
- (B) Evaluation Criteria. Program Offices must establish a process for reviewing and evaluating proposals. The process must be objective, unbiased and must not make funding decisions on undisclosed evaluation criteria.

4.5 Managed Competition

- (A) When competition is required, but a Program Office **determines that the methods of open competition are not practicable**, with the approval of the Senior Resource Official and the concurrence of the Grants Competition Advocate, the Program Office may:

- (1) provide RFAs or RFIPs directly, through electronic or written media, to a subset of the potential applicants which have demonstrated expertise in the subject matter area.
 - (2) for one award, Program Offices should notify at least five potential applicants, and for more than one award, at least three times as many potential applicants as the number of expected awards.
 - (3) in conducting managed competitions, Program Offices should vary the subset of organizations that are contacted.
 - (4) the SRO approval and Grants Competition Advocate concurrence must be documented in the award decision memorandum.
- (B) Factors the Grants Competition Advocate might use in determining whether managed competition is appropriate:
- (1) the number of grants to be awarded and the total funds available for award
 - (2) the pool of eligible applicants is limited by statute, Executive Order, or International agreement.

(For instance, only public water utilities serving 250,000 or more that did not receive a grant under this EPA program in FY 2002 are eligible to apply.)
 - (3) there is other rationale to limit the number of eligible applicants that are permitted to participate;
 - (4) the geographic location of the project is limited; and/or
 - (5) the office does not have sufficient time to make a formal program announcement or does not have the resources required to review a large number of applications.
- (C) **SRO/GCA Decision Memo Documentation:** This memorandum should:
- (1) outline the project to be competed;
 - (2) explain the rationale for limiting competition; and
 - (3) provide a list of targeted recipients.

- (D) **Evaluation Criteria.** Program Offices must establish a process for reviewing and evaluating proposals. The process must be objective, unbiased and must not make funding decisions on undisclosed evaluation and evaluation criteria.

Section 5.0 Award Phase

- 1) If any or all of the project work is being performed in a foreign country, or foreign travel is associated with the agreement, the project officer must obtain the Office of International Activities' (OIA) approval.
- 2) Each applicant selected for award must have its own funding package. At the time the funding package(s) is submitted to GAD, a list of proposed awards should be sent to the Competition Advocate.
- 3) The project officer must ensure that the decision/approval official or project officer informs the unselected applicants in writing that they were not selected. If requested by applicant, an explanation for rejection must be provided. This includes the application scoring and summary of the strengths and weaknesses of the application
- 4) The program office must not notify the applicants they are getting an award.
- 5) Once the Award Official signs the assistance agreement, GAD informs the Office of Congressional and Intergovernmental Relations, which is responsible for notifying the appropriate House and Senate members. **During this 5-day period, the PO must not tell the applicant they are getting an award.**

Section 6.0 Funding Amendments

AO Program Offices may not use funding amendments to avoid compliance with competition nor to expand the original scope of work.

- (A) **Incremental Amendments.** Adding funding to incrementally-funded assistance agreements may be done without competition, provided the amendment does not increase the scope of the project as described in the original award.

(B) Initial Amendments

1) a **single non-competitive** funding amendment **up to \$75K may be done** for other than incremental-funding to an award if:

- a) the recipient was selected through a competitive process consistent with this policy, and
- b) provided the amendment is for activities consistent with the original scope of work.

2) initial funding amendments **exceeding the competition threshold** (\$75K) to competitive awards may be awarded non-competitively if:

- a) Program Office demonstrates that the need for additional funding is based on unusual circumstances that could not have been anticipated at the time of the original award; or
- b) the award of additional funding meets one or more of the exception criteria in Section 8.a(2) thru (7).
- c) funding can be added for discrete activities necessary to enhance the results or complete the project.
- d) funding cannot be added to expand the original scope of work

(C) Appendix A to the policy summarizes requirements for all funding amendments. See Attachment 14.

Section 7.0 Disputes

Every effort should be made by AO project officers to resolve disputes at the Program level. The Program Offices may draw upon the advice and counsel of the Office of General Counsel, the SRO, and/or the Grants Administration Division, as necessary, in attempting to resolve Disputes. Formal disputes challenging the Agency award decision, may be resolved using the Dispute procedures at 40 CFR Part 30.63 and Part 31.70, Subpart F.

Section 8.0 Confidential Business Information/FOIA Requests

- (a) The program office should inform potential applicants in the guidance it sends out about the program that if the applicant wants to claim some information as Confidential Business Information (CBI), he/she needs to mark the information as CBI or similar disclaimer in the application.
- (b) If the recipient claims certain information is CBI, EPA cannot release that information under the Freedom of Information Act (FOIA) unless approved by OGC.
- (c) If EPA does not ask the applicant to identify CBI in its application, and there is a FOIA request, the EPA will have to go back to the recipient and ask him/her to identify any CBI.
- (d) If the project officer has any questions over whether the information is releasable under FOIA, he/she should contact the Office of General Counsel.
- (e) The project officer must notify GAD of all FOIA requests in the assistance arena.