

Sub Awards under EPA Assistance Agreements

A. Purpose of the Directive.

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

B. Authority.

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

C. Scope / Applicability.

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

D. Definitions.

1. The term "sub award" means an award of financial assistance (money or property) made under an EPA grant or cooperative agreement by a recipient to an eligible sub-recipient or by a sub-recipient to a lower tier sub-recipient. The term includes financial assistance when provided by any written legal agreement, but does not include procurement purchases, nor does it include technical assistance, which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award,

which is excluded from the definition of “award” under EPA’s grant regulations (see 40 CFR 30.2(ff) and 40 CFR 31.3).

2. The term “sub-recipient” means the legal entity/individual which receives a sub award and is accountable to the recipient for the use of the funds provided (see 40 CFR 30.2(gg) and 31.3).
3. The term “eligible sub-recipient” means a legal entity/individual that is not debarred, suspended, or otherwise excluded from participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension,” and whose eligibility for a sub award is consistent with applicable authorizing statutes and regulations.

E. General Principles.

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

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

F. National Term and Condition - Administrative

EPA will implement this Directive primarily by attaching an administrative *National Term and Condition for Sub awards* to all assistance agreements subject to this Directive. The

administrative *National Term and Condition for Subawards* can be found in Appendix A.

G. Eligibility.

1. Generally, unless prohibited by statute, an entity/individual is eligible to receive a sub award even if it is not eligible to receive an assistance agreement from EPA directly as long as the sub award is consistent with applicable EPA regulations, EPA policies, EPA guidance, and OMB Circulars. Sub awards may be made to individuals and to the following entities provided they are not debarred, suspended, or otherwise ineligible to participate in Federal assistance programs:
 - a. governmental entities subject to 40 CFR Part 31;
 - b. foreign or international organizations;
 - c. non-profit organizations, educational institutions and hospitals subject to 40 CFR Part 30;
 - d. non-profit organizations deemed similar to commercial concerns under Attachment C of OMB Circular A-122; and
 - e. for-profit organizations only where consistent with Section 210(a)-(d) of OMB Circular A-133 (see Appendix B).

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

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

H. Special Considerations for Specific Types of Subawards.

1. Proposed Sub award Work to 501(c)(4) Organizations – EPA award officials must disapprove the costs of proposed sub award work to 501(c)(4) organizations identified in an application, or work plan changes requiring prior approval, if

the work involves lobbying activities, or would otherwise violate the principles in paragraph E, 2 to 5.

2. Proposed Sub award Work to For-Profit Organizations – EPA generally does not allow recipients to make subawards to for-profit organizations. Transactions between recipients and for-profit organizations including individual consultants are, in almost all cases, subject to the competitive procurement requirements of EPA's grant regulations.
3. EPA Order 4540.1 – EPA, through the Office of International Affairs (OIA), must consent to proposed grants or cooperative agreements, prior to award, where work will be performed by any recipient in whole or in part in a foreign country, or where work will be performed in the United States by a foreign recipient and its sub-recipient or an international organization recipient and its sub-recipient. If the original award was not approved by OIA and the sub-recipient proposes work in a foreign country, OIA must consent to the work prior to award of the sub award.

I. Sub Award Competitions.

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

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

2. EPA Participation in Sub Award Competitions.

- a. General – Grant and cooperative agreement recipients are responsible for selecting their sub-recipients and conducting their sub award competitions. In addition, EPA personnel may not direct recipients to make sub awards to particular organizations, suggest the use of specific sub-recipients, interfere with the recipient's sub award selection decisions, or use sub awards to circumvent EPA policies for competition of assistance agreements. For example, a Program Office may want to award a non-competitive grant to Organization A but is not authorized to do so because of restrictions under EPA's Assistance Agreement Competition Policy. EPA may not circumvent these restrictions by awarding an authorized non-competitive grant to Organization B with the understanding that Organization B will then sub award all of the work to Organization A.
- b. Participation as Technical Advisors – EPA personnel may serve as technical advisors to a recipient's sub award evaluation panel provided that they do not unduly influence the panel or selection decisions and are free of any conflicts of interest, or appearances that they may be

violating ethical standards (e.g., Office of Government Ethics (OGE) Standards of Ethical Conduct for Employees of the Executive Branch), with respect to any competing sub-recipients.

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

J. Applicant Budget Information.

EPA personnel must ensure that the applicant's budget estimate for any proposed sub award work is included in the "Other" category of Standard Form 424A. Future grant streamlining efforts might require that proposed sub award work costs be reported as a separate line item.

K. Anticipated Outcomes / Results.

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

L. Performance Measures.

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

M. References.

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

N. Sunset / Review Date.

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

O. Supersedes / Cancels.

Not applicable.