

EPA received these questions regarding the Request for Proposals (RFP) Funding Opportunity No. EPA-HQ-OPPT-2011-01 as allowed in Section IV.F of the RFP. Responses to the questions received were posted on May 31, 2011

Funding Opportunity No. EPA-HQ-OPPT-2011-01

Title: Request for Proposals to Develop Standards for Environmentally Preferable Electronic Products

ANSI= American National Standards Institute

IEEE= Institute of Electrical and Electronics Engineers

IP = Intellectual Property

PINS= Project Initiation Notification System

SDO= Standards Development Organization

UL = Underwriters Laboratories

ULE= Underwriters Laboratories Environment

Question 1a: Given that IEEE and ULE have both filed ANSI PINS for a server standard, does that mean that they are the only possible SDOs that a proposer can use?

Answer 1a: No. While EPA cannot speak with authority about the ANSI process, it is our understanding that ANSI does not assign jurisdiction for standards development to one standards developer over another, i.e., ANSI does not assign exclusive scopes of standards development activity within the American National Standards (ANS) process.

Question 1b: If a proposer has ties to one of those SDOs might it bias EPA's selection toward (or against) those proposers?

Answer 1b: No. EPA has established a "Policy for Competition of Assistance Agreements": http://www.epa.gov/ogd/competition/5700_5A1.pdf This policy outlines the process for the evaluation of proposals. The evaluation criteria listed in Section V (Paged 21-23) are the sole basis for review and scoring of the proposals received under this RFP.

As noted above: EPA understands that ANSI does not assign exclusive scopes of standards development activity within the American National Standards (ANS) process. Another SDO might file a PINS with ANSI at any time.

Question 2: The RFP states that the standards be developed through an ANSI accredited SDO. Is EPA open to the use of other open and balanced standards development processes?

Answer 2: No – at this time we are seeking standards developed through an ANSI-accredited process.

Question 3: Our review of the RFP has identified a potential Organizational Conflict of Interest (OCI) with either the University of Tennessee or possibly with Green Electronics Council/Zero Waste Alliance (GEC/ZWA) because both entities either developed the initial roadmap (GEC/ZWA)

or the current roadmap (UT). Since there is no OCI statement in this RFP please explain EPA's position on this potential OCI.

Answer 3: EPA does not agree that either the University of Tennessee or GEC/ZWA have a potential organizational conflict of interest that warrant prohibiting them from submitting a proposal under this RFP because these organizations competed successfully for EPA funding for other components of the Agency's electronic products standards development program. Under section 10 a. of EPA's "Policy for Competition of Assistance Agreements", the Agency does consider whether "because of other activities or relationships the applicant could have an unfair competitive advantage." However, the Agency does not exclude organizations from competing simply because they received an award for the initial phase of a project or for similar work under another grant. All eligible applicants will be evaluated solely by the criteria described in Section V of this RFP. The selection panel for this announcement will not include EPA employees who have close working relationships with either UT or GEC/ZWA if either organization submits a proposal under this RFP.

Question 4: On page 1 of the RFP, the RFP indicates that phase 1 of the grant is to result in the development of an ANSI standard for environmentally preferable servers. Underwriters Laboratories filed the original PINS for an American National Standard for environmentally preferable servers. IEEE filed a later PINS for servers with ANSI, but UL challenged the IEEE PINS on the basis of UL's earlier PINS filing. UL's objections to the IEEE PINS have not yet been officially resolved.

Question 4a: Recognizing the PINS process in order to be recognized as an American National Standard, is the standards development function under this RFP limited to UL as the standards development organization, noting UL's unique position as having established a project with ANSI?

Answer 4a: No. While EPA cannot speak with authority about the ANSI process, it is our understanding that ANSI does not assign jurisdiction for standards development to one standards developer over another, i.e., ANSI does not assign exclusive scopes of standards development activity within the American National Standards (ANS) process

Question 4b: Is the standards development function under this RFP limited to UL and IEEE (if UL's objection to the IEEE PINS is resolved)?

Answer 4b: No. See the response to question 4a above.

Question 4c: If this RFP intends that the RFP be open to other standards development organizations, can you please share the details regarding the agreement between EPA and ANSI in which ANSI will be deviating from their PINS process?

Answer 4c: EPA has no agreement with ANSI regarding the PINS process. It is our understanding that ANSI does not screen or choose which PINS are published or otherwise make any preliminary assessment of the merit of a PINS or whether it is similar to others in the queue or published. Please refer to clause 2.5 of the ANSI Essential Requirements to understand the process that ensues once a PINS is published in ANSI's Standards Action (www.ansi.org/standardsaction).

Question 5: On page 3 of the RFP, under Section I.B, Program History, the RFP states: "All product registration and verification functions for existing and new standards in the IEEE 1680

family of standards will be conducted as outlined in the IEEE 1680 Standard and will not be the responsibility of the recipient of this grant.”

Question 5a: Does this RFP require that the new standards be developed as part of the IEEE 1680 family of standards?

Answer 5a: No. EPA requires that the standards developed under this grant should be consistent with the IEEE 1680 framework because the standards developed under this grant will be used in conjunction with the IEEE 1680 framework. Being consistent with the IEEE 1680 framework means at a minimum covering the basic eight environmental performance categories all IEEE 1680 standards cover, including verification requirements in the standard for added clarity for manufacturers, and maximizing efficiencies by building off of previous criteria development work done to date.

Question 5b: If yes to Question 8, does this mean that IEEE is the only standards development organization that can be engaged in the standards delivery portion of this RFP?

Answer 5b: Not applicable.

Question 5c: If “no” to Question 8, please explain the purpose of the discussion of the IEEE 1680 family of standard if this RFP is open to the participation of other standards development organizations.

Answer 5c: As stated in the title of Section I.B, the purpose of this discussion is to provide background information to all interested parties concerning the progress made prior to this RFP publication.

Question 6: On page 3 and 4 of the RFP, under Section I.B, Program History the RFP discusses EPEAT.

Question 6a: Does this RFP require that the requirements of the resulting consensus standards also be accepted by EPEAT, a private organization, for their registry?

Answer 6a: No- as noted above the RFP states: “All product registration and verification functions for existing and new standards in the IEEE 1680 family of standards will be conducted as outlined in the IEEE 1680 Standard and **will not be the responsibility of the recipient of this grant.**” The RFP does not require acceptance by EPEAT.

Question 6b: Can you expand on what role the University of Tennessee will play in the winning proposal? What if any work will UT be responsible for under the RFP? Does UT own any of the IP related to their past work?

Answer 6b: EPA has not received any proposals submitted under this RFP. There is no preconceived role for the University of Tennessee “in the winning proposal” unless UT wins the competition. The purpose of the RFP is to solicit proposals from all interested parties. All IP generated under any EPA Cooperative Agreements, such as the one that the University of Tennessee worked under, are subject to EPA’s license to use the work for federal purposes as specified in 40 CFR 30.36. If EPA determines that any financial assistance agreement recipient can make effective use of IP developed with EPA funds by another organization, the Agency will invoke its right under that regulation to authorize the assistance agreement recipient to use the IP. The last paragraph in Section I.B. states:

“EPA will make data and other material UT produced under the cooperative agreement available to the successful applicant for funding under this announcement.”

Question 7: On page 5 of the RFP, the RFP instructs that “Information on the IEEE standard development process, the IEEE standards, and the IEEE 1680 workgroup policies and procedures can be found at www.epeatdevelopment.net.”

Question 7a: If it's EPA's intent to make this RFP open to other standards developers and to reflect the consensus position of the unique set of stakeholders associated with the products for which standards are to be developed, how is the information re: the IEEE standards development process relevant to this RFP?

Answer 7a: Yes, this RFP is open to all standards developers. This information in Section I.B is provided to all interested parties as program history regarding prior efforts to develop voluntary consensus standards for environmentally preferable electronic products.

Question 7b: Similarly, how is information regarding the IEEE standards relevant?

Answer 7b: See Answer 7a above.

Question 7c: Similarly, how are IEEE workgroup policies and procedures relevant to another standards development organization, which will have their own policies and procedures.

Answer 7c: See Answer 7a above.

Question 8: On Page 6 of the RFP, the RFP states: “Applicants are encouraged to review the IEEE 1680 Umbrella Standard that provides basic content requirements for any standard in the IEEE 1680 standards, and the EPEAT Standards Selection Criteria for inclusion in the EPEAT Product Registry.”

Question 8a: Are the new standards required to comply with IEEE content requirements, despite the new stakeholders that will be engaged in these new standards development initiatives, operating under an open ANSI process requiring approval by vote of the standard committee?

Answer 8a: No, as stated in the RFP, EPA encourages applicants to review the IEEE 1680 Umbrella Standard that provides basic content requirements for any standard in the IEEE 1680 family of standards. There is a significant distinction between encouraging applicants to review standards and requiring them to follow the standards.

Question 8b: Are the new standards required to comply with the EPEAT criteria, even if the new set of stakeholders associated with the new standards prefer competition between certification organizations (i.e., registries)?

Answer 8b: No, as stated in the RFP EPA encourages applicants to review the EPEAT Standards Selection Criteria for inclusion in the EPEAT Product Registry. There is a significant distinction between encouraging applicants to review standards and requiring them to follow the standards.

Question 9: On Page 7 of the RFP, the RFP states

Question 9a: "... applicants must demonstrate how the criteria or elements resulting from this work will build upon the successful development of sustainability standards for electronics under IEEE 1680 and the EPEAT registry."

Answer 9a: The full quote should read: "IEEE may or may not be the relevant SDO for the resulting criteria developed under this assistance agreement; however, applicants must demonstrate how the criteria or elements resulting from this work will build upon the successful development of sustainability standards for electronics under IEEE 1680 and the EPEAT registry."

Question 9b: Noting that the content of the two new standards will be driven by the consensus process associated with the unique sets of stakeholders associated with the new product types, what are the specific elements of the IEEE standards and the EPEAT registry that EPA is mandating the new stakeholders accept as a result of this RFP?

Answer 9b: EPA is not mandating that specific elements of existing standards must be accepted in the proposals that are submitted. EPA is asking for proposals to explain how the proposed work will relate to and harmonize with the current sustainability standards in order to ensure that work done by stakeholders to date is maximized and respondents can reduce activities which may involve "reinventing the wheel" unnecessarily. EPA believes this is in the best interest of taxpayers who financed prior projects for EPA to fund complementary rather than duplicative projects.

Question 9c: Where EPA is mandating a specific approach or the use of specific concepts on content, has EPA obtained the necessary copyright permissions from IEEE, EPEAT, or other parties as necessary so that these permissions can be shared with the grant recipient?

Answer 9c: EPA is not mandating a specific approach or use of specific concepts. Proposals should address how the proposed work will relate to the current sustainability standards. If EPA does not have a license in copyrighted materials under 40 CFR 30.36, EPA will work with recipients to obtain necessary copyright permissions as needed.

Question 10: As an Independent Contractor can I partner with an SDO to submit a proposal?

Answer 10: Only if the SDO selected you as its partner following a competition or you hold a patent or copyright, which would justify a sole source contract.

As noted in Section IV.H.3 (page 20): Applicants must compete contracts for services and products, including consultant contracts, and conduct cost and price analyses, to the extent required by the procurement provisions of the regulations at 40 CFR Parts 30 or 31, as appropriate. Applicants are not required to identify subawardees/subgrantees and/or contractors (including consultants) in their proposal. However, if they do, the fact that an applicant selected for award has named a specific subawardee/subgrantee, contractor, or consultant in the proposal EPA selects for funding does not relieve the applicant of its obligations to comply with subaward/subgrant and/or competitive procurement requirements as appropriate. Please note that applicants may not award sole source contracts to consulting, engineering or other firms assisting applicants with the proposal solely based on the firm's role in preparing the proposal. See Section IV.H.3 of the solicitation for more guidance on this.

As noted in Section IV.H.4 (page 21): If an applicant identifies a contractor or subgrantee in its proposal, it must demonstrate in its application that the contractor(s) was selected in compliance with the competitive Procurement Standards in 40 CFR Part 30 or 40 CFR 31.36 as appropriate. For example, an applicant must demonstrate that it selected the contractor(s) competitively or that a proper non-competitive sole-source award consistent with the regulations will be made to the contractor(s), that efforts were made to provide small and disadvantaged businesses with opportunities to compete, and that some form of cost or price analysis was conducted. EPA may not accept sole source justifications for contracts for services or products that are otherwise readily available in the commercial marketplace. EPA will not consider the qualifications, experience, and expertise of named subawardees/subgrantees and/or named contractor(s) during the proposal/proposal evaluation process unless the applicant complies with these requirements

As noted in Section IV.H.3 (page 20): Successful applicants cannot use subgrants or subawards to avoid requirements in EPA grant regulations for competitive procurement by using these instruments to acquire commercial services or products from for-profit organizations to carry out its assistance agreement. The nature of the transaction between the recipient and the subawardee or subgrantee must be consistent with the standards for distinguishing between vendor transactions and subrecipient assistance under Subpart B Section .210 of OMB Circular A-133 , and the definitions of subaward at 40 CFR 30.2(ff) or subgrant at 40 CFR 31.3, as applicable. EPA will not be a party to these transactions. Applicants acquiring commercial goods or services must comply with the competitive procurement standards in 40 CFR Part 30 or 40 CFR Part 31.36 and cannot use a subaward/subgrant as the funding mechanism.

Question 11: Do I have to be an ANSI-Accredited SDO to apply for this grant?

Answer 11: No, applicants only have to be eligible as described in Section III.A of the RFP. However, the Program Implementation Plan and/or Programmatic Capability narrative must indicate how the applicant will identify and work with an ANSI-accredited SDO in order to develop the product standards through a process that meets the ANSI Essential Requirements

Question 12: Is EPA going to award the full \$500,000 to the recipient at the time of award?

Answer 12: EPA expects that this agreement will be incrementally funded over the entire project period. EPA will award continued funding subject to satisfactory performance, the availability of funds, and Agency priorities.

As noted in Section II.A (page 10): EPA expects that this agreement will be incrementally funded. Phase 1 will provide approximately \$250,000 of Federal funds for approximately 2 years to support the development of environmental performance standards for servers. Phase 2 will provide approximately \$250,000 of Federal funds for another approximately 2-year period to support the development of environmental performance standards for another electronic product category. Funding for Phase 2 will depend upon performance of Phase 1, the availability of funding, and other applicable considerations.

Applicants should submit a work plan and budget encompassing both phases for the full \$500,000 of Federal funds over a period of four years. Funding for proposals is subject to the quality of proposals received and the availability of funds. EPA will award continued funding for the second phase subject to satisfactory performance, the availability of funds, and Agency priorities.

As noted in Section II.C (page 10): EPA reserves the right to partially fund proposals by funding discrete portions or phases of proposed projects. If EPA decides to partially fund a proposal, it will do so in a manner that does not prejudice any applicants or affect the basis upon which the proposal or portion thereof was evaluated and selected for award, and therefore maintains the integrity of the competition and selection process. To be considered for partial funding, the applicant's work plan must have clearly delineated tasks that include separate budget estimates for each task or phase of the project.