

SPECIAL APPROPRIATIONS PROJECTS PROCEDURES

United States Environmental Protection Agency – Region 4

**Revised
May 17, 2006**

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INTRODUCTION AND SPECIAL APPROPRIATIONS PROJECTS FLOW CHART

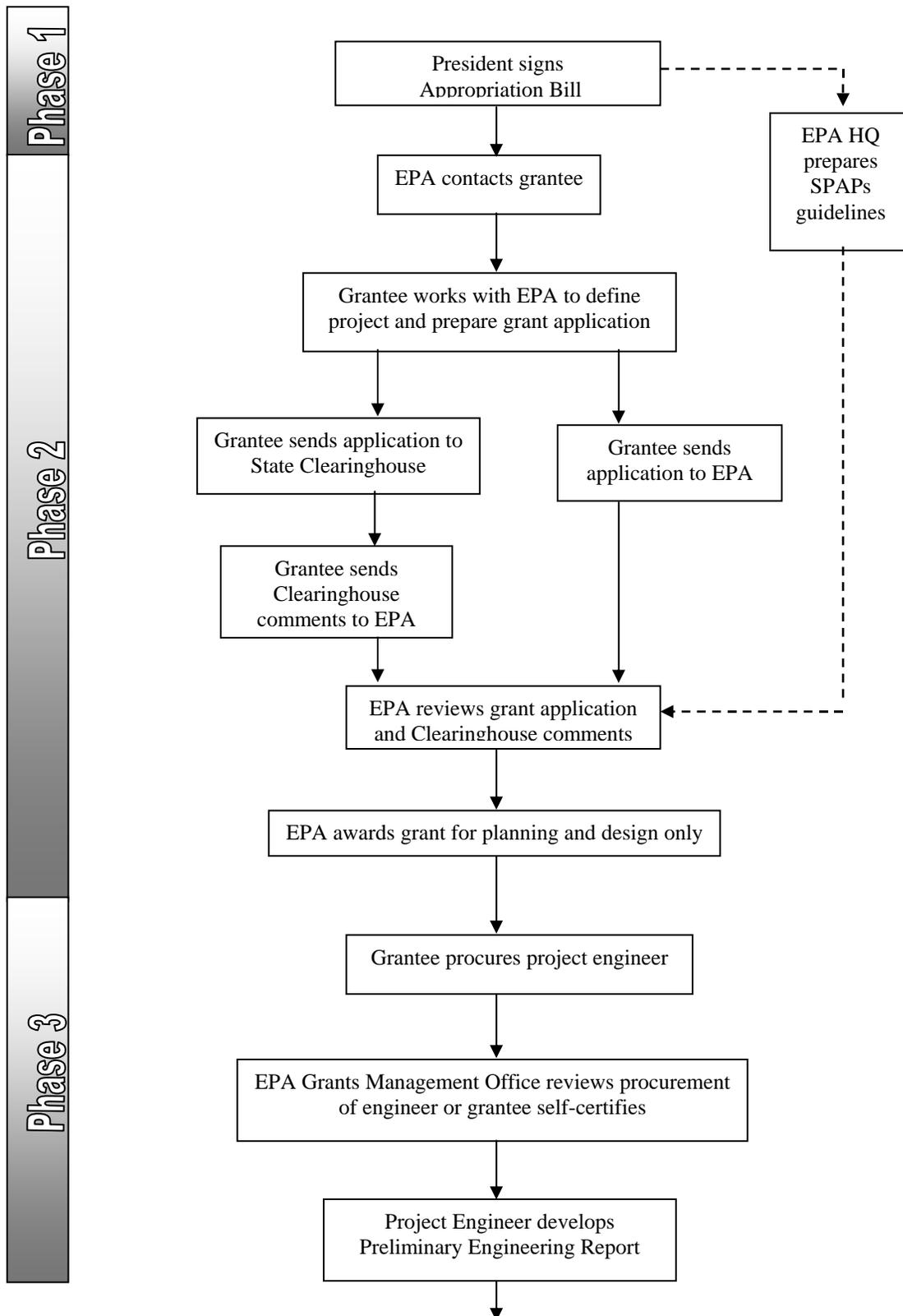
Each year, the United States Environmental Protection Agency (EPA) receives a budget through an appropriations bill created by the Congress of the United States and signed by the President. Since 1994, EPA's budget for State and Tribal Assistance Grants (STAG) has included funding for a number of "special needs" projects identified in the appropriations bills by name and dollar amount. Funding of these projects is in the form of a grant from EPA. EPA refers to these projects as Special Appropriations Projects (SPAPs); however, some people refer to them as STAG projects because they are identified in the STAG portion of our budget. The authority to award the SPAPs grants has been given to the ten regional offices within EPA. Region 4 in Atlanta, Georgia, awards the SPAPs grants for the southeastern states, i.e., Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

This procedures manual is intended to be a tool to assist grantees in understanding the process requirements and provisions related to these SPAPs for wastewater, drinking water and storm water needs in Region 4. It is loosely organized into phases that follow the process flow chart shown on the next three pages. Included in the phases are the specific requirements for those actions.

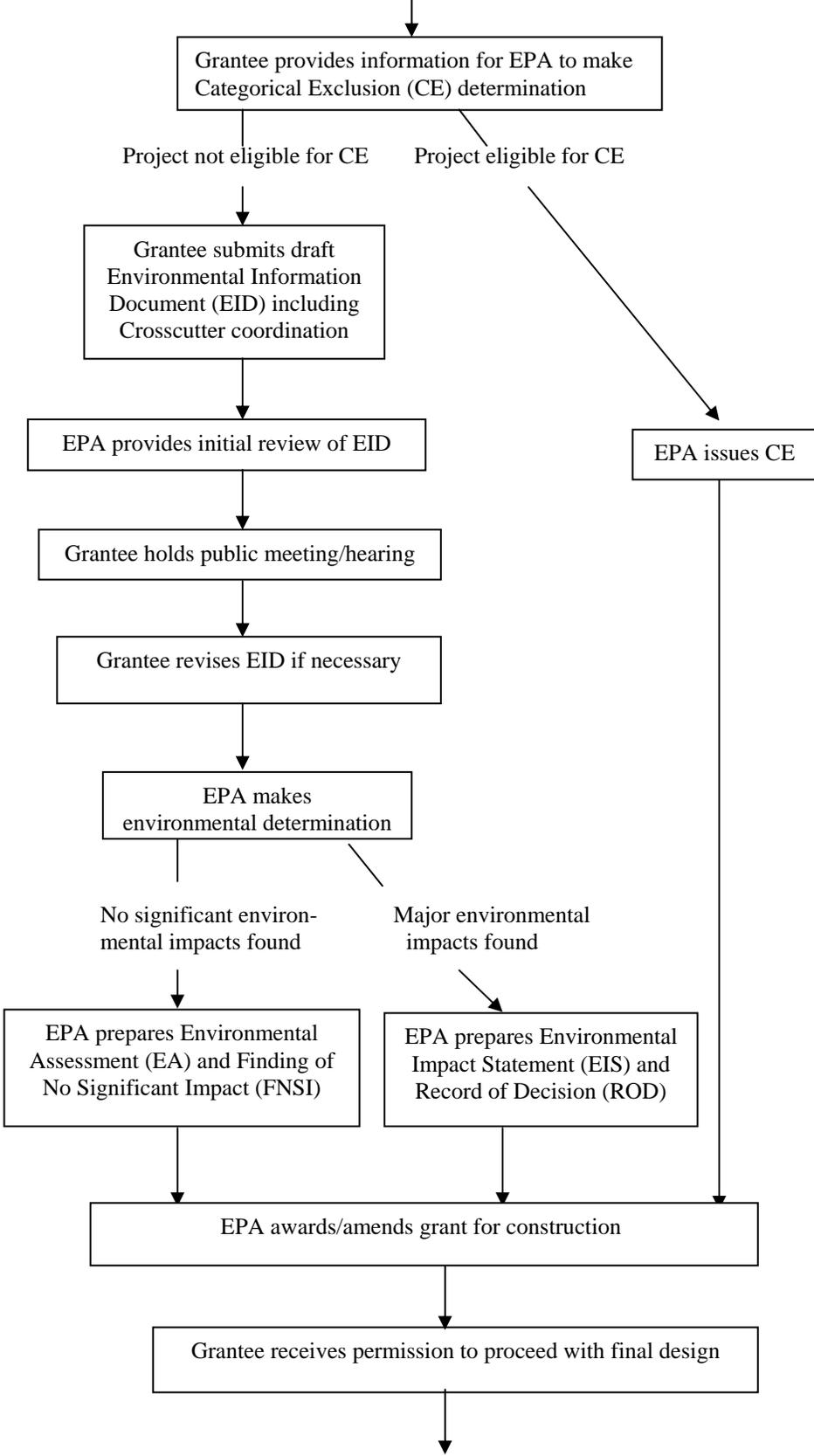
As with any document all comments are general in nature and specific project requirements may vary. **Please note that this document is prepared as a reference tool for general projects and that the federal regulations will apply first in cases of conflict.** This document is also Section 1 of a Region 4 workbook entitled, "Special Appropriations Projects (SPAPs) Grant Procedures Workbook." Section numbers mentioned throughout this document refer to the sections or tabs of the workbook. If you are reading this SPAPs procedures document from the CD, the sections are listed in the bookmarks and are identified by "§" which is the symbol for the word "section" followed by the section number. All of the documents of the workbook are also available on line at: <http://www.epa.gov/region4/water/gtas/specialappropriations.html>.

Region 4 Generic Process for Special Appropriations Projects (SPAPs) Grants Involving Project Planning, Design, and Construction

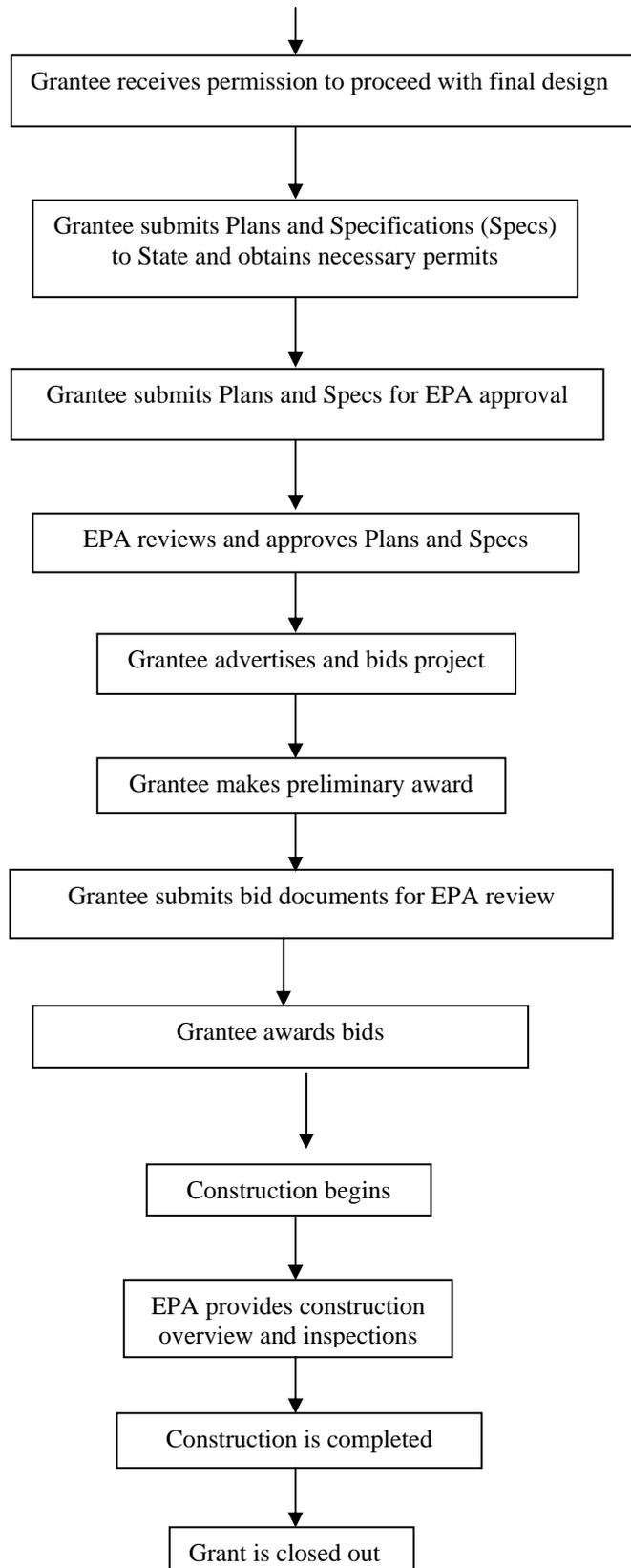
(Some EPA activities may have been delegated to State programs)



Phase 4



Phase 5



Phase 6

PHASE 1 EPA's APPROPRIATIONS BILL AND SPECIAL APPROPRIATIONS GRANT GUIDELINES

The Environmental Protection Agency (EPA) section of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Public Law 109-54) included \$45,422,000 for funding 61 water, wastewater, and groundwater infrastructure projects for the Region 4 area. The specific requirements governing the award of these special projects and programs are contained in the following documents: the fiscal year 2006 (FY06) Appropriations Act, Conference Report (House Report No. 109-188), the House Report (House Report No. 109-80) and the Senate Report (Senate Report No. 109-80).

The EPA section of the Consolidated Appropriations Act, 2005, (Public Law 108-447), included \$68,885,000 for 163 water, wastewater and groundwater infrastructure projects for the Region 4 area. The Consolidated Appropriations Act, 2005 also contained an across the board rescission of 0.83 percent except for defense, military construction or supplemental appropriations. The 0.83 percent rescission applies to all of the funds included in the State and Tribal Assistance Grants (STAG) account, including those funds for special appropriations projects (SPAPs). The specific requirements governing the award of the special projects and programs are contained in the following documents: the Consolidated Appropriations Act, 2005, the Conference Report (House Report No. 108-4818).

The EPA section of the Consolidated Appropriations Act, 2004, (Public Law 108-199), included \$325,000,000 for 509 water, wastewater and groundwater infrastructure projects and for the Long Island Sound Restoration Program. The Consolidated Appropriations Act, 2004 also contained an across the board rescission of 0.59 percent except for defense, military construction or supplemental appropriations. The 0.59 percent rescission applies to all of the funds included in the State and Tribal Assistance Grants (STAG) account, including those funds for special appropriations projects (SPAPs). The specific requirements governing the award of the special projects and programs are contained in the following documents: the Consolidated Appropriations Act, 2004, the Conference Report (House Report No. 108-401), the House Report (H. Rept. No. 108-235), and the Senate Report (S. Report. No. 108-143).

For fiscal year 2003 (FY 2003), the EPA's section of the Consolidated Appropriations Resolution (Public Law 108-7) included \$314,887,000 for the funding of 486 special projects within the Country. The FY 2003 Appropriations Act also contained a government-wide rescission of 0.65 percent. The rescission applied to all of the funds in the FY 2003 State and Tribal Assistance Grants, including those funds for special appropriations projects (SPAPs). The specific requirements governing the award of these projects are found in the various documents that support the Act. These supporting documents include the House of Representatives Conference Report (H. Rept. No. 108-10), the House of Representatives Report (H. Rept. No. 107-740) and the Senate Report (S. Rept. No. 107-222).

For FY 2002, the EPA's section of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Act (Public Law 107-73) included \$343,900,000 for the funding of 337 special projects within the Country. The specific requirements governing the award of these projects are found in the various documents that support the Act. These

supporting documents include the House of Representatives Conference Report (H. Rept. No. 107-272), the House of Representatives Report (H. Rept. No. 107-43) and the Senate Report (S. Rept. No. 107-43). Clarifying provisions were also included in the FY 2002 Supplemental Appropriations Act (Public Law 107-117) and its accompanying Conference Report (H. Rept. No. 107-350).

In addition, the FY 2001 Appropriations Act (Public Law 106-377) included a provision stating that the EPA could use up to three percent of the amount of each project funded in the appropriation to administer the management and oversight of construction of such projects. This provision is a permanent statutory authority, which means that it applies to all projects in future years as well as in FY 2001.

Once each fiscal year's appropriations bill is signed into law, the EPA Headquarters in Washington, D. C. begins developing guidelines to administer the SPAPs grants. Since these guidelines are legally binding, they fall under the Congressional Review Act that requires EPA to notify Congress of any new requirements documents prepared by the EPA. Once Congress is notified, EPA Regions are able to make the grant awards. Historically, this has been a long process. The guidelines for FY 2006 grants were released on March 29, 2006, and can be found in Section 3 of this workbook.

If your SPAPs grant was funded from an appropriations bill passed in a previous fiscal year, copies of the EPA guidelines for the last several years are included in the web version of the Region 4 SPAPs workbook at <http://www.epa.gov/region4/water/gtas/specialappropriations.html>. If you do not have access to the Web, you can contact the Construction and Technical Assistance Section (CTAS) in Region 4 to get a copy of the workbook along with the EPA guidelines for your fiscal year. A contact list for CTAS is provided in Section 2 of the workbook.

PHASE 2 GRANT APPLICATION PREPARATION AND AWARD

A) EPA Contacts Grantee

An EPA engineer or scientist from the Construction and Technical Assistance Section (CTAS) of the Water Management Division will be assigned to each project as a Project Officer. The Project Officer will call, write or meet with you, the grantee, to discuss the project. Such discussions generally include the project scope, work plan requirements, match requirements, cost eligibility of project components, engineering data, and other items of importance for submitting a grant application. You should contact the Construction and Technical Assistance Section of Region 4 to request a meeting if you have not heard from EPA or a meeting has not been scheduled. A contact list is provided in Section 2 of the workbook.

Currently in Kentucky and North Carolina, the state environmental agency is performing certain grant actions for EPA, including grant application review, plans and specifications approval, and construction monitoring. In Mississippi, the state environmental agency is performing plans and specifications review and construction monitoring. In Alabama, the state environmental agency is providing construction monitoring. You will need to contact your EPA Project Officer for specific details. Contact information for each of the four state environmental agencies is provided in Section 2 of the workbook.

The Project Officer will manage and monitor the progress of the project within EPA. As with any program, you will need to report your progress to your EPA Project Officer as indicated in the grant agreements. This is usually done quarterly.

B) Grantee Works with EPA to Define Project and Prepare Grant Application

1. Getting the Application

You should obtain a grant application package from EPA as soon as you become aware that funds have been appropriated for your project. The SPAPs grant application package, which has been tailored for special appropriations projects, is found in Section 4 of the workbook. Your EPA Project Officer can also give you a copy of the SPAPs grant application package or you may obtain these documents by contacting EPA, Region 4, Grants Management Office, 61 Forsyth Street S.W., Atlanta, GA, 30303. SPAPs Project Officers can be identified by the acronym “SPAP” in the position description of the CTAS contact list in Section 2.

The first thing that you will notice about the application package is that it is rather thick. It consists of the application and other information including budget descriptions, assurances, and certifications that are required to be submitted with your application. The assurances and certifications document your agreement to comply with the federal statutes that apply to federal grant awards. These federal statutes are also termed “crosscutters” or “authorities.” They include environmental crosscutters, such as the Endangered Species Act. They also include economic and miscellaneous crosscutters, such as Debarment and Suspensions (Executive Order 12549), as well as social policy crosscutters, such as the Age Discrimination Act of 1975. A

complete list of crosscutters is listed in Section 8 of this workbook. A list will also be attached to your grant award. Environmental crosscutters are described in more detail in Phase IV of this document.

All federal grant and cooperative agreement applications submitted on or after October 1, 2003, must include a Dun and Bradstreet Data Universal Numbering System (DUNS) number. The DUNS number will offer improved statistical reporting of all federal grants and cooperative agreements. This number will also be used for tracking purposes and to validate address and point of contact information.

You may call (800) 234-3867 to get a DUNS number over the phone and the number will be activated the next day. Be sure to state that the DUNS number is required for use by the federal government. There is also a website to obtain a DUNS number located at: <https://eupdate.dnb.com/requestOptions.html>.

2. Determining the Scope of the Project

The EPA Project Officer must first determine that (1) the scope of your project is in agreement with the project description contained in the Conference Report referenced in the appropriations act, (2) the scope and location of the project are clearly defined, and (3) there is a clearly stated environmental or public health objective. EPA must also verify that the cost estimate is reasonable and that the costs are eligible for funding. The above information can be included in the workplan that must be submitted with the grant application. A suggested outline of the elements for a workplan along with an example is given in Section 5 of the workbook. In addition, your work plan must establish how your project will support EPA's environmental objectives and indicate the measurable environmental results expected from completing the proposed project. To assist you in this effort, EPA put together an environmental results table which includes EPA's environmental objectives and likely environmental results from various types of infrastructure projects. Using the table will help streamline EPA's review of your work plan and expected environmental results. The environmental results table is given in Section 6 of the workbook.

Once the scope of the project has been determined, you must decide which costs will be reimbursed from the SPAPs grant. EPA funds may be used for planning, design and construction. Work beyond the conceptual design phase cannot begin until the National Environmental Policy Act (NEPA) environmental review process is complete; therefore, no grant will be made for construction until the NEPA process is finished. If the funds will be applied to both the planning and design phase and the construction phase of the project, you will need to make a grant application for the planning and design phase first. When the NEPA environmental review requirements have been met, you may request that the grant be amended to include the construction phase. If the funds will be applied to the construction phase only, you may make a grant application for just the construction phase following the completion of the NEPA process.

3. Establishing Local Matching Funds

Most SPAPs grants are limited to a maximum federal share of 55%. Unlike previous years, the Conference Report associated with the FY2003 Appropriations Act contained language that no longer allows for waivers based on the size of the project. For FY2003 projects and subsequent years, the only justification for granting an exception or waiver from the 45% local match is financial capability.

The financial guidance document to be used for measuring the financial impact of current and proposed projects is the “*Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development*” published by EPA in March 1997. This document can be found at the following web site: <http://www.epa.gov/owm/pdfs/csofc.pdf>. Financial capability is determined using worksheets #1 (page 13) through worksheet #10 (page 40) culminating in the “FINANCIAL CAPABILITY MATRIX” (Table 3, page 41). To be given consideration for a local match less than 45%, the grantee must be in the High Burden area of the “FINANCIAL CAPABILITY MATRIX”.

The grantee must submit the worksheets and supporting data prior to or along with the grant application for consideration of a waiver of the 45% local match. Waivers must be recommended by Region 4 and approved by EPA Headquarters. Since the grant cannot be awarded without identifying the cost share, you should request any exceptions as soon as possible.

The local share may be provided by other federal sources **only** if the other agencies’ legislation specifically allows it. Please note that EPA SPAPs grants cannot be used as a match to other federal grants because the appropriations acts for EPA do not allow it. Listed below are the major federal programs whose grant or loan funds can be used to provide all or part of the match to the SPAPs grants:

- Department of Agriculture - Rural Development Program
- Department of Housing and Urban Development - Community Development Block Grant Program
- Appalachian Regional Commission grants.

In addition, both the Clean Water State Revolving Fund Program (CWSRF) and the Drinking Water State Revolving (DWSRF) Fund Program within your State can provide match funds. Your state CWSRF and DWSRF contacts for Region 4 can be found at: <http://www.epa.gov/region4/water/gtas/grantprograms.html>.

EPA will accept the following documentation as proof of the match:

- Bonds: The grantee must have the ability to sell bonds sufficient to cover the total cost of the project less the federal grant. A statement from the applicant’s attorney or bond attorney will suffice as documentation.

- Grants: The grantee must provide a letter of commitment or other confirmation that they will receive the grant. Other Federal grants must have in their implementation legislation a statement that the grant may be used to match other federal grants.
- CWSRF or DWSRF loans: A letter must be provided by the State program stating that the project is on the State's Intended Use Plan, has applied for funding, and will be funded in a timely manner.
- Local funds (Cash): An assurance signed by Chief Executive Officer and attorney that the local funds will be available and have been budgeted for the project is required.
- Other loans: A statement from the provider that the applicant meets criteria for receiving the loan and that the loan is needed.

4. Determining Grant Cost Eligibility

It is strongly recommended that you work with your EPA Project Officer to establish a preliminary determination of eligibility before finalizing the preliminary calculations for financing. The White House Office of Management and Budget (OMB) Circular A-87 applies to all EPA assistance programs. The Circular establishes principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts, and other agreements with state and local governments and federally recognized Indian tribal agreements. A copy of the Circular is available in Section 26 of the workbook.

In addition, listed below are examples of both eligible costs and ineligible costs:

- ✓ Force account work (for instance, when a city uses its own workers) is difficult to support and must be included in the grant for it to be eligible.
- ✓ Only wastewater and drinking water infrastructure facilities that are owned or will be owned by the grantee or sub-grantee are eligible for funding with the exception of small, onsite decentralized wastewater systems. (See EPA Guidelines in Section 3 of this workbook for more information.)
- ✓ Contingency costs should be limited to 5 – 10 % of the construction costs.
- ✓ Generally, A/E fees should fall within the following ranges (the higher percentage is for projects less than \$500,000, the lower percentage is for projects greater than \$5 million):
 - Planning – 1.5% - 2.5% of construction
 - Design – 6% - 12% of construction
 - Services during construction, including resident inspection – 2% - 6% of construction
- ✓ Pre-award costs that are incurred after the start of the fiscal year for which the funds were appropriated but before the grant award are eligible if they are included in the grant.

- ✓ Pre-award costs for the facilities planning or design work that is part of the construction portion of the project for which the grant was awarded are eligible.
- ✓ Costs incurred prior to the date of grant award are not eligible unless specifically included in the grant offer.
- ✓ Normal costs of government are not eligible.
- ✓ As a guide, administrative and legal costs should not exceed one percent of the construction costs. Actual costs must be project specific, and will be paid based on supporting documentation submitted to EPA.
- ✓ Construction on private property is not eligible unless the grantee has an easement. (See the EPA SPAPs guidelines in Section 3 for more information.)
- ✓ Costs outside the project and budget period are not eligible.
- ✓ Costs not properly documented are not eligible.

5. Approval of Pre-award Costs

EPA Region 4 has the authority to approve pre-award costs that were incurred after the start of the fiscal year for which the funds were appropriated but before the date of the grant award. Pre-award costs must be approved by the EPA Project Officer and included in the application and grant award.

C) Grantee Sends Application to State Clearinghouse (Intergovernmental Review)

Executive Order 12372 and EPA regulations require that all interested state, area-wide, regional and local agencies be given the opportunity to review and comment on proposed federal assistance within their area of jurisdiction or influence. EPA cannot award assistance until all interested parties have reviewed the grant application and any concerns that they have are satisfactorily addressed. As soon as the project is defined and a location has been identified, an intergovernmental review, sometimes referred to as the Clearinghouse Review, should be started. This review can be accomplished by sending your application to the points of contact for your state as listed in Appendix A of the SPAPs Procedures document found in Section 1 of the workbook.

D) Grantee Sends Clearinghouse Comments to EPA

Once you receive comments from the clearinghouse, you should forward them to EPA Region 4's Grants Management Office (GMO). If the clearinghouse comments require action on your part, EPA may include such actions as a grant condition or return your application for modification. If you submit the grant application to EPA without a clearinghouse comment letter, the EPA GMO will contact you and request it. In this case, the application review process by the GMO will be suspended until the intergovernmental review comments are received; however, your Project Officer will continue to review your application materials.

E) EPA Reviews Grant Application and Clearinghouse Comments

You should submit your application to the EPA GMO at the address designated on the application package with a copy to your Project Officer. The completed application must include (1) all forms and items listed on the submittal checklist in Attachment 1 of the grant application package, (2) a work plan, (3) a preliminary engineering report, if available, (4) the clearinghouse comment letter, and (5) the letters of commitment for any federal matching funds.

Once the application material is received, EPA will perform a technical and administrative review of both the application and the project. EPA may request additional information from you in order to complete the review.

F) EPA Awards Grant for Planning and Design

Grant Offer

Your first notification of the grant offer may come from your Congressman's office. Once the EPA award official signs the grant offer, EPA prepares a Congressional notification. After a notice period of five-working days, EPA mails the grant offer to you.

The grant offer will contain many very important items and should be examined carefully. The cover letter will contain the number of days that you (the grantee) have to return the signed grant offer to EPA. If you exceed the time period, the offer may be withdrawn. If you cannot meet this time frame and wish to have the offer remain in effect, you should immediately request an extension in writing or by e-mail and state the reasons why an extension is necessary.

The grant offer itself will contain a general project description, an estimated project cost, the grant percentage, maximum grant dollars available, a project and budget period, and several pages of conditions that must be met. The grant offer will also reflect any approved pre-award costs that have been requested.

Once you sign the grant offer, you must return it to EPA. By signing the grant, you are agreeing to complete the project and comply with all grant conditions and federal regulations pertaining to the award.

PHASE 3 GRANT INITIATION

Once you have accepted the grant, what happens next will depend on what was completed prior to grant award. If the preliminary engineering report and the Environmental Information Document were not previously completed and the National Environmental Policy Act (NEPA) requirements met, then this will be the first order of business. EPA cannot authorize any significant actions that could affect the selection of alternatives until the NEPA requirements are met.

A) Grantee Procures Project Engineer

While it is possible to use in-house staff, most municipalities do not have design staffs that have the time to follow all of the reviews and details required of typical SPAPs. If not previously established, contact with an engineering firm with engineers registered in the state should be established. It is important that an engineering contact be established early in the process. Most states require that an engineer registered in the state sign the Plans and Specifications.

Engineering services must be obtained in accordance with federal regulations to be eligible for reimbursement. The procurement of contracts for engineering planning and design as well as engineering services during construction must meet the requirements of Title 40 of the Code of Federal Regulations, Part 31, Section 36, which is abbreviated as 40 CFR §31.36. The regulations at 40 CFR §31.36 require that you take specific actions to ensure fair and reasonable competition, including the necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used, when possible. Generally a municipality can use its own procurement methods as long as they comply with the minimum requirements of 40 CFR §31.36. This regulation can be found in the copy of 40 CFR 31 provided in Section 27 of the workbook. The Minority/Women's Business Enterprise requirements can be found in Section 7 of the workbook.

The grantee must provide for the open competition of all procurements of architectural/engineering (A/E) services and may use competitive proposal procedures for qualification-based procurement by:

- advertising for proposals (Request for Proposals),
- evaluating proposals against a set of established criteria, and
- selecting the highest-ranking firm to enter into negotiations to try to arrive at a contract.

The method where price is not used as a selection factor can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services.

[Note that the above description is very brief and details of the requirements can be found in 40 CFR §31.36 in Section 27 of the workbook.]

Things that you need to include in the "Request for Proposals" mentioned in the previous paragraph are listed below:

- ✓ Include who is requesting the proposals.
- ✓ Include the scope of project.
Describe the area involved, and if known, what general quantities are involved.
- ✓ Include the work tasks to be done.
The tasks should consist of the work to be completed under the contract, such as: preparing a preliminary engineering report, preparing an environmental evaluation analysis and Environmental Information Document, designing the project, preparing plans and specifications, preparing necessary documentation to obtain all required permits, surveying to complete design, preparing as-built drawings, surveying and preparing easement plats and legal descriptions of any required boundaries or easements, obtaining and evaluating construction bids, conducting the pre-construction conference, providing periodic inspection by design engineer to confirm that the plans and specifications are being followed, preparing all change orders, reviewing requests for payment and recommending approval, reviewing all submitted shop drawings and material specifications for compliance with the plans and specifications, etc.
- ✓ Include the project schedule /duration.
- ✓ Include the evaluation criteria for selecting the consultant.
The evaluation of the consultant's proposal may include the following information about the firm: familiarity with the rules and regulations of various agencies involved in the project; background, credentials, and work experience of all key personnel who will be involved in the project; experience of firm on similar projects; experience of key personnel with similar projects; experience with timely completion of similar projects; knowledge of system and procedures, and staff size available to work on the project.
- ✓ Include the value of each of the above evaluation criteria.

[Note: It is not the intent of EPA to dictate how you select your engineer but we have a responsibility to inform you of the requirements that are necessary for the cost to be considered allowable for reimbursement.]

B) EPA Grants Management Office Reviews Procurement of Engineer or Grantee Self-Certifies

The intent of 40 CFR §31.36 must be met in order to ensure that engineering costs can be covered in the grant. You may self-certify that your procurement system meets all the requirements of 40 CFR §31.36 by submitting to the Region 4 Grant Management Office (GMO) a statement that you have reviewed your procurement requirements and have determined that they meet the federal requirements. You must also indicate the source of your procurement requirements, such as city ordinance, state law, manual of operating procedures, or other sources

that you identify. The statement should be on your letterhead and be signed by the official responsible for certifying the adequacy of your procurement requirements. EPA will determine if further review of your procurement process is needed. If you do not self-certify, you must submit your procedures to the Region 4 GMO for review.

Below is a condensed summary of the items required to meet the intent of 40 CFR §31.36:

- Grantees must maintain a contract administration system that ensures that the contractor work is in accordance with the contract.
- Grantees must maintain a written code of standards of conduct for employees (40 CFR 31.36(b)(3)).
- Grantee procedures will provide for a review of procurements to avoid purchase of unnecessary items.
- Grantee will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the procurement.
- Grantees will maintain records sufficient to detail the significant history of the procurements.
- Grantees will be responsible for the settlement of all contractual and administrative issues arising out of procurements.
- Grantees will have protest procedures to handle and resolve disputes relating to procurements.

For more complete information, please refer to 40 CFR §31.36.

C) Project Engineer Develops Preliminary Engineering Report

A preliminary engineering report should be prepared to support the project and provide the reviewing agencies with needed information. Listed below is a format containing the information that EPA will need. Specific information in each heading will vary depending on whether the project involves wastewater, drinking water, or storm water. EPA is more interested in the information rather than the format. **(We suggest that you check the state requirements for engineering reports and use that format if applicable. This will prevent duplication of effort in cases where states have required formats.)**

Optional Preliminary Engineering Report Format

- A. Description of the project
- B. Need for the project
- C. Design basis for the project
- D. Cost estimate
- E. Financial information
- F. Permits required
- G. Intermunicipal Agreements required
- H. Environmental documentation
- I. Project schedule

D) Grant Reimbursements

To receive your first reimbursement, you must either submit a “Request for Reimbursement” (SF 271) and Form SF3881 or set up an account on the Automated Standard Application for Payments (ASAP) system. The SF271 is available at Section 22 of the workbook and SF3881 is at Section 21. You will need to set up your ASAP account for your second reimbursement. You can accomplish this by completing the ASAP enrollment forms which are available from the U.S. Department of Treasury at the following internet address: www.fms.treas.gov/asap. Reimbursement payments may be made on a monthly basis for eligible costs incurred. You will receive additional information on how to set-up your ASAP account and request reimbursement payments in the grant offer package. You must use the U.S. Department of Treasury’s ASAP system for grant payments. Although ASAP is an on-line, real time, paperless payment system, payments will not be made without the Project Officer’s approval of the payment request.

For the EPA Region 4 Project Officer to approve your request for payment, you must submit an SF271 and copies of documentation to support the cost incurred. This documentation includes such items as the contractor’s periodic estimate approved for payment, invoices for services, invoices for equipment, etc. Please note that all invoices must be specific for the service being billed. Invoices for “Services Rendered” will be declared not eligible since the eligibility of the service cannot be determined. After the Project Officer has approved your request for reimbursement, you should make a request through the ASAP to receive your payment.

PHASE 4 ENVIRONMENTAL REVIEW

The National Environmental Policy Act (NEPA) applies to the Special Appropriations Projects (SPAPs). NEPA requires that EPA assess all major actions, such as construction, by considering all of the environmental effects of the proposed action and its alternatives, and make the information available for public understanding and evaluation. No grant will be awarded for construction until the NEPA process is completed. The regulations that apply to the SPAPs are the Council of Environmental Quality's implementing regulations at 40 CFR Parts 1500-1508 and EPA's NEPA regulations at 40 CFR Part 6, Subparts A through D. A copy of 40 CFR Part 6 is provided in Section 28 of the workbook.

In January 1995, EPA issued two memorandums describing how the NEPA requirements and the intergovernmental review regulations at 40 CFR Part 29 apply to Special Appropriations Projects (SPAPs) that were authorized in FY 1995. The requirements found in those memorandums also apply to the SPAPs authorized by the EPA FY 1996 Appropriations Act and all subsequent appropriations acts.

EPA reviews all SPAPs to assure compliance with the National Environmental Policies Act and other environmental laws and regulations. As already mentioned in the discussion in Phase 2, Section B of this document, your proposed project will need concurrence from the agencies responsible for the crosscutters early in your environmental evaluation. The crosscutters are federal statutes of other agencies whose laws and regulations apply to all projects receiving money from the federal government, regardless of which agency is supplying the funds.

You should always obtain concurrence for your proposed project from the US Army Corps of Engineers (wetlands, Section 404 permits, dredge and fill, structures placed in navigable waterways), the State Historic Preservation Office, and the US Fish and Wildlife Service. You will also need concurrence from all of the other environmental crosscutters that apply to your project. A list of the environmental crosscutters for your environmental evaluation can be found in Section 8 of the workbook. Section 8 also contains additional crosscutters that are required in the grant application.

A) Grantee Provides Information for EPA to Make Categorical Exclusion (CE) Determination

Some types or categories of projects are so minor in scope that they may be determined by EPA not to need a full environmental review. Such projects are called "Categorical Exclusions". **EPA makes the determination if a project will qualify for a Categorical Exclusion (CE)** based on information provided by you. Although the project may be excluded from a full environmental review, EPA will still need concurrence from the applicable environmental agencies on the crosscutter list in Section 8 of the workbook before we may consider issuing a CE for your project.

If you believe your project may qualify for a CE, you should work with EPA to provide enough information for EPA to make that determination early in the process. Region 4 uses checklists to determine if the project will qualify for a CE. To expedite the CE determination, it is helpful if

you provide EPA the documentation necessary to support the general category for exclusion (for example, minor rehabilitation) and address the criteria for not granting a CE as required in the checklists. Such documentation could include a preliminary engineering report, facilities plan, and/or letters of concurrence from the crosscutting agencies. These documents should clearly describe the project, including pipe sizes and lengths, pump specifications, etc.

For your information in determining what documentation you should provide EPA, the CE checklist for wastewater-related projects is found in Section 9 in this workbook. For drinking water-related projects, the checklist is found in Section 10 and for storm water-related projects it is found in Section 11.

If EPA determines that your project meets the qualifications for a CE, EPA will prepare and distribute a CE document. You will be required to publish the CE determination in a local newspaper of community-wide distribution. EPA requires a one-time publication, but you may publish as many times as you feel necessary. You will be required to provide your Region 4 Project Officer with proof of publication of the CE. Once this information is provided to EPA, you will receive permission to proceed with the final design of your project and apply for funds for the construction phase of the project.

B) Grantee Submits Draft Environmental Information Document (EID)

If your project is not eligible for a CE, EPA requires that you complete an Environmental Information Document (EID). An EID describes and evaluates the environmental impacts of the feasible alternatives, including the 'No Action' alternative. The scope of the EID should fit the size and significance of your proposed project. Below is a suggested outline of an EID for either a wastewater or drinking water project.

Suggested Environmental Information Document (EID) Outline

- A. Proposed Project and Funding Status**
- B. Existing Environment**
- C. Existing Wastewater Facilities/Drinking Water System**
- D. Need for Proposed Facilities and Actions**
- E. Alternative Analysis**
- F. Environmental Consequences; Mitigative Measures**
- G. Public-Participation; Sources Consulted**

A detailed description of what should be included in each heading is given in Section 12 of the workbook. The description of the EID outline for storm water projects is found in Section 14.

Environmental Justice (EJ) issues must be addressed in the EID. Region 4 has developed a summary of the EJ requirements as they relate to EIDs. This summary can be found in Section 16 of the workbook. To further assist you, EPA has developed an Environmental Justice Geographic Assessment Tool that is available at <http://epa.gov/enviro/ej>.

Public participation is required for all SPAPs not eligible for a CE. The National Environmental Policy Act of 1969 (NEPA) and its implementing regulations require that federal agencies encourage and facilitate public involvement in decisions that affect the quality of the human environment (40 CFR §1500.2(d)). Because the NEPA requirements apply to SPAPs, EPA Region 4 has developed minimum public participation requirements for projects in which an EID is required. A description of these minimum public participation requirements is found in Section 17 of the workbook. Most projects will require a public meeting. For complex projects you may be required to hold a public hearing. If so, you may use the regulations concerning public participation at 40 CFR 25 in Section 29 as a guide.

C) EPA Provides EID Review

After you submit a draft EID, members of the Technical Assistance Team in the Construction and Technical Assistance Section (CTAS) in Region 4 will review the EID. A team member other than your Project Officer will be assigned to each project. For your convenience, a CTAS contact list is included in Section 2 of the workbook

After an initial review, you may be required to revise the EID if more information is needed. The CTAS reviewers for Region 4 use a checklist to evaluate each EID. To help you understand how these reviewers evaluate your EID, the EID checklist for wastewater and drinking water projects is given in Section 13 and the checklist for storm water projects can be found in Section 15. The EID checklists are provided for your information only. You are not required to fill out the EID checklist that applies to your project.

To speed up the review process and reduce the amount of paper required, it is suggested that you submit one paper copy of the EID and one copy on computer disk in either Word Perfect or Microsoft Word format. This will allow the environmental reviewers to view the document electronically and to utilize a document reader.

D) EPA makes Environmental Determination

Based on the review of the EID, EPA will make a determination about the environmental effects of your project. If the project is found to have no significant effect, then EPA documents the findings with the preparation of an Environmental Assessment (EA) and issues a Finding of No Significant Impact (FNSI) for a 30-day comment period. If the 30-day comment period passes without significant adverse opposition, then the environmental review process is complete. If the FNSI generates significant adverse opposition, you could be required to take part in an Environmental Impact Statement. Also, if the initial review of your EID finds that your project will have major environmental impacts, you may be required to take part in an Environmental Impact Statement.

E) EPA awards/amends Grant for Construction

When the NEPA environmental review requirements have been met, you may request that the grant for construction be awarded or that your existing planning and design grant be amended to include the construction phase. Follow the procedures outlined in Phase 2 of this document. At this time you also will be given permission to proceed with final design.

PHASE 5 CONSTRUCTION

A) Grantee Submits Plans and Specifications for EPA Approval

Once the plans and specifications for your project are completed, they will need to be approved by various local, state and federal agencies including EPA. Each agency will review the plans to determine that its own requirements have been met. Once all reviews are completed, required changes are made, and permits to construct are received, the job may be placed for bid.

EPA, or in some cases the States, will review the plans and specifications to determine that the special conditions and federal requirements related to 40 CFR Part 31 (Section 27) have been met. The review will also determine if the project is reasonable, does not contain excessive cost items, and conforms to the project cost eligibility in OMB Circular A-87 (Section 26). The following States are reviewing plans and specifications for EPA: Kentucky, Mississippi, and North Carolina (wastewater only). For these states, you will need to submit plans and specifications to the state contact listed in Section 2 of the workbook.

Your Project Officer uses a checklist to review your plans and specifications. To help you understand the review process, a copy of the checklist for Region 4 plans and specifications review is available in Section 19 of the workbook.

To prevent surprises at a later date, you should ask your Project Officer to do an eligibility determination based on your plans and specifications. Surprises can happen when your project contains items not within the original scope of the grant and you assume that the entire project is eligible.

The EPA has a set of supplemental conditions that can be used to comply with the procurement requirements of 40 CFR §31.36. A copy of these conditions can be found in Section 18 of the workbook or if you prefer, you can use your own wording for the conditions. The EPA supplemental conditions package also contains the goals for the Disadvantaged Business Enterprise (DBE) that are included in the grant award.

Common problems to avoid include:

- ✓ Failure to include and observe the “or equal” clause required by 40 CFR §31.36(c)(3)(i). Subpart (c) of 31.36 requires that there be free and open competition. The “or equal” clause states that:
 - “When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated...”Ideally all products and materials should have a technical description of the required features. These technical descriptions should not have features that are unduly restrictive.

- ✓ Use of the ‘experience’ requirement.

Experience clauses require equipment manufacturers to have a record of satisfactory operation for a specific period of time or provide bonds or deposits to guarantee replacement in the event of failure. The general use of experience clauses is restricted to special cases where the project engineer adequately justifies any such requirement in writing. When the engineer makes a written justification, submission of a bond or deposit must be allowed in place of a specified experience period, and the period of time for which the bond or deposit is required should not exceed the specified period.

B) Grantee Advertises and Bids Project

The regulations at 40 CFR §31.36 in Section 27 of the work book allow the use of local and state procedures for bidding the project as long as those procedures provide for free and open competition and do not restrict bidding to a local area. This involves advertising the project in a widely read publication and/or the official state or local legal publication for a period of not less than 30 days. Bids are received in sealed form and opened in public at what is known as a bid opening. Once bids are received, a determination must be made as to who is the low, responsible, responsive bidder. The award should be conditioned (usually called a tentative award) so that the bidder satisfactorily meets the federal requirements, such as EPA bid review and meeting the DBE requirements.

C) Grantee Compliance with Disadvantaged Business Enterprise Requirements

The provisions of Public Law 102-389 and EPA’s implementing regulations 40 CFR §31.36(e) require recipients of federal assistance to award a fair share of subagreements to small, small rural, minority and women’s businesses on contracts and subagreements performed under EPA Assistance Agreements. The EPA supplemental conditions package in Section 18 of the workbook also contains the goals for the Disadvantaged Business Enterprise (DBE) that are included in the grant award.

Please note that you must comply with the six required steps described in Attachment 9 of the grant application kit found in Section 4 of the workbook and you must ensure that the prime contractor complies as well. After bid opening or receipt of proposal(s), you must evaluate the bids to determine whether or not they are responsive. The successful bidder should submit to the grantee within 10 days after bid opening, evidence of positive steps taken. The grantee shall consider the failure to follow the six steps as a non-responsive bid. Please refer to Section 7 of the workbook for further MBE/WBE guidance.

Grantees must retain all records documenting their and their prime contractor’s good faith efforts. In addition, recipients must submit EPA Form 5700-52A, “MBE/WBE Utilization Under Federal Grants Cooperative Agreements, and Interagency Agency Agreements,” to the EPA award official beginning with the Federal fiscal year quarter the recipient receives the award and continuing until the project is completed.

D) Construction Begins

1. Change Orders

A change order should be issued when there is a change in the project affecting a contract. This is an area where many audit exceptions have originated in the past because of a lack of documentation. The change order process is not held in check by the competitive bidding process, as it occurs after bids are awarded; therefore, it is important that you make every effort to obtain a fair and reasonable price for all deductive and additive items. For Special Appropriations Projects, the EPA funds are fixed by legislation and cannot be exceeded.

EPA will only review change orders for contract modifications which change the scope of a contract or increase the contract amount by more than \$100,000. The grantee must submit these change orders to their SPAP Project Officer for review. Below is a summary of the information that the Project Officer may request in order to evaluate and approve a change order.

- ✓ A copy of the Change Order with a clear description of the change
- ✓ Need for the change
 - A clear statement of the merits of the change to include the reason it was not in the original contract.
- ✓ Consistency with the Scope of the Grant
- ✓ Consistency with the environmental documents
- ✓ Concurrence of the Grantee with the Change Order
 - A certificate of review and acceptance of the contractor's cost or price.
- ✓ Cost and pricing data
 - Include the contractor's cost breakdown, your engineer's independent cost estimate, and in some cases your cost/price estimate.

A SPAPs Change Order Checklist which will be used by EPA can be found in the workbook under Section 20. The grantee does not fill out this list. It is for use by EPA, but we have included so you will understand the type of information we must consider.

2. Time extensions

Time extensions are generally granted by change order; therefore, the requirements for change orders will apply. Supporting evidence must be presented to EPA that the extension is warranted, such as an excessive number of rain days, severe weather or unexpected delays.

Additional costs incurred by the contractor for the project after the contract period has ended, such as inspection costs and administrative costs are not grant eligible. These costs should be covered by liquidated damages and not by the grant.

E) EPA Provides Construction Overview and Inspection

An EPA Project Officer or designated engineer will periodically inspect the construction of the project and prepare a “Project Inspection Review”. A copy of the review form is available in Section 23 of this workbook. This inspection is used to determine the construction progress and proper record keeping. The inspection is conducted at your office and the project site.

PHASE 6 GRANT CLOSEOUT AND OWNERSHIP

Once construction has been completed, you will need to contact your EPA Project Officer (or State contact for AL, KY, MS, or NC (wastewater only)) to conduct a final inspection. During the final inspection, the Project Officer (or State contact) will make a final determination of eligible costs and determine if the grant conditions have been satisfied.

To close out the grant, you must submit your final payment request and complete the SPAPs Grant Closeout Package. A copy of the package can be found in Section 24 of the workbook. Once EPA verifies the information and all requirements have been met, we will make the final payment and proceed to administratively close out the grant.

Ownership of the grant project must be established with the entity that will operate and maintain the infrastructure facility over its useful life before closing the grant. If ownership of the grant project is transferred to an entity other than the grantee, EPA must authorize the transfer. Refer to instructions in Section 25 of the workbook for more information.

Records should be kept secure and accessible to EPA or other agencies of the Federal Government upon request for 3 years following project closeout. The closeout start date is the date you submit the last expenditure report, which is the last SF271 (Outlay Report and Request for Reimbursement) for the grant. All grants are subject to an audit by EPA.

Appendix A
Intergovernmental Review

INTERGOVERNMENTAL REVIEW PROCESS STATE POINTS OF CONTACT

(Refer to Item #16 of the “Supplemental General Instructions for Application Forms SF424A and B”.)

ALABAMA

BACKGROUND:

Executive Order 12372 and EPA's implementing regulations - 40 CFR Part 29, 40 CFR §30.12(c), and 40 CFR §31.11 - require that all interested state, area wide, regional, and local agencies be given the opportunity to review and to comment on proposed Federal assistance within their area(s) of jurisdiction or influence. The regulations also provide for implementation of the requirements of Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, which apply to all Federal assistance.

EPA cannot award assistance until all interested parties (e.g., State agencies, Planning and Economic Development agencies) have been given the opportunity to review the proposed project and all concerns of these agencies about the proposed project have been satisfactorily disposed of by the applicant.

A copy of your application should be submitted to the appropriate agency(ies) listed below for comment at least 60 days before sending your application to EPA. It is not necessary to send an application to all Development Districts and agencies listed but only to those agencies responsible for the area(s) affected or that may be affected by your proposed project. Please include with your application to EPA a copy of all comments received and, if required, an explanation of action taken to accommodate any concerns of the designated agencies.

PROCEDURES:

Applicants for projects in Alabama having *state-wide impact* should submit a copy of their applications to the CENTRAL ALABAMA REGIONAL PLANNING AND DEVELOPMENT COMMISSION (REGION 9) on the list below. They are serving as the State Intergovernmental Review Clearinghouse for these projects. For projects having local impact, applications should be sent to the appropriate Regional Development Commission listed below.

REGION 1
NORTHWEST ALABAMA COUNCIL OF LOCAL GOVERNMENTS
Mr. Sam Minor, Executive Director
P.O. Box 2603
103 Student Drive
Muscle Shoals
AL 35662

205/389-0500 FAX 205/389-0599

REGION 2
WEST ALABAMA PLANNING AND DEVELOPMENT COUNCIL
Mr. Robert B. Lake, Executive Director
4200 Highway 69 North, Suite 1
Northport
AL 35473

205/333-2990 FAX 205/333-2713

**REGION 3
BIRMINGHAM REGIONAL PLANNING COMMISSION**
Mr. Larry W. Watts, Executive Director
2112 Eleventh Avenue, South
Magnolia Office Park, Suite 220
Birmingham
AL 36256

202/251-8139 FAX 205/328-3304

**REGION 4
EAST ALABAMA REGIONAL PLANNING AND DEVELOPMENT COMMISSION**
Mr. Bill Curtis, Executive Director
P.O. Box 2186
1130 Quintard Avenue, Suite 300
Anniston
AL 36202

205/237-6741 FAX 205/237-6763

**REGION 5
SOUTH CENTRAL ALABAMA DEVELOPMENT COMMISSION**
Tyson Howard, Executive Director
5900 Carmichael Place
Montgomery
AL 36117

334/244-6903 FAX 334-270-0038

**REGION 6
ALABAMA-TOMBIGBEE REGIONAL COMMISSION**
Mr. John C. Riggs, Executive Director
107 Broad Street
Camden
AL 36726

334/682-4234 FAX 334/682-4205

**REGION 7
SOUTHEAST ALABAMA REGIONAL PLANNING & DEVELOPMENT COMMISSION**
Mr. W. Fred Dykes, Executive Director
P.O. Box 1406
462 North Oates Street
Dothan
Alabama 36302

334/794-4093 FAX 334/794-3288

**REGION 8
SOUTH ALABAMA REGIONAL PLANNING COMMISSION**
Mr. Russ Wimberly, Executive Director
P.O. Box 1665
651 Church Street
Mobile
AL 36633

334/433-6542 FAX 334/433-6009

**REGION 9
CENTRAL ALABAMA REGIONAL PLANNING & DEVELOPMENT COMMISSION**
Ms. Ann B. Harper, Executive Director
125 Washington Avenue, 3rd Floor
Montgomery
AL 36104

334/262-4300 FAX 334/262-6976

REGION 10
LEE-RUSSELL COUNCIL OF GOVERNMENTS
Ms. Suzanne G. Burnette, Executive Director
2207 Gateway Drive
Opelika
AL 36801

334/749-5264 FAX 334/749-6582

REGION 11
NORTH CENTRAL ALABAMA REGIONAL COUNCIL OF GOVERNMENTS
Mr. C. Ronald Matthews, Executive Director
216 Jackson Street, SE
P.O. Box C
Decatur
AL 35602

205/355-4515 FAX 205/351-1380

REGION 12
TOP OF ALABAMA REGIONAL COUNCIL OF GOVERNMENTS
Mr. Bob Culver, Executive Director
115 Washington Street, SE
Huntsville
AL 35801

205/533-3330 FAX 205/533-3442

FLORIDA

Ms. Cherie L. Trainor, Coordinator
Florida State Clearinghouse
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

850/922-5438

GEORGIA

Mr. Charles H. Badger, Administrator
Georgia State Clearinghouse
Office of Planning and Budget
270 Washington Street, SW
Atlanta, GA 30334

404/656-3855

KENTUCKY

Mr. Ronald W. Cook, Manager
Kentucky State Clearinghouse
2nd Floor, Capital Plaza Tower
Frankfort, KY 40601

502/573-2382

MISSISSIPPI

Ms. Mildred Tharpe, Clearinghouse Officer
Office of Federal Grant Management and Reporting
Department of Finance and Administration
1301 Woolfolk Building, Suite E
501 Northwest Street
Jackson, MS 39201

601/359-3927

NORTH CAROLINA

Ms. Chrys Baggett
State Clearinghouse
Department of Administration
116 West Jones Street
Raleigh, NC 27603-8003

919/733-7232

SOUTH CAROLINA

Ms. Omeagia Burgess
Intergovernmental Review
Office of the Governor
1205 Pendleton Street, Room 477
Columbia, SC 27201

803/734-0494

TENNESSEE

BACKGROUND:

Executive Order 12372 and EPA's implementing regulations - 40 CFR Part 29, 40 CFR §30.12(c), and 40 CFR 31.11 - require that all interested state, areawide, regional, and local agencies be given the opportunity to review and to comment on proposed Federal assistance within their area(s) of jurisdiction or influence. The regulations also provide for implementation of the requirements of Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, which apply to all Federal assistance.

EPA cannot award assistance until all interested parties (e.g., State agencies, Planning and Economic Development agencies) have been given the opportunity to review the proposed project and all concerns of these agencies about the proposed project have been satisfactorily disposed of by the applicant.

Since the State of Tennessee currently has no Single Point of Contact for Intergovernmental Review, a copy of your application should be submitted to the appropriate agency(ies) listed below for comment at least 60 days before sending your application to EPA. It is not necessary to send an application to all Development Districts and agencies listed but should be sent only to those agencies responsible for the area(s) affected or that may be affected by your proposed project. Please include with your application to EPA a copy of all comments received and, if required, an explanation of action taken to accommodate any concerns of the designated agencies.

PROCEDURES:

Therefore, applicants for projects in Tennessee should submit a copy of their applications to each of the appropriate State Agency Grant Review Contacts.

Mr. James Morris
Department of Economic and Community Development
Local Planning Division
6th Floor, Rachel Jackson Building
Nashville, TN 37243

Mr. Jack Hughes
Department of Environment and Conservation
401 Church Street
L & C Tower
Nashville, TN 37243

Mr. N.E. Christianson
Department of Transportation
6th Floor, James K. Polk Building
Nashville, TN 37243

Mr. Joe Garrison
Tennessee Historical Commission
2941 Lebanon Road
Nashville, TN 37243-0442

Mr. Dan Sherry
Tennessee Wildlife Resources Agency
P.O. Box 40747
Nashville, TN 37204

Applicants should also send a copy to the appropriate Tennessee Development District listed below:

NORTHWEST TENNESSEE
Mr. Robert Brandon, Executive Director
P.O. Box 963
124 Weldon Street
Martin, TN 38237

901/587-4215

GREATER NASHVILLE REGIONAL COUNCIL
Mr. Maynard Pate, Executive Director
700 Stahlman Building
211 Union Street, Box 233
Nashville, TN 37201

615/862-8828

UPPER CUMBERLAND
Mr. Ed Brooks, Executive Director
1225 Burgess Falls Road
Cookeville, TN 38501

615/432-4111

FIRST TENNESSEE
Ms. Susan Roberts Reid, Executive Director
207 North Boone Street, Suite 800
Johnson City, TN 37604

615/928-0224

MEMPHIS AREA ASSOCIATION OF GOVERNMENTS
Mr. John Sicola, Executive Director
157 Poplar Avenue, B150
Memphis, TN 38103

901/576-4610

SOUTHWEST TENNESSEE
Mr. Barry Matthews, Executive Director
Williamsburg Office Park
27 Conrad Drive, Suite 150
Jackson, TN 38301

901/668-7112

SOUTH CENTRAL TENNESSEE
Mr. Joe M. Williams, Executive Director
815 South Main
P.O. Box 1346
Columbia, TN 38401

615/381-2040

SOUTHEAST TENNESSEE
Mr. Joe Guthrie, Executive Director
25 Cherokee Boulevard
P.O. Box 4757
Chattanooga, TN 37405

615/266-5781

EAST TENNESSEE
Mr. Bob Freeman, Executive Director
5616 Kingston Pike
P.O. Box 19806
Knoxville, TN 37939

615/584-8553