

RAIN-2022-G02

Rescission of Grants Policy Issuance 04-04 Consultant Fees Under EPA Assistance Agreements and Related Revision to Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements.

Notification Date: 1/12/2022

Purpose: This Recipient/Applicant Information Notice (RAIN) informs the EPA financial assistance community that the Agency has rescinded Grants Policy Issuance 04-04, Consultant Fees Under EPA Assistance Agreements (GPI 04-04). EPA has also revised the [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#) to delete the reference to GPI 04-04 and provide guidance on limitations on the allowability of costs for compensation of individual consultants.

Summary: EPA's interpretation of the limit on EPA funding recipients of EPA financial assistance may use to compensate individual consultants established in Public Law 111-8 ("Consultant Cap") has been codified at 2 CFR 1500.10. In addition, up-to-date guidance on complying with the Consultant Cap is available from sources that are more current than GPI-04-04. These sources include the Consultant Cap term and condition in the [EPA General Terms and Conditions](#) incorporated in EPA financial assistance agreements, the [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#), and the [Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance](#). Consequently, EPA has decided to rescind GPI 04-04.

Background: EPA's annual appropriation acts historically included a Consultant Cap limiting the amount of personal compensation for individual consultants that recipients could charge to EPA financial assistance agreements. The Consultant Cap was based on the compensation paid to Federal employees at Level IV of the Executive Schedule. EPA published a notice of the availability of the Agency policy interpreting the Consultant Cap in GPI 04-04 at [69 Fed. Reg. 18380](#) (Wednesday, April 7, 2004). GPI-04-04 interpreted regulatory provisions describing the Consultant Cap in 40 CFR Parts 30 and 31. Subsequently, EPA's Fiscal Year 2009 appropriation act, Public Law 111-8, provided that "[U]nless specifically authorized by law, for fiscal year 2009 and thereafter, none of the funds available . . . for grants may be used to pay for the salaries of individual consultants at more than the daily equivalent of the rate paid for level IV of the Executive Schedule." This Congressional action had the effect of making the Consultant Cap a permanent statutory limitation on the use of EPA financial assistance funding.

When EPA promulgated regulations at 2 CFR Part 1500 implementing the Office of Management and Budget's Uniform Grant Guidance ([79 Fed. Reg. 75871, 76050, December 19, 2014](#)) the coverage on Consultant Cap at then 2 CFR 1500.9 was virtually identical to that in 40 CFR Parts 30 and 31. However, the regulation did not reflect important aspects of the interpretation of the Consultant Cap in GPI-04-04. These requirements included compliance with competitive procurement requirements when contracting with individual consultants and the "selection, direction and control" standards for determining when the Consultant Cap applies to consulting contracts with multi-employee firms. EPA subsequently published an interim final rule that, among other things, clarified the regulatory coverage on the Consultant Cap to better align it with GPI-04-04 ([85 Fed. Reg. 61571, 61572 \(September 30, 2020\)](#)). Additionally, the Interim Final Rule revised the numbering of the sections in 2 CFR Part 1500 to make designate the Consultant Cap provision as 2 CFR 1500.10. The clarification of the regulatory coverage on

the Consultant Cap in 2 CFR 1500.10 when coupled with the availability of more up-to-date guidance on how EPA interprets the requirement made GPI 04-04 obsolete.

Related Resources:

[Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#)

[EPA General Terms and Conditions](#)

[Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance](#)