



# SPECIAL APPROPRIATIONS PROJECTS REGION 4 PROCEDURES

United States Environmental Protection Agency – Region 4

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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 55% reimbursement grant from EPA. A reimbursement grant is one in which the grantee incurs the costs, and then submits the invoices for such costs to EPA for payment at the federal percentage rate of the grant, no greater than 55%. 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.

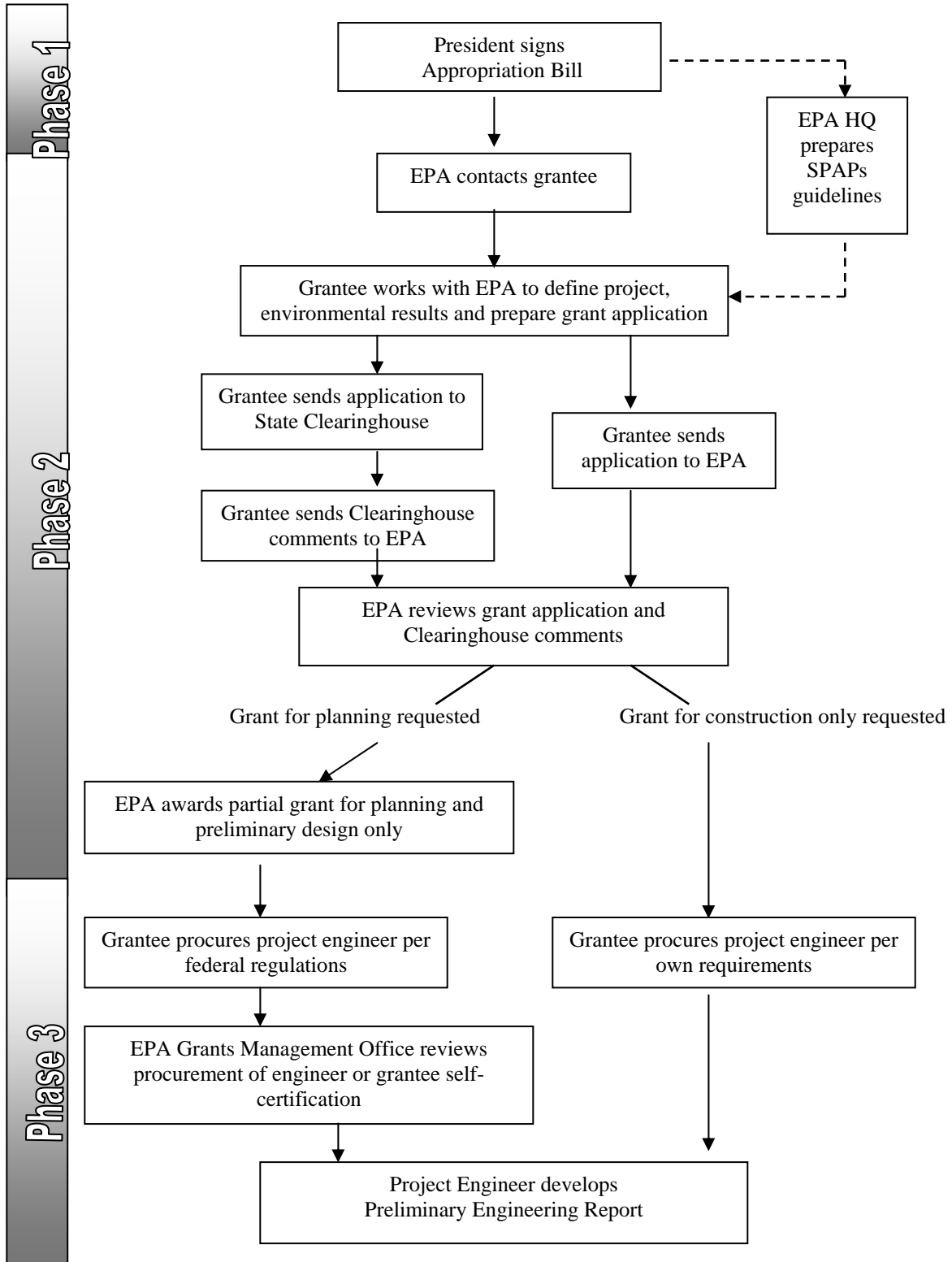
This procedures manual is intended to be a tool to assist grantees in understanding the grant process requirements and provisions related to these SPAPs for wastewater, drinking water and storm water needs in Region 4. It is loosely organized into six phases that follow the process flow chart shown on the following pages. Included in the phases are the specific requirements for those actions. Please note that the states of AL, KY, MS and NC assist EPA in the administration of these grant to varying degrees; therefore, the process may differ slightly in those states.

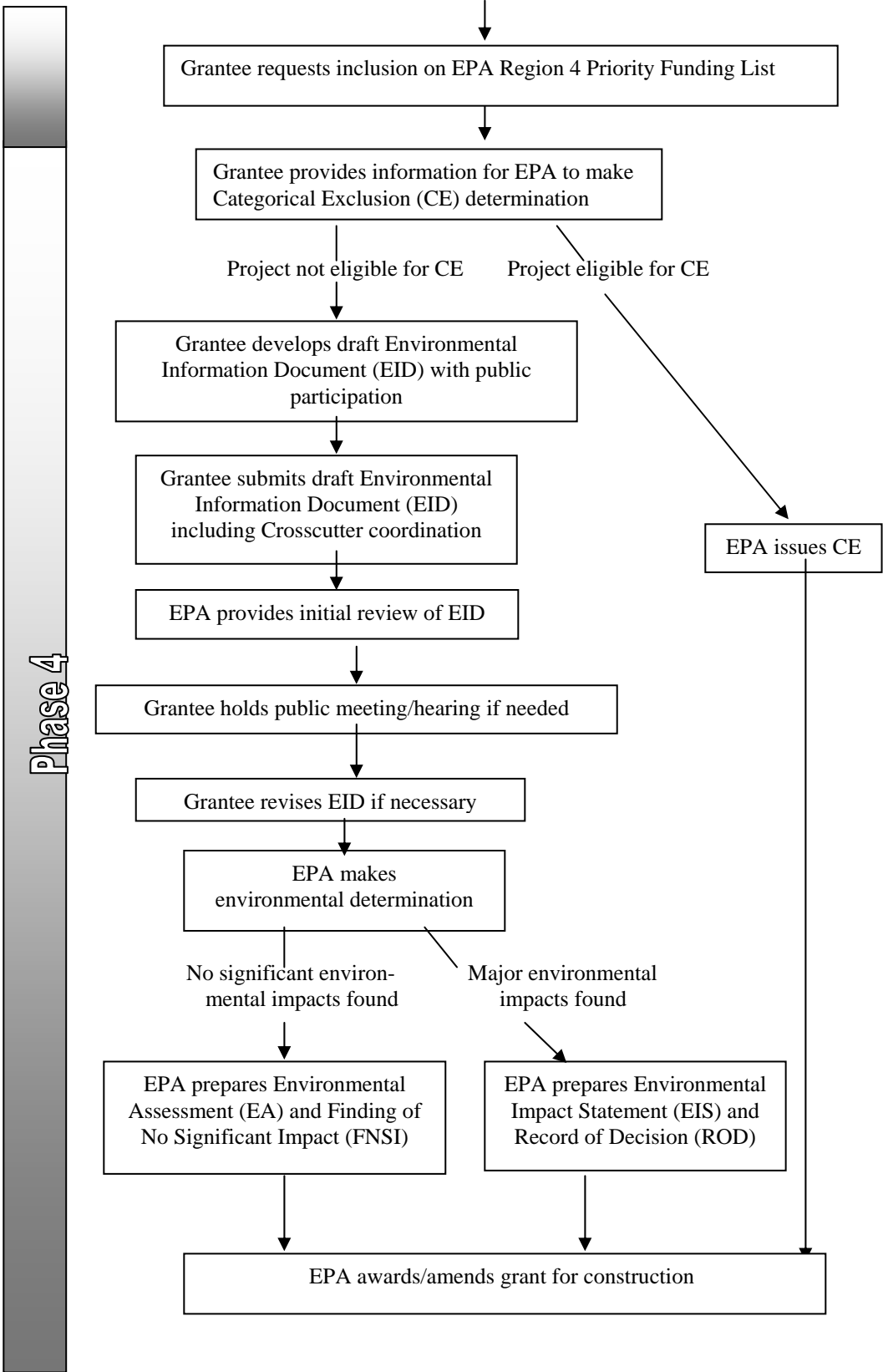
Since EPA cannot award funds for final design and construction until it completes an environmental review of the project, the grantee has two award process options. The first option is to request a grant for planning and conceptual design to prepare the needed preliminary engineering report and environmental information document with federal funds. The grant would then be amended to include funds for the construction phase of the project once the environmental review was completed by EPA. The second option is to request funding only for final design and construction, thus paying for the planning and environmental information document with local funds. In this option the grant would be awarded once the environmental review once EPA had completed its review.

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 part of the Region 4 workbook entitled, "Workbook for Special Appropriations Grants," and is available on line at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html).

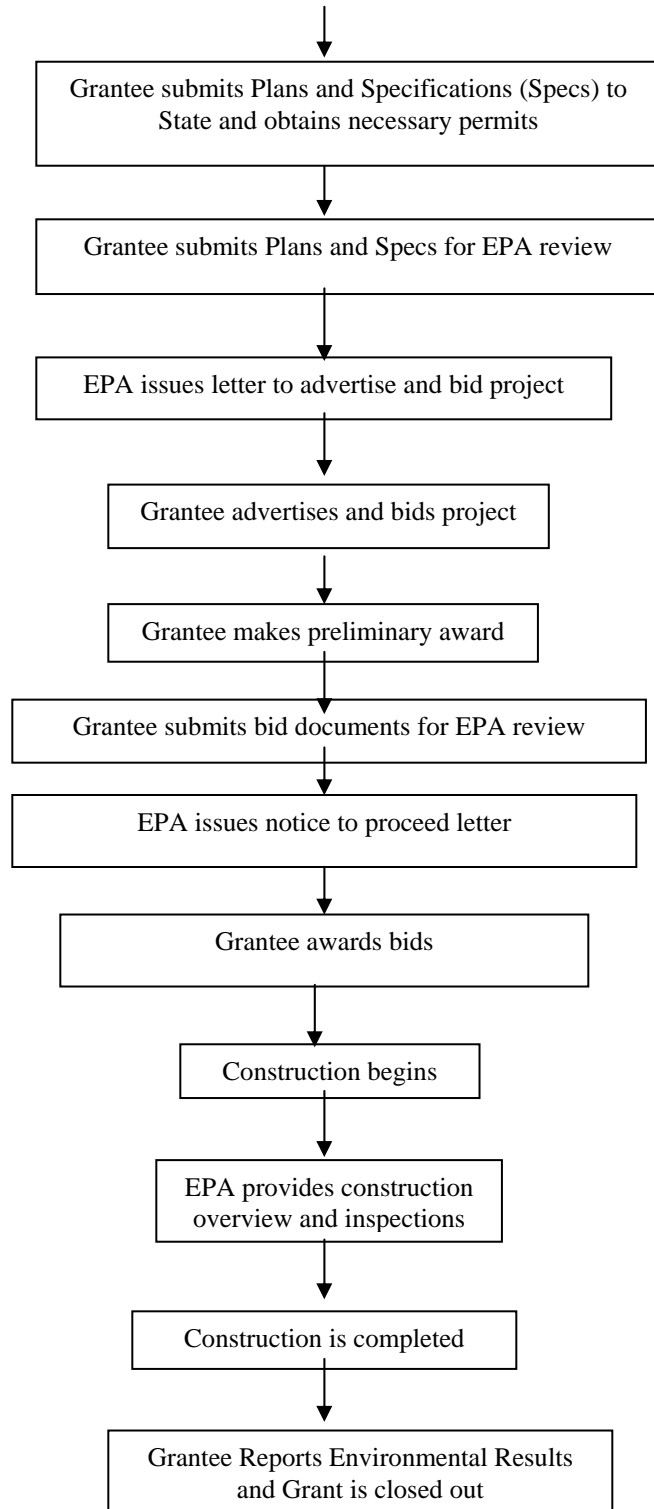
# Region 4 Generic Process for Special Appropriations Projects (SPAPs) Grants Involving Project Planning, Design, and Construction

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





Phase 5



Phase 6

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

The Environmental Protection Agency (EPA) section of the Consolidated Appropriations Act, 2008 (Public Law 110-161) included \$25,392,000 for 52 water, wastewater, and groundwater infrastructure projects in EPA Region 4. The FY 2008 Appropriations Act also contained a rescission of 1.56% from all appropriations accounts. The specific requirements governing the award of these special projects and programs are contained in the following documents: the FY 2008 Appropriations Act, the Joint Explanatory Statement for Division F of the FY 2008 Appropriations Act – Department of the Interior, Environment, and Related Agencies Appropriations Act, 2008, the House Report (H. Rept. No. 110-187) and the Senate Report (S. Rept. No. 110-91).

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 in Region 4. 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, the 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 in Region 4. 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 was applied 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, and 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 was applied 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 was 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. develops guidelines to administer the SPAPs grants identified in that fiscal year. 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. Each year's appropriation will have its own guidelines to reflect the specific requirements governing the SPAP grant awards. Although the guidelines have not changed dramatically over the years, please review the guidelines for the year in which the funds for your project were appropriated as well as the guidelines for the year in which your grant is to be awarded.

Copies of the EPA guidelines for the last several years are included in the Region 4 SPAPs workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html).

## **PHASE 2 GRANT APPLICATION PREPARATION AND AWARD**

### **A) EPA Contacts Grantee**

Once the President signs EPA's appropriation, EPA contacts the named grantees by letter advising them of their appropriation and directing them to any information or scheduled training. You should contact the Special Appropriations Projects (SPAP) Coordinator of 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. Currently in Kentucky and North Carolina, the state environmental agency is performing certain grant actions for EPA, including grant application review; therefore, a state representative will contact you as well as EPA to discuss your project. You may find a current contact list of state contacts for Special Appropriations Projects in our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html).

### **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 our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html).

The application package 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 crosscutters list is listed in our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html). A list will also be attached to your grant award. Environmental crosscutters are described in more detail in Phase 4 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

When determining the scope of your project, pay special attention to the sustainability of your water infrastructure. As the country's water infrastructure ages, we are facing a looming crisis in replacing and maintaining the quality of our drinking water and our streams. Deferred maintenance, crumbling systems and a gap between revenues and long term costs are presenting an increasing challenge to the utilities and communities that provide us safe and clean water. As a result, EPA has been promoting a Sustainable Water Infrastructure Initiative in attempts to raise the visibility of the challenge and to affect a change towards more sustainable practices.

EPA strongly encourages that the principles and approaches outlined below are adopted by those receiving special appropriations for water, wastewater or stormwater projects, if we are to sustain our water resources. Many of these may be grant eligible in promoting the sustainability of your infrastructure.

### a) Better Management

#### Environmental Management Systems (EMS)

An EMS is a comprehensive management system for identifying, monitoring, and managing activities that have potential environmental impacts. The implementation of an EMS at water and wastewater utilities can result in increased efficiency, reduced costs, and greater operational consistency; improved ability to meet environmental compliance requirements; improved succession planning; and better relationships with regulators.

EPA recognizes that EMSs are a relatively new concept for many water and wastewater utilities, and that developing an EMS is often the greatest challenge facing utilities seeking recognition in Performance Track and similar state programs. Working with utilities that have successfully implemented an EMS, EPA has developed a number of state-of-the-art tools to help wastewater utilities understand the benefits of adopting an EMS. These tools have been compiled in an EMS Toolbox, and are available free of charge at [www.PeerCenter.net](http://www.PeerCenter.net) . These tools include:

- EMS Handbook for Wastewater Utilities
- EMS Compendium for Wastewater Utility Managers
- Case studies on successful EMS implementation at wastewater and water utilities

A similar implementation guide for water utilities, Environmental Management Systems: A Tool to Help Water Utilities Manage More Effectively, is available at [www.awwarf.org](http://www.awwarf.org).

#### Asset Management

Asset Management processes help utilities inventory the condition, age, service history and estimated useful life of each asset and then prioritize assets based on criteria that include: remaining useful life; criticality of the asset; failure probability; cost; actual or potential risk to public health or environment; customer demands and improved operations.

The five major steps of developing an asset management system are based on answering the following questions:

- 1) What is the current state of my assets?
- 2) What is my required level of service?
- 3) Which assets are critical to sustained performance?
- 4) What are my best O&M and capital improvement strategies?
- 5) What is my best long term funding strategy?

b) Full Cost Pricing

When measured as a percentage of household income, the U.S. pays less for water/wastewater bills than other developed countries. Because of this, the public has been led to believe that water is readily available and cheap. We need to fundamentally shift thinking in this area to meet our essential infrastructure needs. Pricing that recovers the costs of building, operating, and maintaining a system is absolutely essential to achieving sustainability. Drinking water and wastewater utilities must be able to price their services to reflect the full costs of treatment and delivery.

EPA has brought together a broad set of information and tools on water and wastewater pricing which can be found at <http://www.epa.gov/waterinfrastructure/pricing/index.htm>.

The Environmental Finance Center at Boise State, Idaho also provides free “Rate Checkup” software which may be useful at [http://sspa.boisestate.edu/efc/Tools\\_Services/RATECheck/ratecheck.htm](http://sspa.boisestate.edu/efc/Tools_Services/RATECheck/ratecheck.htm).

c) Water Efficiency

EPA is promoting an ethic of improving water use practices to increase efficiency, eliminate waste, and conserve water resources, resulting in a decreased burden on our infrastructure. Water Efficiency can make our infrastructure systems more sustainable by reducing the quantity of water treated and distributed through our water and wastewater systems. Water withdrawn from the environment for human use must be used wisely and effectively, successfully perform its intended function while using only the practical minimum amount of water.

The WaterSense is program works to enhance the market for water efficient products by labeling those products which perform as well as their less efficient counterparts. Promoting water efficiency in your community is important to long term sustainability. For more information visit our WaterSense website at <http://www.epa.gov/watersense>.

Also, a tremendous amount of drinking water is lost from aging and leaky distribution pipes. By addressing water loss from a distribution system, utilities can reduce the burden on our treatment systems and recover the cost of more of the clean water that they provide.

d) Watershed Approaches to Infrastructure

There are a wide variety of watershed wide approaches to infrastructure which can achieve cost efficiency while producing the same or better results within a watershed. To move towards a sustainable future, utilities will need to look beyond traditional approaches to ensure the best watershed and infrastructure results.

For example, the use of Green Infrastructure in the management of wet weather employs site-specific management practices (such as rain gardens, porous pavements, and green roofs) that are designed to maintain natural hydrologic functions by absorbing and infiltrating precipitation where it falls. It can reduce our reliance on traditional stormwater structures (i.e. pipes, channels, and treatment plants) that are expensive to build, operate and maintain. In addition, green infrastructure has numerous other benefits such as the protection of surface waters and drinking water supplies, mitigation of urban heat islands effects, reductions in energy demand, and the protection of highly valued natural habitats, forests, and agricultural lands. More information can be found at [http://cfpub.epa.gov/npdes/home.cfm?program\\_id=298](http://cfpub.epa.gov/npdes/home.cfm?program_id=298).

Source water protection is another watershed approach that can reduce the need for or burden on water infrastructure. Information on source water protection can be found at <http://cfpub.epa.gov/safewater/sourcewater>.

Water Quality Trading is an innovative approach to achieve water quality goals more efficiently. Trading programs allow facilities facing higher pollution control costs to meet their regulatory obligations by purchasing environmentally equivalent (or superior) pollution reductions from another source at a lower cost, thus achieving the same water quality improvement at a lower overall cost. Visit <http://www.epa.gov/owow/watershed/trading.htm>.

Decentralized wastewater management is another approach to watershed protection. More information can be found at [http://www.epa.gov/OW-OWM.html/septic/pubs/septic\\_management\\_handbook.pdf](http://www.epa.gov/OW-OWM.html/septic/pubs/septic_management_handbook.pdf).

Additional details on the Sustainable Infrastructure Initiative are available from [www.epa.gov/waterinfrastructure](http://www.epa.gov/waterinfrastructure).

After considering these strategies, the next step is for you and EPA to 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. The suggested elements for a SPAPs work plan along with an example are in our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html). 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 that 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 table for projected environmental results for drinking water projects is available in our workbook at: [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html). The table for projected environmental results for wastewater and stormwater projects is available in our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html).

When evaluating your environmental results it may be helpful to consider that the term 'output' means an environmental activity, effort, and/or associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during an assistance agreement funding period. Outputs reflect the products and services provided by the recipient, but do not, by themselves, measure the programmatic or environmental results of an assistance agreement. Some examples of outputs are:

- Number of additional homes (or equivalents) provided adequate wastewater treatment (can be centralized or decentralized).
- Number of additional homes (or equivalents) provided safe drinking water.
- Capacity (MGD) of newly constructed wastewater treatment plant.
- For expansion of an existing wastewater treatment plant, increase in capacity (MGD) of plant.
- For upgrade of an existing wastewater treatment plant, new level of treatment provided.
- Storage (MG) provided by newly constructed drinking water tank.
- Storage (MG) provided by new reservoirs.
- Population served by new construction.
- Feet of sewer lines replaced.
- Feet of sewer lines extended.
- Feet of water lines replaced.
- Feet of water lines extended.
- Gallons of water conserved
- BTUs of energy conserved
- Acres of buffer established.
- Acres of wetlands protected.
- Description of Habitats created.
- Wet weather improvement:
  - Estimated number of combined sewer overflows (CSOs) reduced.
  - Estimated amount (e.g., million gallons per year) of untreated wastewater not discharged as a result of CSO improvements.
  - Number of sanitary sewer overflows reduced.
  - Storm water improvements.
- Environmental restoration improvements.
- Enhanced security improvements to wastewater or drinking water facilities.
- Results of post construction/operations water quality monitoring.

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 conceptual design cannot begin until EPA completes its the National Environmental Policy Act (NEPA) environmental review process; therefore, no grant will be made for construction until the NEPA process is finished. If your grant funds will be applied to the planning, design and construction, you will need to make an initial grant application for the planning and conceptual design portion of your project first. When EPA completes its NEPA environmental review, you may request that the grant be amended to include the construction portion of the project. However, if you decide to use your funds only for construction, you may make a grant application for the entire amount of funds available 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 with the nonfederal portion of these 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 with nonfederal CWSRF or DWSRF funds 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.

Please note that federal grant requirements apply to the entire grant award, i.e., both the federal and the nonfederal funds.

#### **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 at [http://www.whitehouse.gov/omb/circulars/a087/a87\\_2004.pdf](http://www.whitehouse.gov/omb/circulars/a087/a87_2004.pdf).

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

## ELIGIBLE COST EXAMPLES:

- ✓ 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. The grantee must show that it is cost effective and well documented.
- ✓ Equipment such as portable generators and portable pumps are eligible.
- ✓ Retrofitting government-owned buildings, including public housing, with WaterSense products is eligible.
- ✓ Development and implementation of an Environmental Management System is eligible.
- ✓ Development and implementation of an Asset Management Program is eligible
- ✓ Implementation of an incentive program to replace fixtures using high efficiency WaterSense products is eligible.
- ✓ Development and implementation of a program to reduce water loss in your distribution system through strategic repair, replacement and enhanced metering is eligible.
- ✓ Study, plan and/or implementation of Green Infrastructure approaches to wet weather in your community are eligible.
- ✓ Implementation of source water protection efforts or plans is eligible.
- ✓ Only wastewater and drinking water infrastructure facilities that are owned and operated or will be owned and operated by the grantee or sub-grantee are eligible for funding with the exception of small, onsite decentralized wastewater systems. (See EPA Guidelines)
- ✓ Contingency costs should be limited to 5 – 10 % of the budget and included within a specific budget category. Do not use contingency as a separate line item within the budget of the grant application.
- ✓ 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 ConstructionA/E fees exceeding these percentages must be justified in writing.
- ✓ 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.
- ✓ Mitigation which is necessary as a result of the environmental review is eligible.
- ✓ Planning costs which include energy audits and system management audits as they pertain to planning for the sustainability of the infrastructure are eligible.
- ✓ Land need not be an "integral part of the treatment process" as in the Clean Water Act title II construction grant program. For example, land which is purchased for mitigation, habitat creation, wellhead protection, source water protection, and stream buffers, as long as they support the sustainability of the infrastructure being constructed, is an eligible cost.

#### INELIGIBLE COST EXAMPLES:

- ✓ 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 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 for construction that were incurred after the start of the fiscal year for which the funds were appropriated but before the date of the grant award. We may also approve pre-award costs for planning regardless of time if they were part of the funded construction project that was begun after the start of the fiscal year for which the funds were appropriated. 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 and workplan to the points of contact for your state as listed in Appendix A.

#### **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 may 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 the EPA SPAP Coordinator. 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. The SPAP Office will send a letter to you confirming receipt of your application and advising you of the status of your application in regards to the need for additional information, environmental review requirements, and your priority status. At that time a Project Officer may be assigned to your project for further action or your grant will be held until a Project Officer becomes available.

#### **F) EPA Awards Grant for Planning and Conceptual Design**

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 at [http://www.access.gpo.gov/nara/cfr/waisidx\\_07/40cfr31\\_07.html](http://www.access.gpo.gov/nara/cfr/waisidx_07/40cfr31_07.html). The Minority/Women's Business Enterprise requirements can be found in our workbook at: [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html).

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 on our website.]

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.

Some of the situations considered to be restrictive of competition include but are not limited to the following:

- ❖ Placing unreasonable requirements on firms in order for them to qualify to do business,
- ❖ Requiring unnecessary experience and excessive bonding,
- ❖ Noncompetitive pricing practices between firms or between affiliated companies,
- ❖ Noncompetitive awards to consultants that are on retainer contracts,
- ❖ Organizational conflicts of interest,
- ❖ Specifying only a “brand name” product instead of allowing an “equal product” to be offered and describing the performance of other relevant requirements of the procurement.

[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) Grantee Requests Inclusion on the Region 4 Priority Funding List**

By the first of July of each year, grantees must notify EPA of their intent to request funding in the following fiscal year (October 1 - September 30). At this time the grantee should also designate whether they intend to request a partial grant award for planning, or a full award which will include construction. The grantee should also describe how the project will achieve environmental results in accordance with EPA's strategic plan (see Environmental Results Worksheets for example environmental results).

By late August, EPA will post the funding list and the pending list on our website. EPA will also identify the projected number of projects EPA anticipates that it will be able to award in the fiscal year. The projected number of grant awards is based on the availability of EPA Project Officers to overview the projects. In accordance with EPA's Project Officer workload model, the number of projects is limited to 40 projects per Project Officer.

Those projects that request funding will be placed on the funding list if they meet one of the following criteria:

- ✓ have significant public health need,
- ✓ are continuation projects that have supplemental funding,
- ✓ are located within a designated priority or tier 3 watershed,
- ✓ are located within the Mississippi River drainage basin,
- ✓ have appropriated funds subject to rescission based on Congressionally imposed constraints.

**By mid-March**, a complete grant application should be submitted to EPA. Should any project on the funding list fail to comply with this deadline, the project will be bypassed. Only grant applications with completed environmental reviews will be considered for funding. A completed environmental reviews means that EPA has issued a Categorical Exclusion, Finding of No Significant Impact or Environmental Impact Statement/Record of Decision.

**By late-March**, if it becomes apparent that the projects on the funding list will not meet the targeted number of grant actions by the end of the current fiscal year, projects from the pending list that are ready to proceed will be funded on a first come, first served basis.

The Region's intent in developing the Funding Process is to fund projects in the order of greatest benefit to the public health and the environment within the context of EPA's strategic goals and manage those projects efficiently with limited project officer resources. Projects in designated priority and tier 3 watersheds, the Mississippi River drainage basin, and those with significant public health consequences will be given preference over other projects.

Those projects that requested funding and were ready to proceed during that fiscal year, but were not funded due to the lack of project officer resources, will be given first priority for funding in the next fiscal year and do not need to resubmit a request for funding. All other projects must request funding for next fiscal year to be considered.

Complete priority information is available on our website at <http://www.epa.gov/region4/water/gtas/documents/appropriation.pdf>.

#### **E) Grant Reimbursements**

To receive your first reimbursement, you must submit a "Request for Reimbursement" (Form SF 271), "ACH Vendor/Miscellaneous Payment Enrollment Form" (Form SF3881), and corresponding invoices to EPA or your designated state representative. The SF271 is available at <http://www.whitehouse.gov/omb/grants/sf271.pdf> and the payment procedures form (SF3881) is in our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html). You will need to set up your ASAP account for your second reimbursement. All future reimbursement requests will be submitted using Form SF 271. Reimbursement payments may be made on a monthly basis for eligible costs incurred.

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, the funds will be electronically transferred to the grantee's bank account provided with the SF 3881 form.

#### **F) Reporting Requirements**

Please note that quarterly reporting is a requirement of grant award. You will need to submit a quarterly progress report to your Project Officer identified on your grant agreement or your designated state representative, beginning with the grant award. The progress report should contain the your grant number, grantee name, project name, authorized representative, a

description of the work accomplished that quarter, any problems encountered with actions taken to correct them, a review of the project work schedule, and notification of any changes needed to the grant award. An example format will be included in your grant award. This report is in addition to the quarterly Minority Business Enterprise/Women-owned Business Enterprise (MBE/WBE) utilization report (EPA Form 5700-52A) that must be submitted along the same time frame.

## 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 at

[http://www.epa.gov/region4/water/gtas/workbookdocs/FR\\_40CFR\\_part6\\_101907.pdf](http://www.epa.gov/region4/water/gtas/workbookdocs/FR_40CFR_part6_101907.pdf).

EPA reviews all SPAPs to assure compliance with the National Environmental Policies Act and other environmental laws and regulations. To assist you in the environmental review process, EPA has developed a handbook, "Environmental Review Guide for Special Appropriation Grants" (EPA 315-K-08-001), which is provided at:

<http://www.epa.gov/compliance/resources/policies/nepa/environmental-review-guide-grants-pg.pdf>. The EPA handbook is nationwide in scope. The information provided below is specific for SPAPs environmental reviews in Region 4.

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 the SPAPs crosscutter list in our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html). The chart 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) or (CATEX)** 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 SPAPs crosscutter list in our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html) before we may consider issuing a CE for your project and show that there will be no environmental impacts from the 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 Categorical Exclusion checklist for all project types is available from our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html).

If EPA determines that your project meets the qualifications for a CE, EPA will prepare and distribute a CE document.

## **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 provided in the EID instructions for wastewater and drinking water projects in our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html). The description of the EID outline for storm water projects is found in the EID instructions for storm water projects in our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html).

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 our environmental justice review and guidance which is available from our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html). To further assist you, EPA has developed an Environmental Justice Geographic Assessment Tool that is available at <http://epa.gov/enviro/ej/>.

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)). EPA is required to make diligent efforts to involve the public in the preparations of its environmental assessment. To do this, EPA Region 4 has developed public participation suggestions for projects in which an EID is required. A description of these minimum public participation suggestions is found at [http://www.epa.gov/region4/water/gtas/workbookdocs/public\\_participation.pdf](http://www.epa.gov/region4/water/gtas/workbookdocs/public_participation.pdf). Controversial projects may be required to have a public meeting. Complex projects may be required to hold a public hearing. For further information, please refer to the regulations concerning public participation at 40 CFR 25 located at [http://www.access.gpo.gov/nara/cfr/waisidx\\_07/40cfr25\\_07.html](http://www.access.gpo.gov/nara/cfr/waisidx_07/40cfr25_07.html) 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 located on our website at <http://www.epa.gov/region4/water/gtas/grantstaff.html>.

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 all projects is available from our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html). The EID checklist is provided for your information only. You are not required to fill out the EID checklist for to your project.

To speed up the review process and reduce the amount of paper required, it is suggested that you submit two paper copies 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.

### **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 draft Finding of No Significant Impact (FONSI). The draft FONSI is made available to the public for a 30-day comment period. If the 30-day comment period passes without significant adverse opposition, then the FONSI is considered final and environmental review process is complete. If the FONSI 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.

## PHASE 5 CONSTRUCTION

### A) 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.

### B) 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. Submit two copies of your plans and specifications to EPA for review. 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 [http://www.access.gpo.gov/nara/cfr/waisidx\\_07/40cfr31\\_07.html](http://www.access.gpo.gov/nara/cfr/waisidx_07/40cfr31_07.html) have been met. The review will also determine if the project is consistent with the environmental review, reasonable, does not contain excessive cost items, and conforms to the project cost eligibility in OMB Circular A-87 [http://www.whitehouse.gov/omb/circulars/a087/a87\\_2004.pdf](http://www.whitehouse.gov/omb/circulars/a087/a87_2004.pdf). The following States are reviewing plans and specifications for EPA: Kentucky and North Carolina. For these states, you will need to submit plans and specifications to the state contact. We have provided a contact list for state contacts for SPAPs in our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html).

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 our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html).

The EPA has a set of supplemental conditions that can be used to comply with the procurement requirements of 40 CFR §31.36. EPA supplemental general conditions are provided in our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html). The EPA supplemental conditions package also contains the goals for the Disadvantaged Business Enterprise (DBE) that is 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 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 without prior EPA approval  
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.

### **C) Grantee Advertises and Bids Project**

The regulations at 40 CFR §31.36 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.

### **D) Grantee Compliance with Disadvantaged Business Enterprise (DBE) 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 general conditions package in our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html) also contains the goals for the MBE/WBE or Disadvantaged Business Enterprise (DBE) that is 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 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. For further MBE/WBE guidance, please refer to the

minority/women's business enterprise requirements in our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html).

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.

## **E) 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 or designated state representative 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 is in our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html). 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.

### **F) EPA Provides Construction Overview and Inspection**

An EPA Project Officer, a designated state representative 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 the workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html).

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

### A) Grantee Reports Environmental Results and Submits Closeout Information

Once construction has been completed, you will need to contact your EPA Project Officer (or State contact for AL, KY, MS, or NC 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 is available from our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html).

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. 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. For further information refer to 40 CFR 31.42.

### B) Ownership

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 for infrastructure ownership in our workbook at [http://www.epa.gov/region4/water/gtas/SPAPs\\_workbook.html](http://www.epa.gov/region4/water/gtas/SPAPs_workbook.html) for more information.

**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, 3<sup>rd</sup> 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**