

AGENCY: ENVIRONMENTAL PROTECTION AGENCY (EPA)

TITLE: Solid Waste Infrastructure for Recycling (SWIFR) Grants for Tribes and Intertribal Consortia

ACTION: Request for Applications (RFA) – Questions and Answers

RFA NUMBER: EPA-I-OLEM-ORCR-23-07

Updated on 03/27/23

SUMMARY: The following are formal Agency responses to questions/comments received regarding the Solid Waste Infrastructure for Recycling (SWIFR) Grants for Tribes and Intertribal Consortia. This list of questions and answers will be updated as questions about the funding opportunity are received.

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Eligible Activities

1. **Question:** My project has both an education component as well as an infrastructure component. Which RFA should I apply to, the Solid Waste Infrastructure for Recycling (SWIFR) Grants for Tribes and Intertribal Consortia or the Consumer Recycling Education and Outreach (REO) Grant Program?

Answer: You will need to make that decision based on the primary purpose of the project you are asking EPA to fund. Carefully review *Section I.D: Program Vision and Goals*, and *Section I.F: Scope of Work (Section I.G in the REO RFA)*, in both RFAs for information on the vision of the programs and the scope of work.

For example, an applicant for a Solid Waste Infrastructure for Recycling (SWIFR) Grants for Tribes and Intertribal Consortia project that seeks to achieve the objective, “Establish, increase, or expand materials management infrastructure...,” may propose a project that has both an infrastructure construction/improvement and educational component.

We indicate in *Section I.F.* of the [SWIFR RFA](#) that “. . . the creation and construction of tangible infrastructure, technology, or other improvements to reduce contamination in the recycled materials stream” is one of the objectives of SWIFR and that projects for “[D]evelopment of and/or upgrades to reuse infrastructure . . .” are eligible for funding. In contrast, while we did not state that infrastructure construction projects are ineligible for funding under the *Consumer Recycling Education and Outreach (REO) Grant Program* the program vision and scope of work for that program are focused on information dissemination activities that promote recycling. Costs for incidental construction that is reasonably necessary to carry out a REO education and outreach project may be allowable but the primary purpose of REO is not infrastructure construction/improvement.

For additional information on general principles for cost allowability for EPA grants, please refer to *Section I.A: General Principles for Cost Allowability* of [EPA’s Interim General Budget Development Guidance for applicants and Recipients of EPA Financial Assistance](#).

2. **Question:** Are projects related to the recycling of household hazardous (HHW) waste permitted? For example, would a project that would establish a HHW collection facility be permitted?

Answer: Yes, household hazardous waste (such as batteries and electronics) is an eligible waste stream for recycling. A HHW collection facility to collect municipal solid waste (MSW) considered as Hazardous Materials is an eligible activity provided you can demonstrate the HHW can be recycled.

3. **Question:** My project serves communities that cross more than one EPA region. May I still apply for these grants?

Answer: Yes. While the EPA anticipates making at least one award per EPA region, it will consider applications from organizations that serve multiple EPA regions.

4. **Question:** Can I use grant funding to pay for projects already underway (i.e., reimbursement)?

Answer: It depends on when your organization incurred the costs for the projects. Costs incurred more than 90 days prior to award require specific approval of an EPA award official as provided at [2 CFR Part 1500.9](#). Under 2 CFR § 200.458 pre-award costs must be incurred “...pursuant to the negotiation and in anticipation of the federal award where such costs are necessary for efficient and timely performance of the scope of work.” EPA interprets this provision to require that eligible pre-award costs be incurred after applicants for competitive funding receive notification of selection. Our anticipated announcement of SWIFR selections is now in September of 2023 and any costs incurred prior to an applicant receiving notification of selection would not be approved by an EPA award official.

If costs were incurred up to 90 days prior to the award (but after EPA has notified the applicant of selection), under [2 CFR Part 1500.9](#), EPA may reimburse successful SWIFR applicants for eligible pre-award costs even if the applicant did not request prior approval to incur pre-award costs provided the costs are eligible and allowable.

For example, costs for contracts (including consultants) are allowable only if the contract was entered into in a manner that complies with the competitive procurement provisions of EPA’s grant regulations (Procurement Standards in 2 CFR Part 200). Construction contracts must comply with Davis Bacon prevailing wage requirements and Build America Buy America domestic preference requirements. Fees paid to individual consultants must comply with 2 CFR 1500.10 to be allowable costs.

Selected applicants must include the pre-award costs in their final budget and workplan submitted to EPA and provide the date the pre-award costs were incurred. For more information, please see EPA’s term and condition on pre-award costs.

Please note that applicants incur pre-award at their own risk and that EPA is not obligated to reimburse applicants for pre-award costs that are not included in the workplan, and budget EPA approves. EPA has no obligation to reimburse unsuccessful applicants for pre-award costs. Selected applicants should discuss pre-award costs with their EPA Project Officer.

5. **Question:** Are projects focusing on biosolids eligible for grant funding?

Answer: It depends. A project that is *only* focused on a publicly owned treatment works (POTW) biosolids recycling would not be eligible. However, a project at a POTW incorporating MSW in addition to biosolids, such as a food waste co-digestion project, would be eligible.

6. **Question:** Is purchasing a tire shredder an allowable activity?

Answer: Purchasing a tire shredder is an allowable activity under the program for tire recycling as long as the shredded tires were not then placed in a landfill (included use as landfill cover), or incineration activities. Please note, activities that focus on the landfilling or incineration pathways of tires are not included in the list of management pathways in *Section I.F: Scope of Work* of the RFA and will not be considered for funding.

7. **Question:** Are chemical or advanced recycling projects eligible for grant funding?

Answer: No. Chemical or advanced recycling projects (including pyrolysis and gasification) are not eligible for grant funding. Materials and waste streams considered under SWIFR include MSW, including plastics, organics, paper, metal, glass, etc., and construction and demolition (C&D) debris. In addition, materials and waste streams considered include the management pathways of source reduction, reuse, sending materials to material recovery facilities, composting, industrial uses (e.g., rendering, anaerobic digestion (AD)), and feeding animals. Please refer to *Section I.F: Scope of Work* for more information on acceptable waste streams.

8. **Question:** Is land acquisition an eligible expense?

Answer: Land acquisition is an eligible cost. Although as provided in 2 CFR 200.311(a) title to the property upon acquisition vests with the recipient, the regulations contain detailed coverage at 2 CFR 200.311(c) on the disposition actions EPA is authorized to direct the recipient to take when the real property is no longer needed for the originally authorized purpose. Additionally, under 2 CFR 200.316 EPA's practice is to require recipients to record a lien to provide notice that the "... real property has been acquired or improved with a federal award and that use and disposition conditions apply to the property."

9. **Question:** Can funding be applied to personnel as well as building cost? For example, will the grant support hiring a person to manage new infrastructure created as a part of the project?

Answer: Personnel is an eligible expense for this grant program. In the application, the tribe must address how the employee would help achieve one or more of the objectives in *Section I.F: Scope of Work*:

- Develop or update plans focused on encouraging environmentally sound post-consumer materials management such as source reduction (e.g., repair clinics, reuse centers), collection, storage, transportation, composting, recycling, and/or markets for recyclables;
- Develop, strengthen, and/or implement comprehensive data collection efforts that demonstrate progress towards the National Recycling Goal and Food Loss and Waste Reduction Goal;
- Establish, increase, or expand materials management infrastructure, such as facilities for reuse, recycling or composting; collection and storage bins for recyclable or organic

- material, purchasing and maintaining equipment or supplies such as scales, crushers, balers, and sorting equipment, trucks, forklifts, and safety equipment)
- Establish or identify end-markets for the use of recycled materials; or
- Demonstrate an increase in the diversion⁶ recycling rate, and/or quality of materials collected.

As stated in the RFA (*Section IV. E.v. Budget and Expenditure of Awarded Grant Funds*) grant funds can be used for reasonable and allocable personnel costs for the grant period, which is up to three years. That can include paying an existing salary or hiring a new employee.

For additional information on the personnel and fringe benefits section of the budget for EPA grants, please refer to Section II: Personnel and Fringe Benefits of EPA's Interim General Budget Development Guidance for applicants and Recipients of EPA Financial Assistance.

10. Question: My project involves construction, should I use the SF-424C form instead of the SF-424A form?

Answer: No. Please use the SF-424A form. Please refer to page 32 of the RFA for information on categorizing construction costs. For additional information on completing SF-424A form, please utilize this resource: <https://www.grants.gov/web/grants/forms/sf424-fid.html?formId=241>


11. Question: Can I include in my grant application costs for operations and maintenance (O&M) for existing equipment, or eligible equipment that I wish to purchase as part of the grant?

Answer: Yes. Reasonable costs for Operations and Maintenance (O&M) for existing equipment, or eligible equipment (including vehicles) that you will purchase as part of the grant is eligible. For instance, operations can include personnel costs for the salaries, wages, and allowable incentive compensation for those individuals who are employees of the recipient organization who will perform work directly for the project.

Examples of maintenance can be in the form of a service contract during the performance period of the grant, or through the purchase of extended coverage that extends past the performance period of the grant.

12. Question: Is paying for travel (gas mileage) associated with collection of recyclables or compost collection at tribal residences and transporting recyclables to a recycling center off-reservation for processing or to a community garden on Tribal Lands an eligible expense?

Answer: Yes. Gas mileage for the collection and the transportation of materials for recycling or composting is an allowable expense. Please include the anticipated amount for mileage reimbursement in the travel category of your budget. Refer to 2 CFR 200.475 and EPA's [Interim General Budget Development Guidance for applicants and Recipients of EPA Financial Assistance for additional guidance.](#)



Travel expenses may include costs such as gas mileage, per diem, estimated number of trips, and the number of travelers involved with the collection and/or transportation of materials for recycling or composting. These expenses will be accounted for under different budget categories depending on who is providing the services:

- If an applicant contracts for these services, the travel costs should be included in contractor's price for procurement and would be captured in the budget in the "contractual" category.
- If the applicant is using a truck from their fleet, it would be an O&M cost which would be captured in the budget in the "other" category.
- If a tribal employee is using their own vehicle, this could be reimbursement of a travel cost, and would be captured in the "travel" category.

13. Question: Are abandoned vehicles or other vehicle-like equipment in the scope of the SWIFR grants? Can SWIFR funding be used to purchase equipment to collect, process, and/or backhaul vehicles that are destined for recycling?

Answer: Yes. Abandoned vehicles are considered in the scope of the SWIFR grants and SWIFR funding may be used to purchase equipment to collect, process, and/or backhaul vehicles such as cars, boats, trucks, snowmobiles, ATVs, etc., and/or to conduct the collection, processing, and/or backhauling of vehicles that are destined for recovery, recycling, reuse, repair, or refurbishment.


As with all activities being funded by EPA grants, receiving a grant does not release an applicant from complying with relevant federal, state, tribal, and local regulations and policies. Examples of materials for which relevant regulations exist and should be considered include, but are not limited to, used oil, tires, batteries, and mercury switches. Applicants are encouraged to consult the practices recommended in these two documents:

- [Developing an Abandoned Vehicle Cleanup Program for Tribal Governments](#)
- [Processing End-of-Life Vehicles: A Guide for Environmental Protection, Safety and Profit in the United States-Mexico Border Area](#)

14. Question: Can SWIFR fund Biodiesel plant infrastructure and equipment for processing food waste?

Answer: Yes, processing fats, oils, and grease food waste would be included in the industrial uses of food waste and included in the scope of the RFA. As stated in *Section I.A: Background*, "Materials and waste streams considered under this announcement include: municipal solid waste (MSW), including plastics, organics, paper, metal, glass, etc., electronic waste, batteries, and construction and demolition (C&D) debris. In addition, materials and waste streams considered include the management pathways of source reduction, reuse, sending materials to material recovery facilities, composting, industrial uses (e.g., rendering, anaerobic digestion (AD)), and feeding animals."

Please refer to EPA's Sustainable Management of Food webpage here for additional information: <https://www.epa.gov/sustainable-management-food/industrial-uses-wasted-food#fog>



Please ensure that your application clearly addresses one or more of the objectives in *Section I.F: Scope of Work* in the RFA on pages 7-8.

15. Question: Are projects solely focused on sending waste to landfills or waste to energy eligible for funding?

Answer: No, activities for this funding opportunity must address at least one of the objectives in *Section I.F: Scope of Work*.

16. Question: Are waste compactors and roll-off containers used for the management of non-recyclable materials destined for a landfill eligible for funding under this funding opportunity?


Answer: No, the purchase of waste compactors and roll-off containers used for the management of **non-recyclable materials destined for a landfill are not eligible activities under this funding opportunity**.

This funding opportunity will provide funds for tribes and intertribal consortia to develop or update plans focused on encouraging environmentally sound post-consumer materials management; establish, increase, or expand materials management infrastructure, utilize funds for equipment and construction related costs as part of their implementation plans, and identify, establish, or improve end-markets for the use of recycled materials. Materials and waste streams considered under this announcement include: municipal solid waste (MSW), including plastics, organics, paper, metal, glass, etc., electronic waste, batteries, and construction and demolition (C&D). In addition, materials and waste streams considered include the management pathways of source reduction, reuse, sending materials to material recovery facilities, composting, industrial uses (e.g., rendering, anaerobic digestion (AD)), and feeding animals. They do not include waste management for materials destined for landfills or energy recovery. Projects eligible for this funding opportunity must meet one or more of the objectives stated in *Section I.F: Scope of Work* (pages 7, 8).

17. Question: Can SWIFR funds be used to deconstruct or demolish a historic barn on tribal property. We will reuse barn materials to restore this barn for continued use. We are also considering creating a “how to renovate a barn” document to improve replicability for others.

Answer: Projects eligible for funding under this Request for Applications must address one or more of the objectives listed in *Section I.F. Scope of Work* (page 8) of the RFA. Activities to reduce, reuse, and recycle building materials including deconstruction (dismantling buildings for reuse and recycling) and construction and demolition debris recycling equipment and projects are examples of eligible activities.

Therefore, if the primary purpose of the proposed project is to reuse and recycle materials from the deconstruction or demolition of the building, these activities would be eligible. A project that is solely focused on demolition (which generally does not preserve materials in a condition suitable for reuse or recycling) does not address the objectives of this RFA and would not be eligible.



Finally, while costs would be allowable for deconstruction and recycling of building materials, these funds may not be used for the purchase of new materials to renovate and make a building new, unless the new building addresses one of the objectives in *Section I.F. – Scope of Work*. For example, planning and construction of facilities for food recovery, reuse, recycling, composting, or anaerobic digestion would be allowable.

18. Question: Can SWIFR funds be used to purchase and install a sump to collect wastewater and other undesirable liquids expunged from bailing recyclable materials?

Answer: The purchase of equipment for purposes of improving post-consumer materials management is an eligible activity under this grant. Please be sure to tie your equipment purchase supports to the objectives in *Section I.F. Scope of Work* of the RFA (Page 7).

Note that applicants must address environmental outputs and outcomes from their projects (*Section I.J. Measuring Environmental Results: Outputs and Outcomes*; page 10) for any project proposed.

19. Question: Can SWIFR funding be used to purchase *used* recycling equipment, such as used balers, shredders, and excavators.

Answer: Yes, used recycling equipment can be considered for funding.

20. Question: Can SWIFR funds be used for maintenance or updating older trash trucks?

Answer: It depends. If the older trash trucks are being updated for continued use as collection and transport vehicles for waste destined for a landfill or waste-to-energy facility, this activity **would not be eligible** for funding.

Updating the older trash trucks to collect and transport **materials destined for recycling**, and thus improving post-consumer materials management **is an eligible activity** under this grant.


Proposed projects must meet one or more of the objectives in *Section I.F. Scope of Work* of the RFA (Page 7).

21. Question: Can SWIFR fund composting programs and equipment?

Answer: Yes. SWIFR can fund composting programs and equipment. Please refer to *Section I.F: Scope of Work* for more information on acceptable waste streams and project objectives.

Surveys

22. Question: How would marketing pieces that drive people to a specific website, for example, intersect with "information collection?" For instance, could we direct people to a website that allows them to sign up for a newsletter?



I want to make sure if we have some sort of a "Join our mailing list" component to that, we are not putting ourselves in a negative position. The hope would be that we can engage our folks using a mailing list and help to provide very economical future communication.

Answer: Eligible projects under this solicitation must address one or more of the objectives found in Section I.F: Scope of Work (pages 7 – 8) of the RFA. Based on the information you provided, collecting information for a mailing list that supports one or more of these objectives would generally not trigger the Paperwork Reduction Act, as long as the sign-up process does not involve the collection of information beyond that which is “necessary to ensure proper transmission” of the information. It cannot, for example, also include questions intended to collect demographic information.

Please refer to this excerpt from [OMB’s 2010 Guidance on Social Media](#):

Electronic subscriptions to agency notifications or publications.

OMB does not consider mailing addresses collected for agency mailing lists to be information subject to the PRA. Similarly, an agency is not collecting information when it collects email addresses for agency updates, alerts, publications, or email subscription services; mobile phone numbers for text notification lists; or addresses for RSS feeds, which allow individuals to customize and subscribe to updates from websites.


If, however, the agency requests a member of the public to provide additional information (e.g., age, sex, race/ethnicity, employment, or citizenship status) beyond what is necessary to ensure proper transmission of responses, the collection of that additional information is covered under the PRA. As with non-electronic mailing lists, the use of email lists to survey subscribers (about, for example, satisfaction with government program design) is an information collection under the PRA.

If an agency authorizes website users to share content, such as “send to a friend” using a web form, this authorization is not covered by the PRA unless the agency collects the “friend’s” email address or username to use it for some purpose other than sharing the content selected by the sender. Agencies should provide notice to users on the web form if they intend to retain email addresses for future use.

23. Question: Can cooperative agreement recipients conduct surveys with EPA grant funds?

Answer: It depends. Cooperative agreement recipients cannot ask 10 or more individuals identical questions using a survey developed or administered with funds available under this [RFA](#) as indicated on p. 16. Reasonable costs for analyzing and publishing the information collected through a survey developed with non-federal funds are allowable to the extent authorized in the EPA approved budget for this agreement.

24. Question: Why may I not use grant funding to collect information from 10 or more individuals?



Answer: The prohibited activities language is referencing the OMB regulations implementing the Paperwork Reduction Act. A survey or other information collection of identical information from 10 or more parties will not be eligible under this funding opportunity because EPA funding will be in the form of a cooperative agreement. OMB's regulations implementing the Paperwork Reduction Act, 5 CFR 1320.3(d), provide that EPA is considered a sponsor of information collections under a cooperative agreement. The process for EPA to obtain OMB approval for information collections is lengthy and resource intensive. This restriction on eligibility applies to both the applicant and any contractors or subaward recipients supported with EPA funding as well. Note that as indicated in the RFA you may use other funds for the development and administration of the survey and EPA funds may be used for analysis and publication of the results.


Procurement and Subawards

25. Question: If we partner with an NGO and the funds they will receive are more than \$10,000, then do we still comply with the competition requirements?

Answer: Generally, no, as long as the transaction with the NGO is not to procure commercial services such as accounting. Funding the NGO to carry out a portion of the substantive work under the EPA grant on a cost reimbursement basis (no profit allowed) would meet the requirements for a subaward under Appendix A of the [EPA Subaward Policy](#). Under our Subaward Policy, recipients can select subrecipients on a non-competitive basis as long as that approach complies with the state/local laws and the subaward policies of the recipient. Note that our response presumes that the "NGO" you refer to is a private nonprofit organization.

26. Question: Our organization has recently been donated land to open a community composting facility. We need to purchase a \$X,000 dump truck and a \$X,000 skid steer (front-end loader). We are 501(c)3 tax exempt. Would we qualify as a subrecipient to receive this equipment from a tribe as a pass-through organization? We would not be "profiting" from the equipment, but it would give us the ability to render services that would generate revenue to pay employees "fair and reasonable" salaries. Is this a subrecipient scenario that the EPA would deem acceptable?"

Answer: Yes. Assuming EPA selected the tribe for SWIFR funding the tribe could choose to provide your organization with a noncompetitive subaward to purchase the dump truck and front-end loader. The requirements for managing equipment specified in 2 CFR 200.313 would "flow down" to your organization. Those regulations specify that title to the equipment would vest in your organization (as the subrecipient) once your organization purchased the equipment with subaward funds. However, the tribe would remain accountable to EPA for proper use of the funds. Note that one requirement of the regulations at 2 CFR 313(c)(3) is that recipients " . . . not use equipment acquired with the federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by federal statute for as long as the Federal Government retains an interest in the equipment." The federal interest in the equipment remains in effect as long as the equipment is being used to carry out the EPA funded project during the funded period. As stated in EPA's National Terms and Conditions, for



most recipients, consistent with 2 CFR 200.313, unless instructed otherwise on the official award document, this award term, or at closeout, the recipient may keep the equipment and continue to use it on the project originally funded through this assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by federal funds.

27. Question: The X Tribal Materials Recycling Facility (MRF) is jointly owned by the Tribe of X and the Tribe of Y. The Tribe of X owns the land, building, and equipment. The MRF is operated by a private contractor. The contractor was selected using the Tribe of X's procurement bidding and awarding process. The revenue produced is shared through a contractual revenue share agreement between all entities. We're looking to submit an application for extending the MRF's tip floor and upgrades to sorting equipment. The tip floor extension would require construction. I believe our application would be eligible but wanted to clarify.

Answer: The project as described above is eligible for funding and there are no competitive procurement concerns because the Tribe of X is not using EPA funds to procure the equipment from the firm operating the MRF facility. Rather, the Tribe of X is purchasing equipment to upgrade its own MRF facility that is operated by a for profit firm under contract to the Tribe. MRF facilities operated by for profit firms may be improved even though the for-profit firm is not eligible to receive SWIFR funding as a grant recipient. An eligible recipient such as the Tribe of X can receive funds to improve the facility (including funding for construction) and if necessary, provide a subaward to the for-profit facility operator to reimburse the firm for otherwise eligible and allowable costs, as described in the RFA and consult the [*Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance*](#) for general definitions. However, the subaward could not include an allowance for profit in excess of actual costs the firm incurred for the project.

28. Question: We are partnering with several tribes to help them develop plans to implement tribal reusable food ware systems. The tribes are eager to champion the work and help secure funding, but they do not necessarily want to be the ultimate owner of the reuse infrastructure. In the SWIFR grants, can they subgrant some of the funding for other parties (a third-party reuse service provider that could be either for profit or not for profit) for the purchase of the assets or does the grant require that the tribal entity be the owner of any purchased assets or infrastructure?

Answer: EPA does not require that the tribal recipient be the owner of any purchased assets or infrastructure. Recipients of SWIFR grants for tribes and intertribal consortia may provide subawards (as pass-through entities) to eligible subrecipients to enable the subrecipient to purchase infrastructure assets (e.g., equipment or real property) necessary to improve tribal recycling or post-consumer materials management programs. The subrecipients would be subject to the Property Standards in 2 CFR Part 200 which would "flow down" to the subawards from the pass-through entities as provided in 2 CFR 200.332(a)(2) and (3). For example, the terms of the EPA award may require that the pass-through entity ensure that the subrecipient record liens on the property to ensure that disposition requirements are complied with if real or personal property acquired with EPA funds is sold. Note also that other federal requirements such as Davis-Bacon prevailing wage requirements and Build America Buy America domestic preference requirements will also apply to the subaward.

29. Question: Can a tribe use this funding toward helping a local county government with their recycling facility upgrades from an old dual stream recycling facility to a new single stream recycling facility?

Answer: Yes. Assuming EPA selected the tribe for SWIFR funding, the tribe could choose to provide the local county government with a noncompetitive subaward to purchase support such upgrades. The requirements for managing any equipment specified in 2 CFR 200.313 would “flow down” to the local county government. Those regulations specify that title to the equipment would vest in the local county government (as the subrecipient) once the local county government purchased the equipment with subaward funds. However, the tribe would remain accountable to EPA for proper use of the funds. Note that one requirement of the regulations at 2 CFR 313(c)(3) is that recipients “ . . . not use equipment acquired with the federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by federal statute for as long as the Federal Government retains an interest in the equipment.” The federal interest in the equipment remains in effect as long as the equipment is being used to carry out the EPA funded project during the funded period. As stated in EPA’s National Terms and Conditions, for most recipients, consistent with 2 CFR 200.313, unless instructed otherwise on the official award document, this award term, or at closeout, the recipient may keep the equipment and continue to use it on the project originally funded through this assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by federal funds.

For additional information on the scope of the RFA, please refer to *Section I.F: Scope of Work*.

Build America, Buy America (BABA)

30. Question: Where can I find more information on Build America, Buy America (BABA) for EPA programs?

Answer: You can find additional Frequently Asked Questions about BABA for EPA programs at the following link. <https://www.epa.gov/cwsrf/build-america-buy-america-baba>

31. Question: We are looking at proposing to use SWIFR funds to build a new recycling facility to house balers and baled materials while we await shipping them. Is there anything specific that we need to be asking our contractors for to ensure we are meeting the BABA requirements when asking them to give us a proposal for the construction costs? I would assume BABA requirements would alter the cost of construction depending on material availability and thus would need to be addressed in the initial cost proposals now.

Answer: Grantees should ask for a certification or other assertion that the supplied product is “Produced in the United States” in accordance with the definition of that term in section 70912(6) of the Infrastructure Investment and Jobs Act. It will be the manufacturers responsibility to determine whether the product meets that definition. Grantees will be able to

rely upon that certification. EPA has provided FAQs that reflect this response here:
<https://www.epa.gov/cwsrf/build-america-buy-america-baba#olemfaq>.

As stated in Section VI.F: Build America, Buy America, "Applicants should be aware that if their proposals include using federal funds for a project that includes the purchase of goods, products, and materials on any form of construction, alteration, maintenance, or repair of infrastructure in the United States for identified EPA financial assistance funding programs, they must comply with the following Term and Condition if they are selected for award. Please consider this information when preparing budget information."

In addition, please ensure that you refer to Threshold Criteria 3 in *Section III.C: Threshold Eligibility Criteria* for naming contractors and subrecipients.

32. Question: Will the EPA provide product specific waivers prior to the notification of selection for award consideration?

Answer: No. The EPA will address further BABA compliance with selected applicants as part of the negotiation of the selectees' final workplan and budget. Applicants should be aware that a waiver is not guaranteed and should make appropriate considerations when preparing budget information.

33. Question: My tribe has a contract with X manufacturer for a specific kind of recycling equipment. We entered into this contract by fair and open competition requirements in 2 CFR Part 200 and 2 CFR Part 1500. However, X manufacturer's equipment is not made in America. Could I still apply for the grant under this situation?

Answer: Yes, because the city entered into this contract by fair and open competition requirements in 2 CFR Part 200 and 2 CFR Part 1500 they may name the contractor as part of your application. Although a waiver is not guaranteed, if selected for an award EPA will address BABA compliance, which may include your tribe applying for a waiver pursuant to Section 70914(c) of the BABA Act, where EPA finds that:

- Applying the domestic content procurement preference would be inconsistent with the public interest (a "public interest waiver") such as causing an unreasonable delay in carrying out the project;
- Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a "nonavailability waiver"); or
- Inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an "unreasonable cost waiver").

National Environmental Policy Act (NEPA)

34. Question: What kind of construction activities would trigger NEPA?

Answer: The SWIFR grants are subject to compliance with NEPA. Before the EPA can award the grant, the EPA will need to complete an environmental review and determine if the proposed action is eligible for coverage under a categorical exclusion or requires the preparation of an environmental assessment. The level of NEPA review required for a proposed action will be vary depending on the potential for significant environmental effects. For the SWIFR grants, it is anticipated that construction activities may require an environmental assessment to be prepared.

As defined in [EPA's Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance](#), the term "Construction" means the erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply.

35. Question: What happens if EPA has not yet done the NEPA review for my project? Does that mean my grant will be delayed?

Answer: Yes. The EPA will need to complete the environmental review under NEPA before it can award the grant. The EPA will review the proposed action to determine if it is eligible for coverage under a categorical exclusion or if it requires the preparation of an environmental assessment. The timing for completing the environmental review will vary under each proposed action, such as whether consultation may be required under the National Historic Preservation Act or Endangered Species Act, etc.


Davis-Bacon Act

36. Question: Do Davis-Bacon Related Act prevailing wage requirements apply to SWIFR cooperative agreements?

Answer: Yes. As provided in 33 U.S.C. 4282(e) EPA must ensure that ". . . all laborers and mechanics employed on projects funded directly, or assisted in whole or in part, by a [SWIFR grant] be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with [the Davis-Bacon Act]". The Davis-Bacon Act applies to contractors and subcontractors performing work on federally funded or assisted construction contracts in excess of \$2,000.

37. Question: How can we determine if Davis-Bacon prevailing wage requirements apply to a construction project that is partially funded with SWIFR grant funds?

Answer: As provided in 33 U.S.C. 4282(e) EPA must ensure that ". . . all laborers and mechanics employed on projects funded directly, **or assisted in whole or in part**, by a [SWIFR grant] be paid wages at rates not less than those prevailing on projects of a character similar in



the locality as determined by the Secretary of Labor in accordance with [the Davis Bacon Act]”. Emphasis added. EPA will follow the Department of Labor’s “purpose, time and place” test for determining whether Davis Bacon compliance is required for construction projects that are funded “in part” by a SWIFR grant. Below is an excerpt from DOL guidance for the American Recovery and Reinvestment Act of 2009 (ARRA) which contained prevailing wage language virtually identical to 33 U.S.C. 4282(e)

. . .the Department’s longstanding view [is] that a project consists of all construction necessary to complete the building or work regardless of the number of contracts involved so long as all contracts awarded are closely related in purpose, time and place. The use of the phrase “projects funded directly by or assisted in whole or in part” in the ARRA labor standard provision precludes the intentional splitting of ARRA projects into separate and smaller contracts to avoid Davis-Bacon coverage on some portion of a larger project, particularly where the activities are integrally and proximately related to the whole. However, that does not suggest that Davis-Bacon coverage of an ARRA project lasts in perpetuity. There are many situations in which major construction activities are clearly undertaken in segregable phases that are distinct in purpose, time, or place. While the Federal agency must examine every situation independently, the general guidelines that define “project” for Davis-Bacon coverage purposes as contracts that are related in purpose, time, and place should govern in most instances.

38. Question: Does this mean that if the Davis-Bacon Act applies to my construction project, and I’m using the SWIFR grants for part of that project, that the prevailing wage requirements would now apply to **the entire project**?

Answer: That depends on the outcome of the Department of Labor’s “purpose, time and place” test as mentioned in Question 24 (above). It could mean that the prevailing wage requirements do apply to the entire project. However, as noted above, the federal agency [EPA] must examine every situation independently.

General

39. Question: Does my project need to report on all or just some of the outputs and outcomes listed in *Section I.J: Measuring and Reporting Environmental Results: Outputs and Outcomes*?

Answer: Yes, applicants must report on **all** the outputs and outcomes listed in that section of the RFAs **that pertain to the project being proposed**.

For the *Solid Waste Infrastructure for Recycling (SWIFR) Grants for Tribes and Intertribal Consortia*, if the project that is being proposed includes the activities in the left-hand side of the table on page 10 of the RFA under “Activity Funded,” then the corresponding “Output/Outcomes” are required reporting.

40. Question: What should I consider as the maximum period of performance of these grants?

Answer: As stated in *Section II.F: What is the project period for awards resulting from this solicitation?* in the RFA, the estimated start date for projects resulting from this solicitation is **December 1, 2023**. All project activities must be completed within the negotiated project performance period of three years. Actual start and end dates may be negotiated after selection. Please refer to the previous question on pre-award costs as well.

41. Question: How will grant funds be disbursed?

Answer: Grant funds will be obligated by EPA once awards are made. Recipients must draw funds from the Automated Standard Application for Payments (ASAP) system for the minimum amounts needed for actual and immediate cash requirements to pay employees, contractors, subrecipients or to satisfy other obligations for allowable costs under this assistance agreement. The timing and amounts of the drawdowns must be as close as administratively feasible to actual disbursements of EPA funds but recipient must disburse substantially all of the drawn down funds within 5 business days of receiving payment from EPA. For additional information, please refer to EPA's General Terms and Conditions:

https://www.epa.gov/system/files/documents/2022-09/fy_2022_epa_general_terms_and_conditions_effective_october_1_2022_or_later.pdf.

42. Question: Will these RFAs be offered in the future?


Answer: The Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL), provides funding for grants authorized under Section 302(a) “Post-Consumer Materials Management Infrastructure Grant Program” of the Save Our Seas 2.0 Act (Public Law 116–224) as codified at 33 U.S.C. 4282(a). The SWIFR grant program, which includes the SWIFR grants for Tribes and Intertribal Consortia resulted from these laws.

The BIL funds for the entire SWIFR grant program will be available to EPA at \$55,000,000 per year from Fiscal Year 2022 to Fiscal Year 2026. EPA plans on future rounds of funding, however, the exact nature of those specific Notice of Funding Opportunities and timing is still in development.

43. Question: Where can I learn more about SAM.gov registration, UEI numbers, and/or Grants.gov registration?

Answer: Please review *Section IV.B: Submission Information* of the RFAs. Also, <https://www.grants.gov/support.html> or <https://sam.gov/content/about/contact>. You will be able to live chat or call an expert who will be able to help you with your issue.

44. Question: Can the grant money be used to cover a salary for up to three years of the project period?



Answer: Yes, as stated in the RFA (*Section IV. E.v. Budget and Expenditure of Awarded Grant Funds*) grant funds can be used for reasonable and allocable personnel costs for the grant period, which is up to three years. That can include paying an existing salary or hiring a new employee.

For additional information on the personnel and fringe benefits section of the budget for EPA grants, please refer to *Section II: Personnel and Fringe Benefits* of [EPA's Interim General Budget Development Guidance for applicants and Recipients of EPA Financial Assistance](#).

45. Question: Can projects be less than \$100,000 or more than \$1,500,000? Is there any flexibility there?

Answer: No, the absolute minimum is \$100,000 and absolute maximum is \$1.5M. Grant applications with award requests below \$100,000 or above \$1,500,000 will not meet threshold eligibility criterion 4 in *Section III.C: Threshold Eligibility Criteria*, and thus will not be considered.

46. Question: May grantees use these funding opportunities as matching funds for other federal grant funding opportunities?

Answer: The EPA puts no prohibitions on using these funds to match other funding opportunities other than the general requirement in 2 CFR 200.306(b)(5) for authorization in a federal statute to use funds from one federal grant to meet cost share requirements for another federal grant. The SWIFR statute does not provide that authorization. Grantees should check with the federal agency requiring matching funds to determine whether this funding opportunity can be used for a cost share under that agency's funding opportunity.

47. Question: Is the EPA making only one award per region?

Answer: No, the EPA anticipates making at least one award per region, assuming an acceptable application is received from each region. Multiple awards per region may be made.

48. Question: Using grant funds, may grantees purchase small incentives for participants in project activities, such as gift cards, meal vouchers, a recycling bin for contest winners, etc.?

Answer: Yes, reasonable costs for gift cards and similar incentives for program participation are allowable (with prior approval of the Award Official) under the EPA Guidance on Participant Support Costs (<https://www.epa.gov/sites/default/files/2020-11/documents/epa-guidance-on-participant-support-costs.pdf>). Grantees should include information on the proposed incentives in the budget justification for the "Other" budget category to obtain prior approval by the EPA Award Official at the time of grant award.

49. Question: Can I use GAP grant funding to prepare my application for this RFA?

Answer: It depends on the nature of the project. Please refer to *Section 6. Proposal Costs*, of the [Office of Grants and Debarment \(OGD\) Guidance on Selected Items of Cost for Recipients](#) for additional information as supplemented at XXXX.

As provided in 2 CFR 200.460, proposal preparation costs are normally covered by recipients' indirect cost rates. However, directly charging proposal preparation costs is allowable for Tribes applying for GAP grants subject to limitations and requirements in the EPA Guidance on Selected Items of Cost and approval by an EPA Grants Official (i.e., a Regional Grants Management Officer or Award Official). To qualify for direct charging of proposal costs, the recipient must provide EPA with assurance that its indirect cost rate calculations do not include the same costs that will be charged directly. Proposal preparation costs must not exceed 5% of the total budget.


- 50. Question:** Our tribe would like to move a Solid Waste position and associated work that is currently funded under the Indian Environmental General Assistance Program (GAP) program, and instead fund it through a SWIFR grant, if awarded. We would use this SWIFR funded position to complete recycling and sorting to increase and improve our tribe's management infrastructure. We would then re-allocate the GAP funds to work on another one of our long-term environment concerns.

Answer: What you propose is permissible provided your tribe or intertribal consortia requests, and obtains approval from EPA's Grants Management Officer, for an amendment to the GAP agreement. The amendment would revise the scope of work and budget for the GAP agreement to reflect that the Solid Waste position and associated work will be funded under the SWIFR grant. Our main concern would be to ensure that your tribe or intertribal consortia does not charge two EPA assistance agreement for the same costs and that there is no duplication of effort on the GAP and SWIFR agreements. Page 14 of the RFA in *Section III. C. Threshold Eligibility Criteria*, the sixth criteria states "Funds awarded under this RFA may not be used to carry out the same activities that are already funded or in the process of being funded under other EPA financial assistance programs such as the Indian General Assistance Program, Tribal Hazardous Waste Management Grant Program, and the Tribal Response Program Grants or financial assistance applicants receive from other Federal agencies. Applicants must provide a statement that their proposed project(s) do not duplicate other Federally funded grants received. Duplicate activities will not be considered for funding under this opportunity."

By removing the work from GAP altogether the project(s) would not duplicate other Federally funded grants received.

- 51. Question:** Our current indirect cost rate is expired; however, we have submitted a newly requested rate to BIA and are awaiting approval. Can we submit a budget with our expired negotiated indirect cost rate?

Answer: No. You should submit the rate you requested BIA to approve in your budget. However, if your application is successful and BIA has not approved your requested rate by the time EPA plans to award the funding you will not be able to drawdown indirect costs until the new rate is approved or you obtain a regulatory exception. Note that if BIA approves a lower rate than you requested you will have to adjust the budget to reflect the lower indirect cost rate. Please refer to the "Use of Expired Rate" guidance in the document available at this link.



<https://www.epa.gov/sites/default/files/2021-04/documents/indirect-cost-policy-guidance-for-recipients-of-epa-assistance-agreements.pdf>. You may submit your application with the proposed rate. Providing supporting documentation will support the rate included in your budget. We also recommend that you request that BIA approve your proposed indirect cost rate on an expedited basis.

52. Question: Where in the budget and budget description would I place the costs for registration to attend a training or a conference?

Answer: We assume that this question relates to attendance at training or a conference by employees of a recipient of EPA funds. EPA’s Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance provides information on training costs.

On page 27; #3 of this guide states that “Costs for training courses for recipient employees (e.g., instructional services) provided by third parties would be classified as contractual although any travel costs for the employees would be categorized as travel.” Costs for training recipient employees in skills necessary to carry out the EPA funded projects, including training conferences, are allowable as provided in 2 CFR 200.473.

The cost of registration fees for attending a conference that does not involve training, unless attending that conference was necessary and reasonable for performance of the EPA funded project, would not be allowable. EPA would need more information on the purpose of the conference to advise further.


53. Question: I don’t see a line for construction or wage increases in the example Budget Table and Description found in the Request for Applications, Appendix C?

Answer: The example budget shown in Appendix C of the Request for Applications does not contain a line item for “construction” and only lists one hourly rate over three years, which may not be adequate to reflect wage increases over a three-year project period.

The Budget Table and Description in Appendix C of the RFA (page 45) is provided as examples you may follow. Other formats are also acceptable if other eligible categories need adding, or total costs per category and specific descriptions of costs are included in the project proposal. Applicants who do not use the optional format in Appendix C will not be penalized in the evaluation process.

For example, to accommodate increases in hourly rate, you may wish to add another line under “Project Management” for Year Two, or alternatively, add an additional column for Year Two for salary increases.

More information about the detailed budget is found in *Section IV E.: Content of Application Submission*. Information on what may be included in the “Construction” budget category is found on Pages 25 – 27 of the RFA.



For additional information on general principles for cost allowability for EPA grants, please refer to Section I.A: General Principles for Cost Allowability of [EPA's Interim General Budget Development Guidance](#) for applicants and Recipients of EPA Financial Assistance.

54. Question: I don't see an Evaluation Criterion for environmental justice. May I add environmental justice information in my Project Narrative?

Answer: Environmental Justice is not a distinct Evaluation Criteria for this funding opportunity. However, applicants are welcome to talk about Environmental Justice in their application. For example, an applicant may wish to provide such information in their Evaluation Criteria descriptions if this information is relevant and supports one or more of the requirements on the Evaluation Criterion.

55. Question: We are tribal consortia and do not have an indirect rate. We typically add an administrative cost of 10% to our proposals to cover the grant's accountant and administration. I would like to know where to put this in the budget and if this is an allowable cost.

Answer: Because you do not have an indirect rate you may use the 10% of "de-minimis" indirect cost rate authorized by 2 CFR 200.414(f). Please refer to EPA's Indirect Cost Guidance for Recipients of EPA Assistance Agreements located here for additional information: <https://www.epa.gov/grants/rain-2018-g02-r>


Indirect costs are those that are incurred for a common or joint purpose benefiting more than one cost objective. They are allowable, allocable, and reasonable costs that benefit EPA assistance agreements as well as other activities your organization carries out that may or may not be Federally funded. Indirect costs are costs incurred to facilitate the general operations of your organization. They include, but are not limited to:

- space costs
- utilities
- accounting services
- human resource services

For example, overhead costs, such as a human resource department, that serves your entire organization (including activities not associated with your grant) should be categorized as an indirect cost because the cost is split among multiple projects. Indirect costs may also be referred to as "Facilities and Administrative" costs.

56. Question: Are progress reports required?

Answer: Yes. In the Request for Applications, *Section IV. H.: Reporting Requirements* (page 36), Quarterly progress reports and a detailed final report will be required. The quarterly progress reports will be submitted to the EPA Project Officer within thirty days after each reporting period. These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period. A discussion of expenditures along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant



discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

57. Question: Can you explain the difference between threshold criteria and evaluation criteria?

Answer: Threshold eligibility criteria (RFA *Section III.C: Threshold Eligibility Criteria*, page 13) are the minimum criteria that applicants must satisfy for their application to be considered. For this funding opportunity there are 9 Threshold Criteria. Evaluation criteria (RFA *Section V.A: Evaluation Criteria*, page 30) are the criteria used to rate and score the application. For this funding opportunity there are seven Evaluation Criteria.

58. Question: Can you say a little more about Threshold Criterion 6: Duplicate Activities?

Answer: Funds awarded under this RFA may not be used to carry out the same activities that are already funded or in the process of being funded under other EPA financial assistance programs such as the Indian General Assistance Program, Tribal Hazardous Waste Management Grant Program, and the Tribal Response Program Grants or financial assistance applicants receive from other Federal agencies. For example, if a tribe or intertribal consortium already has a grant covering compost equipment, they cannot also receive a grant from SWIFR for the same composting equipment. Duplicate activities will not be considered for funding under this opportunity. Our main concern would be to ensure that your tribe or intertribal consortia does not charge two EPA assistance agreement for the same costs and that there is no duplication of effort using federal funds.