

Additional Terms and Conditions of U.S. Environmental Protection Agency Awards – Tracking Codes 2007 Forward

January 29, 2008

These conditions apply to all Nonpoint Source (NPS) Grants Tracking Codes 2007 forward. The U.S. Environmental Protection Agency (U.S. EPA) conditions are in normal font; **comments from the U.S. EPA and its interpretation are in bold, based on a conversation with the U.S. EPA and the Michigan Department of Environmental Quality federal budget liaison in December 2006.** All conditions are included in the boilerplate for contracts with Tracking Codes 2007 forward.

CONSULTANT CAP

Payment to consultants: The U.S. EPA participation in the salary rate (excluding overhead) paid to individual consultants by recipients, or by a recipient's contractors or subcontractors, shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2010, the limit is \$598.08 per day and \$74.76 per hour. This rate does not include transportation and subsistence costs for travel performed. (The recipient will pay these in accordance with their normal travel reimbursement practices.)

Sub-recipients with firms for services that are awarded using the procurement requirements in 40 Code of Federal Regulations (CFR) 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provided the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

The U.S. EPA explained that “designated individuals with specialized skills” is being broadly interpreted to mean all consultants. This rate limitation pertains to the hourly rate of a consultant including fringe but exclusive of travel and overhead. From January 1, 2007 on, we need to be sure that our consultants are not charging above this rate. Program managers should review all contracts with start dates after January 1, 2007, and work with staff and grantees to modify any budgets with notes to reflect the actual hourly rate of consultants. For any unsigned contracts, staff will need to break out the costs of the consultants by noting their hourly salary at the bottom of the budget form. Lump sum line items (e.g., 1 unit at \$150,000) will no longer be acceptable.

Note that the second clause relieves grantees of this limitation if they adhere to procurement requirements.

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attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion of federal depositories; (5) Use by state, tribal, and local governments that carry out delegated federal environmental programs as “co-regulators” or act as official partners with the U.S. EPA to carry out a national environmental program within their jurisdiction; and (6) Limited use by other grantees to carry out federal grants provided the use is consistent with the terms of the U.S. EPA’s authorization to the grantee to use the copyrighted materials.

While attempts were made to simplify our boilerplate by providing draft verbiage to our Use of Material clause to address this issue, the U.S. EPA thought it better to add this entire clause to the federal portion of the boilerplate.

DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA RECIPIENTS

The recipient organization of this U.S. EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200-36.230. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the CFR Title 40 at http://www.access.gpo.gov/nara/cfrwaisidx_06/40cfr36_06.html.

The U.S. EPA agreed that our including this in the boilerplate is adequate, since the intent is that grantees make a good faith effort to have a drug-free policy in their work place.

MANAGEMENT FEES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term “management fees or similar charges” refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs that are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

The U.S. EPA agreed that due diligence on this item is to look for management fees as a line item on a budget and remove such before finalizing a contract.