

U.S. DEPARTMENT OF COMMERCE
Office of Inspector General



**PUBLIC
RELEASE**

***NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION***

*NMFS's Cooperative Science and
Education Program Awards
Were Not Competitively Selected,
CFDA No. 11.455*

Audit Report No. STL-10951-9-0001 / March 1999

Office of Audits, Seattle Regional Office



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EXECUTIVE SUMMARY

The Office of Inspector General conducted an audit of the fiscal year 1997 procedures and practices for soliciting, reviewing, and selecting applications for financial assistance under the National Oceanic and Atmospheric Administration's National Marine Fisheries Service's (NMFS) Cooperative Science and Education Program, classified as No. 11.455 in the *Catalog of Federal Assistance*. The audit was conducted as part of a Department-wide review of Commerce's discretionary financial assistance program initiated at the request of the Chairman of the Senate Committee on Commerce, Science, and Transportation.

Discretionary financial assistance programs are those programs for which federal agencies have the authority to independently determine the recipients and funding levels of the awards. These programs involve a significant portion of the Commerce Department's budget and operations, approximately \$1 billion annually. If not properly administered, they are susceptible to fraud, waste, and misuse of funds.

Through the Cooperative Science and Education Program, NMFS provides financial assistance to institutions of higher learning and education; public and private research organizations affiliated with institutions of higher learning; and national and international organizations and programs dedicated to marine and estuarine research, education, and outreach. Assistance is provided for cooperative science and education on marine and habitat issues that confront local, regional, and national resources managers, and to develop innovative approaches and methods for marine and estuarine science. In fiscal year 1997, the program awarded 15 new cooperative agreements, 18 continuation amendments to existing cooperative agreements, and 2 grants, totaling \$3.7 million. All 35 awards were made noncompetitively in response to unsolicited proposals. The original 18 cooperative agreements for which the continuation amendments were awarded were also made noncompetitively in response to unsolicited proposals.

We examined NMFS's criteria, procedures and practices for the solicitation, review, and selection of the Cooperative Science and Education Program awards and found that they did not comply with departmental and NOAA requirements and were not adequate to guide agency officials in making merit-based discretionary funding decisions. We found that the program was not administered as a competition-based financial assistance program, as encouraged by federal laws and regulations and mandated by Commerce policies and procedures. In addition, we examined the written justifications prepared for the 35 noncompetitive awards made in fiscal year 1997 and found them to be inadequate. Specifically, we found that NMFS:

- Did not comply with the Department's requirement that merit-based evaluation criteria against which program applications for financial assistance could be reviewed, be developed and published. (See page 7.)
- Did not comply with the Department's requirement that a notice be placed in the *Federal Register*, at least annually, announcing the availability of funds and soliciting award

applications, and specifying the criteria and the process to be used in reviewing and selecting applications for funding. (See page 7.)

- Did not comply with the Department's requirements that (1) all financial assistance awards be made on the basis of a competitive review process, unless a special waiver is obtained, and (2) the competitive review process meet minimum standards established by the Department. (See page 7.)

As a result of these deficiencies, NMFS cannot provide reasonable assurance that noncompetitive awards made under the program are merit-based and represent the most effective means of achieving program objectives.

Lacking competitive award procedures, there is a greater potential for NMFS to make questionable or even inappropriate noncompetitive program awards in instances where competition from other sources is available. NMFS risks forgoing the receipt of research proposals from a broad range of eligible applicants and thus may lose opportunities to increase the effectiveness of the Cooperative Science and Education Program.

We also found that NOAA grants office did not provide adequate oversight of NMFS's administration of the program. (See page 13.)

In its response to the draft report, NOAA stated that the agency agrees that more awards should be granted competitively for all discretionary funding programs and that a rigorous solicitation process should be used. NOAA also stated that the agency is continuing to look at its current processes and will provide more specific comments and details as part of the audit action plan submitted in response to the final report (see Appendix III).

We recommend that the Assistant Administrator for Fisheries ensure that financial assistance awards under the Cooperative Science and Education Program are made through a competitive merit-based process, unless otherwise mandated by law or adequately justified, and that the award process complies with Department policies and procedures and includes the following four elements:

- (1) Widespread solicitation of eligible applications and disclosure of essential application and program information in written solicitations;
- (2) Independent application reviews that consistently apply written program evaluation criteria;
- (3) Written justifications for award decisions that deviate from recommendations made by application reviewers; and
- (4) Adequate written justifications for noncompetitive awards which document appropriate market search efforts to validate the determination that there is only

one source for the anticipated award. The market search should include, at a minimum, a preaward notice in the *Federal Register* stating that the agency expects to make a noncompetitive award and inviting other qualified parties to inquire.

We also recommend that the Chief Financial Officer/Chief Administrative Officer, as the Director of the Office of Finance and Administration, which includes the Grants Management Division, require that grants officer reviews of proposed noncompetitive awards include procedures designed to objectively determine compliance with Department and NOAA competitive requirements.

Our recommendations appear on pages 13 and 14.

INTRODUCTION

The National Oceanic and Atmosphere Administration's (NOAA) mission is to describe and predict changes in the Earth's environment and to conserve and manage wisely the nation's coastal resources. The National Marine Fisheries Service's (NMFS) mission is to provide stewardship of living marine resources for the benefit of the nation through science-based conservation and management and promotion of the health of the marine environment. NOAA, through NMFS, administers the Cooperative Science and Education Program, classified as No. 11.455 in the *Catalog of Federal Domestic Assistance*. The program's objective is to provide grants and cooperative agreements to furnish biological, socio-economic, and physical science research on fishery stocks and protected resources that will contribute to their optimal management, and to develop innovative approaches and methods for marine and estuarine science.

The Cooperative Science and Education Program does not have legislation authorizing a financial assistance program and does not receive specific annual appropriations or funding allotments. Program awards have always been made noncompetitively in response to unsolicited proposals. The fiscal year 1997 awards, totaling \$3,736,104, were funded with appropriations provided to NMFS for its various fishery programs and under the authorities of the Fish and Wildlife Coordination Act, Fish and Wildlife Act, and Magnuson Fishery Conservation and Management Act.

The Fish and Wildlife Coordination Act, as amended, authorizes the Secretary of Commerce to provide assistance to federal, state, and public and private agencies and organizations in the development, protection, rearing, and stocking of species of wildlife, resources thereof, and their habitat, and in controlling losses to the same from disease or other causes. The Fish and Wildlife Act of 1956, as amended, authorizes the Secretary to perform research services on fish matters, and to provide assistance for informational services, economic and technological development, resource conservation, and resource management. The Magnuson Fishery and Conservation Act authorizes the Secretary to initiate and maintain a comprehensive program of fishery research designed to acquire knowledge and information on fishery conservation and management and on the economics of fisheries.

NMFS, through three of its four regional science centers, made 35 awards under the Cooperative Science and Education Program in fiscal year 1997. All 35 awards were made noncompetitively to organizations that had submitted unsolicited proposals. Unsolicited proposals are applications for financial assistance that are not submitted in response to a formal solicitation notice published in the *Federal Register*. Three of the proposals were submitted in response to specific requests from NMFS. The projects and the organizations to be funded had been identified by NMFS beforehand.

The awards consisted of 15 cooperative agreements, 18 continuation amendments to existing cooperative agreements, and 2 continuation amendments to existing grants. The awards were made to six universities. The original awards for which continuation amendments were used

were also made noncompetitively in response to unsolicited proposals. NMFS chose the cooperative agreement as its award mechanism for 15 of the new awards because program officials planned to be substantially involved in the projects. For the remaining cooperative agreements, NMFS chose a continuation amendment to an existing agreement or grant because the projects had been funded in the previous year.

Since there is no specific legislation authorizing the Cooperative Science and Education Program, nor any specific appropriations for the program, each NMFS regional science center that participates in the program allocates funds to the program in a different way. The Northeast Science Center attempts to maintain a consistent funding level for the program from year to year. The Southeast Science Center each year identifies projects that it would like performed under the program and establishes a funding level for the projects. The Northwest Science Center does not set a funding level for the program; project managers identify projects for funding under the program within individual research project budgets.

Discretionary assistance programs are those for which federal agency officials have the authority to decide (1) which eligible applicants will receive awards, and (2) how much financial assistance that will be awarded. Competition is generally recognized as the most effective means of ensuring that financial assistance awards are made on the basis of merit. One of the primary purposes of the Federal Grant and Cooperative Agreement Act (31 U.S.C. §6301) is to encourage competition in the award of federal financial assistance to the maximum extent practicable.

The Office of Management and Budget (OMB) has issued guidelines on administering competition-based financial assistance programs for use by federal agencies. An interagency study group, convened in 1979 by OMB to examine competition in financial assistance programs, determined that financial assistance award processes, to ensure effective competition, should include three basic elements. These elements, which were discussed in OMB's June 1980 report, *Managing Federal Assistance in the 1980's*, are still applicable, and include:

- Widespread solicitation of eligible applicants and disclosure of essential application and program information in written solicitations;
- Independent application reviews that consistently apply written program evaluation criteria; and
- Written justifications for award decisions that deviate from recommendations made by application reviewers.

Also, OMB has issued the following circulars which set forth the policies and procedures to be followed in administering federal financial assistance programs:

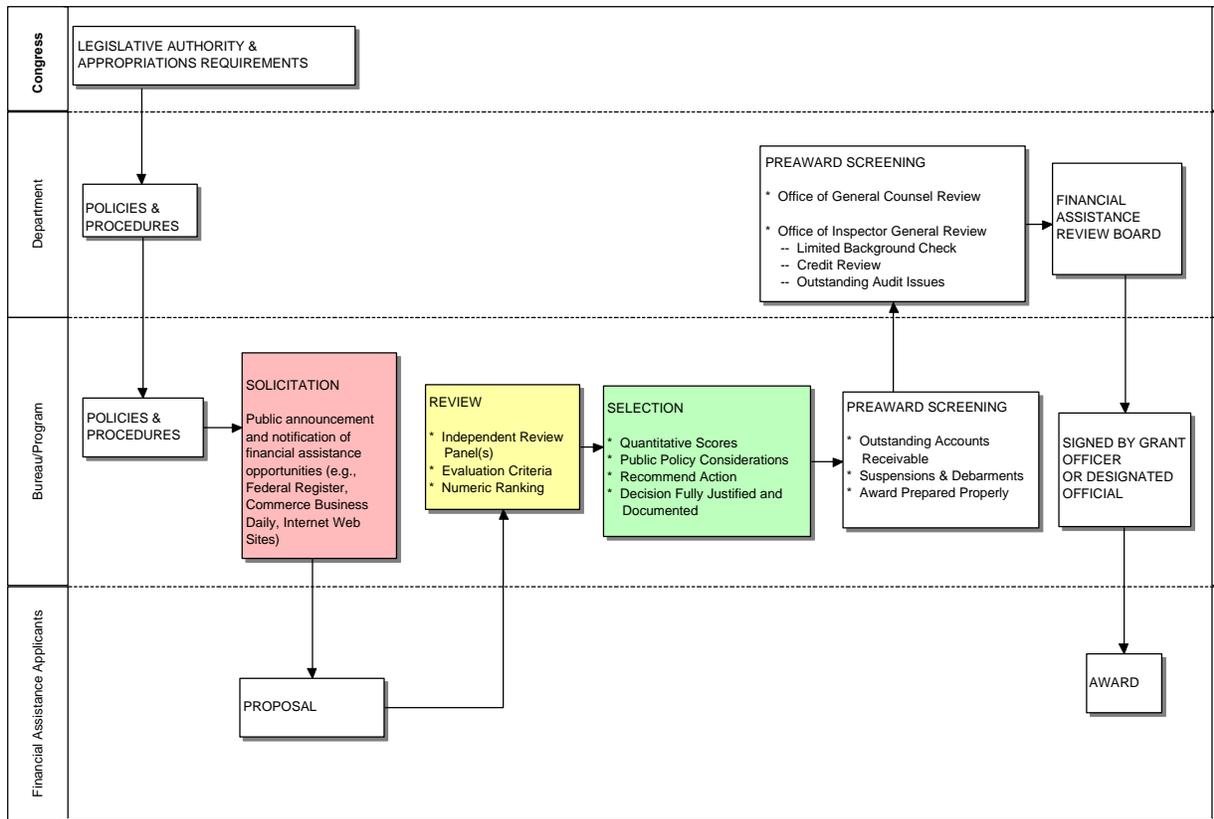
- OMB Circular A-89, *Federal Domestic Program Information*, implements The Federal Program Information Act (P.L. 95-220) requiring agencies to systematically and periodically collect and distribute current information to the public on federal domestic assistance programs, which is accomplished through the semiannual publication of the *Catalog of Federal Domestic Assistance*.

- OMB Circulars A-102, *Grants and Cooperative Agreements with State and Local Governments*, requires agencies to provide the public with advance notice in the *Federal Register*, or by other appropriate means, of their intended funding priorities for discretionary assistance programs unless such priorities are established by federal statute. Under A-102, when time permits, an agency must provide the public with an opportunity to comment on funding priorities. Finally, A-102 requires all grant awards over \$25,000 to be review for consistency with agency priorities by a policy level official.
- OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*, requires agencies to provide the public with advance notice of their intended funding priorities for discretionary assistance programs unless such priorities are established by federal statute.
- OMB Circular A-123, *Management Accountability and Control*, implements the Federal Managers Financial Integrity Act (P.L. 97-255) requiring agencies to establish management controls for federal programs and operations, including financial assistance programs, that provide reasonable assurance that activities are effectively and efficiently managed to achieve agency goals.

Commerce has relied on OMB's guidelines and circulars in developing and issuing policies and procedures for its discretionary funding programs. Department Administrative Order (DAO) 203-26, *Department of Commerce Grants Administration*, requires that (1) all Commerce financial assistance awards be made on the basis of competitive reviews unless a special waiver is obtained, (2) competitive review processes meet minimum standards outlined in the DAO, and (3) all Commerce agencies publish, at least annually, a notice in the *Federal Register* announcing the availability of funding, soliciting award applications, and specifying the criteria and the process to be used in reviewing and selecting applications for funding. In addition, agency-initiated noncompetitive or unsolicited awards should be adequately justified in writing as part of an internal control system defined in OMB Circular A-123 and required by DAO 203-26, Section 4.02 i.

The chart presented on the following page depicts the basic process and controls for the solicitation, review, and selection of financial assistance awards as set forth in DAO 203-26. The processes we reviewed during our audit are color coded for this chart and the NOAA/NMFS process chart located in Appendix I.

Department of Commerce Financial Assistance Awards Process



PURPOSE AND SCOPE

This audit was conducted as part of a comprehensive review of the Department of Commerce's discretionary funding programs initiated at the request of the Chairman of the Senate Commerce, Science, and Transportation Committee. The Chairman requested that the Inspectors General of the Departments of Commerce and Transportation and the National Science Foundation review the discretionary funding programs of their respective agencies to assess the manner in which discretionary funding decisions are made. More specifically, the Chairman requested that each IG review and report on the criteria developed, either statutorily or administratively, to guide agency officials in making discretionary spending decisions, and on the extent to which the criteria are appropriately applied.

We are conducting our Department-wide review in two phases: a survey phase and an individual program audit phase. During the survey phase, we identified and examined the body of laws, regulations, and other guidance applicable to the administration of federal financial assistance programs. We also examined the authorizing legislation, provided by Department officials, for each Commerce financial assistance program and classified each program as either a "full discretion" program or a "limited discretion" program, based on the extent to which the legislation limits the agency's authority to independently determine the recipients and funding levels of the awards made under the program. Finally, we examined the fiscal year 1997 appropriations legislation to identify legislatively mandated awards and reviewed accompanying conference and committee reports to identify projects recommended for funding. No legislatively mandated awards were found.

During the second phase of our review, we are conducting individual audits of the award solicitation, review, and selection processes of each program we have classified as a "full discretion" program, including the Cooperative Science and Education Program. We are evaluating the adequacy of each program's established award procedures and criteria for evaluating individual applications. For those programs with procedures deemed to be adequate, we are ascertaining whether they were followed in making awards in fiscal year 1997. For those programs with procedures considered to be inadequate or lacking, we are reviewing how the fiscal year 1997 award decisions were made. Finally, we are examining the legislatively mandated projects identified for each program and determining their significance and impact on fiscal year 1997 award decisions. We plan to issue individual reports, with any appropriate recommendations, on each program, followed by a capping report summarizing the results of the individual audits and providing recommendations for the Department and/or its bureaus.

On July 21, 1998, the Acting Inspector General and the Chief Financial Officer and Assistant Secretary for Administration testified before the Senate Commerce, Science, and Transportation Committee on the Department's discretionary funding programs. The Acting IG reported on the survey phase of the OIG review, and discussed some of the preliminary observations from the individual program audits.

This performance audit focused on funding decisions made during fiscal year 1997 under the Cooperative Science and Education Program. Specifically, we:

- Reviewed the program authorization and other information published in the CFDA and provided by NOAA's Office of Legislative Affairs to identify criteria for funding decisions.
- Reviewed policies and procedures for soliciting, reviewing and selecting recipients for funding (see Appendix I for flowchart of process). We also reviewed NOAA's *Grants and Cooperative Agreements Manual* as it applied to the solicitation, review, and selection process and assessed whether it was adequate and in accordance with DAO 203-26, *Department of Commerce Grants Administration*, and Office of Federal Assistance Financial Assistance Notice No. 17, *Department of Commerce Guidelines for the Preparation of Federal Register Notices Announcing the Availability of Financial Assistance Funds -- Requests for Applications*.
- Compared NOAA/NMFS's procedures with its practices to determine if the process contained adequate internal controls to provide for competitive, merit-based awards.
- Examined pertinent documents in individual program award files to determine if departmental and NOAA policies and procedures were followed.
- Interviewed NOAA/NMFS program office officials concerning NOAA/NMFS's solicitation, review, and selection procedures.
- Examined fiscal year 1997 appropriations legislation to identify legislatively mandated projects and the accompanying committee and conference reports to identify projects recommended for funding under this program.

We did not rely on computer-based data supplied by NOAA and OEAM as a basis for our audit findings and recommendations. We therefore conducted neither tests of the reliability of the data, nor of the controls over the computer-based system that produced the data.

We performed the audit fieldwork at the NMFS Northwest Science Center during May and June 1998. We conducted the audit in accordance with generally accepted government auditing standards, and under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated May 22, 1980, as amended.

FINDINGS AND RECOMMENDATIONS

We found that NMFS's criteria, procedures and practices for the solicitation, review, and selection of the Cooperative Science and Education Program awards did not comply with departmental and NOAA requirements and were not adequate to guide agency officials in making merit-based discretionary funding decisions. NMFS does not administer the program as a competition-based financial assistance program. NMFS has not developed and published merit-based evaluation criteria against which applications for funding could be reviewed, does not annually announce the program in the *Federal Register*, and makes all awards under this program noncompetitively in response to unsolicited proposals.

In addition, we reviewed the noncompetitive justifications for the 35 awards made in fiscal year 1997 and found them to be inadequate because NMFS did not provide sufficient support for the unique applicant capabilities cited, did not correctly demonstrate that the awards were legislatively mandated, and/or did not demonstrate that cited legislative authorities limited awards to specific recipients. NMFS's practices do not comply with the Department's and NOAA's requirements to seek maximum program competition. We also found that reviews performed by the NOAA grants office of the proposed awards did not question NMFS's lack of competitive award procedures or the validity of the noncompetitive award justifications. As a result, NOAA/NMFS cannot provide reasonable assurance that noncompetitive awards made under the program are merit-based and represent the most effective means of achieving program objectives.

I. Cooperative Science and Education Program Is Not Administered As a Competition-Based Financial Assistance Program

NMFS's Cooperative Science and Education Program is not administered as a competition-based financial assistance program, as encouraged by federal laws and regulations and mandated by Department of Commerce policies and procedures. All of the awards made under the program were made noncompetitively in response to unsolicited proposals. We examined the written justifications prepared for the 35 noncompetitive awards made in fiscal year 1997 and found them to be inadequate. Specifically, we found that NMFS:

- Did not comply with the Department's requirement that merit-based evaluation criteria against which program applications for financial assistance could be reviewed, be developed and published.
- Did not comply with the Department's requirement that a notice be placed in the *Federal Register*, at least annually, announcing the availability of funds and soliciting award applications, and specifying the criteria and the process to be used in reviewing and selecting applications for funding.
- Did not comply with the Department's requirements that (1) all financial assistance awards be made on the basis of a competitive review process, unless a special waiver is obtained, and (2) the competitive review process meet minimum standards established by the Department.

As a result of these deficiencies, NMFS cannot provide reasonable assurance that noncompetitive awards made under the program are merit-based and represent the most effective means of achieving program objectives.

A. NMFS did not develop and publish merit-based evaluation criteria

The NOAA *Grants and Cooperative Agreements Policy Manual*, Chapter 1, Section A.4., requires that applications for financial assistance be reviewed by a panel of independent reviewers in accordance with published criteria. The manual states that the criteria used for evaluating applications must be published as part of the request for applications and prohibits scoring against unpublished criteria. However, NMFS did not develop and publish merit-based evaluation criteria against which competing program applications could be reviewed.

In particular, the agency did not place a notice in the *Federal Register* announcing the availability of funding, soliciting competing applications for funding, and specifying the criteria and the process to be used in reviewing and selecting applications for funding under the Cooperative Science and Education Program for fiscal year 1997. Also, the NMFS Cooperative Science and Education Program summary, published in the *Catalog of Federal Domestic Assistance*, does not cite program-specific evaluation criteria. The summary simply states that proposals will be initially evaluated by the appropriate NMFS Science and Research Center, and are subject to review for technical merit, soundness of design, competency of the applicant to perform the proposed work, potential contribution of the project to national or regional research and education goals, and appropriateness and reasonableness of proposed costs. In order to be adequate to facilitate a merit-based evaluation process, criteria used to evaluate applications for federal financial assistance must not be general in nature, but as specific as possible with weights assigned to each criterion.

B. Solicitation and review process did not comply with competitive requirements

Department Administrative Order 203-26, Section 4.02.b., requires Department bureaus to publish an annual notice in the *Federal Register* for each financial assistance program announcing the availability of funding, soliciting applications for funding, and specifying the criteria and the process to be used in reviewing and selecting applications for funding. Section 4.02.f. also encourage the bureaus to publish notices in other widely distributed publications, such as the *Commerce Business Daily*, to ensure widespread notice of funding opportunities. Bureaus can also prepare and send requests for proposals directly to organizations known or believed to be qualified. Also, NOAA's *Grants and Cooperative Agreements Policy Manual*, Chapter 1, Section A.4., states that it is NOAA's policy to seek maximum competition for its discretionary grants and cooperative agreements. To accomplish this, the manual states that when appropriate, program offices should publish requests for applications in the *Federal Register* or otherwise solicit applications from all eligible organizations.

In addition, Department Administrative Order 203-26, Section 4.02.a., requires the establishment of selection criteria for use in evaluating applications submitted for new awards. Section 4.02.h. requires awards be made on the basis of competitive review, and Section 4.02.h.1.(e) requires the use of the selection criteria in evaluating individual applications. Unless a program receives a waiver of competitive review requirements, awards under the program are generally required to be made on the basis of competitive review.

However, despite the Department and NOAA policies, NMFS did not announce the Cooperative Science and Education Program in the *Federal Register* or *Commerce Business Daily*, and did not establish merit-based criteria for evaluating proposals. By not announcing the program and establishing award selection criteria as required, NMFS did not comply with Department as well as its own policies and missed an important opportunity to seek potential program competition. In addition, NMFS may have encouraged the use of noncompetitive awards by not developing selection criteria for use in making awards for program needs when the anticipated awards cannot be properly exempted from competitive review requirements.

Although NMFS did not announce the Cooperative Science and Education Program in the *Federal Register*, it still could have placed preaward notices in the *Federal Register* announcing its intent to fund specific program projects and requesting proposals or inviting inquires from interested organizations. However, NMFS did not publish individual preaward notices in the *Federal Register* for any of the 35 awards NMFS funded on the basis of noncompetitive justifications. In our opinion, the publishing of preaward notices would have provided (1) the public with an opportunity to comment on the proposed projects, (2) other qualified recipients an opportunity to submit proposals for funding, and (3) NMFS officials with independent support for determining whether a recipient is uniquely qualified to perform proposed projects.

The 35 fiscal year 1997 awards made under the Cooperative Science and Education Program were made at the request of the NMFS Northeast, Southeast, and Northwest Science Centers. Each science center used a different selection and review process as described below.

Northeast Science Center

The Northeast Science Center provides funding to three universities: Rutgers University (4 awards: \$677,000), the University of Massachusetts (3 awards: \$192,317), and the University of Rhode Island (12 awards: \$1,010,809). According to NMFS, the funding of awards was limited from the outset to proposals from these three universities because NMFS maintains cooperative agreements with each of these universities under the Cooperative Science and Education Program. However, the cooperative agreements do not obligate NMFS to provide funding to the universities nor do they restrict NMFS from providing funding to other potential recipients.

The Northeast Science Center does not use a formal documented selection process in making Cooperative Science and Education Program awards. Each year a list of research projects is generated based on input from NMFS staff. The list is distributed and a call for pre-proposals is

made to the faculty of the three universities. A general market survey is not conducted, nor is a general request for proposals or list of priorities published.

The participating universities are encouraged to work with NMFS staff in developing their projects. The pre-proposals go through an agency peer review. Those that survive the peer review are forwarded to a Coordinating Committee. There are three different coordinating committees, each composed of NMFS personnel and representatives of the respective university. Each committee, along with agency scientists, and sometimes scientists outside the agency with appropriate expertise, evaluate how well the proposals meet NMFS and university priorities. After the projects are chosen, full proposals are requested. Each coordinating committee evaluates the full proposals and selects the ones to be funded. If there are more proposals provided than can be funded, the coordinating committee performs an informal undocumented ranking process. Decisions are reached through discussion.

Southeast Science Center

The Southeast Science Center provides funding to one university, North Carolina State University. This university represents the Cooperative Institutes for Fisheries and Oceanography (CIFO), a coalition of universities in the North Carolina State University system and Duke University. A North Carolina State University faculty member acts as CIFO's coordinator, performs CIFO's administrative duties, and provides some input in directing the grant funds. The funding of the award is limited from the outset to the North Carolina State University proposal as the CIFO representative. NOAA maintains a memorandum of understanding with the University of North Carolina, whose campuses include North Carolina State University, and Duke University concerning the establishment of CIFO. However, the memorandum of understanding does not obligate NMFS to provide funding to CIFO universities nor does it restrict NMFS from providing funding to other potential recipients.

The Southeast Science Center does not use a formal documented selection process in making the Cooperative Science and Education Program award. Each year the award goes to North Carolina State University as the CIFO representative. In fiscal year 1997 NMFS awarded CIFO two amendments for \$461,893. The two amendments were made during the same year because, as the year progressed, more funds became available for known needs.

After the basic grant is awarded by NMFS, CIFO performs an internal project selection process. CIFO receives unsolicited proposals and, in some instances, specifically requests that proposals be submitted; however, no general request for proposals or list of priorities is published. The proposals received are reviewed for technical merit, and if they also meet CIFO's objectives, as outlined in the memorandum of understanding with NOAA, the proposals are sent out to nonparticipating university experts for peer review. NMFS also participates in this process. Through e-mails, telephone calls, and other informal communication, NMFS expresses its goals for the funds. CIFO chooses the final projects to be funded using input from peer review, NMFS, and CIFO directly. CIFO then distributes the funds to various universities who, in turn, distribute the funds to individuals to perform certain projects. This entire process is informal and

undocumented. CIFO does not have written guidelines for the proposal selection process, nor does North Carolina State University.

Northwest Science Center

The Northwest Science Center provides funding to two universities: the Oregon State University (6 awards: \$349,536) and the University of Washington (8 awards: \$1,044,549). NMFS maintains a memorandum of understanding with each university under the Cooperative Science and Education Program. However, the memorandums of understanding do not obligate NMFS to provide funding to the universities or restrict NMFS from providing funding to other potential recipients.

The Northwest Science Center does not have a documented solicitation, review, and selection process for Cooperative Science and Education Program awards. Proposals are initiated as a result of interaction between science center program managers and university faculty. Proposed projects can be initiated by either the science center staff or university faculty. If funding is available and a project meets the needs of the science center, NMFS requests that a formal project proposal be submitted. The proposals are reviewed individually to determine if they (1) meet the general goals of NOAA/NMFS and (2) comply with administrative requirements.

C. Noncompetitive awards under the program lacked adequate justification

In fiscal year 1997, NOAA/NMFS made 15 cooperative agreements, 18 continuation amendments to existing cooperative agreements, and 2 continuation amendments to existing grants under the Cooperative Science and Education program, totaling \$3,736,104. These awards were made to six universities. A list of awards is provided as Appendix II. The awards were made noncompetitively to organizations that had submitted unsolicited proposals for NMFS funding consideration. We concluded that NMFS had no basis for not competing any of the 35 awards.

We examined the written justifications for all 35 noncompetitive awards and noted that NMFS justified all the awards on the basis that each proposed recipient possessed unique capabilities that made it either the best or the only organization qualified to do the work. In our opinion, all of the awards made under the Cooperative Science and Education program had inadequate justifications because NMFS either did not provide sufficient support for the unique capabilities cited or did not correctly demonstrate that the awards were legislatively mandated. In particular, none of the noncompetitive justifications cited general market surveys performed to determine if other institutions were interested or capable of doing the work.

Unsolicited proposals are applications for financial assistance that are not submitted in response to a formal solicitation notice published in the *Federal Register*. Because unsolicited proposals are a means by which unique or innovative ideas can be made available to accomplish specific

projects, scientific organizations like NOAA and NMFS encourage their submission. DAO 203-26, Section 4.02.i, allows the receipt of unsolicited proposals, but states that no unsolicited proposal may be funded outside the competitive process if that proposal falls within the program goals of a competitive program. In addition, the receipt of a technically acceptable unsolicited proposal does not, in itself, justify a noncompetitive award. DAO 203-26, Section 4.02.i., also states that the decision to fund an unsolicited proposal must be fully justified and included in the official grant file.

While NMFS wrote noncompetitive justifications for the 35 awards, the justifications do not cite any factual basis for the assertions that the applicants possessed unique capabilities. Since NMFS also did not comply with the Department's requirement that a notice be published in the *Federal Register* soliciting applications for fiscal year 1997 awards under the Cooperative Science and Education Program, it lacked support for its assertions that the organizations that submitted unsolicited proposals were the only ones that could perform the work. Instead, the justifications contain statements by program office officials that are based on knowledge accumulated through their past working relationships with recipients. Without documented support, a belief that an organization possesses unique qualifications does not justify making a noncompetitive award because there may be other qualified applicants unknown to program officials. Such a belief should still be tested through a competitive review process that includes widespread solicitation of eligible applicants, through announcement in the *Federal Register* and other means.

We believe that the justification for a noncompetitive award should include a documented market search to verify or confirm that there is only one source. The market search should include, at a minimum, a preaward notice in the *Federal Register* stating that the agency expects to make a noncompetitive award and inviting other interested and qualified parties to inquire. Such a practice would be similar to the requirements in the *Federal Acquisition Regulation (FAR)* for contracting (see 48 FAR, Part 6.302). In addition, the review process for a noncompetitive award should ensure that the proposal meets the program goals. NMFS did not publish individual preaward notices for the awards.

NMFS made one award (No. NA77FE0493) in the amount of \$328,105 to the University of Rhode Island on the basis of language contained in the fiscal year 1997 Senate appropriations conference report. However, the award was not specifically contained in the fiscal year 1997 Appropriations Act and was, therefore, not legislatively mandated.

II. NOAA Reviews of Proposed Awards Are Not Effective

Reviews performed by the NOAA grants office of the 35 proposed awards did not question NMFS's lack of competitive award procedures or the validity of the noncompetitive award justifications. The science centers provided information to NMFS regional offices who prepared and forwarded, as required, the justifications and related documents for the proposed noncompetitive awards to the grants office for review and approval. However, the grants office's

review of the proposed awards did not ensure the program office's compliance with applicable Department and NOAA competitive requirements.

DAO 203-26, Section 4.01., requires that each organization unit establish a central liaison to ensure that its programs comply with federal, departmental, and organization grant requirements and to review grant documents for compliance. The NOAA Office of Finance and Administration, which includes the Grants Management Division, fulfills this responsibility for NOAA.

The grant files do not indicate whether the Grants Management Division questioned why the NMFS program office did not prepare and submit the required annual *Federal Register* program announcement. The files also do not show whether the grants office determined if the noncompetitive justifications were factually based, or if the program office had made any attempt to identify other qualified sources before submitting the noncompetitive awards. Grants Management Division personnel stated that they relied on and accepted as valid the technical descriptions of perceived unique capabilities presented in the program office's award justifications. They further stated that while they reviewed the justifications to determine if they addressed one or more of the acceptable reasons for a noncompetitive award, they did not verify the information because the office has no authority over the offices submitting the justifications, they can not make field trips to verify information, and scientists involved would not consider them qualified to make the type of scientific determinations included in the noncompetitive justifications. Therefore, we believe the reviews were not effective in ensuring the science centers' compliance with Department and NOAA competitive policies.

III. Conclusions

We concluded that NMFS's fiscal year 1997 award process under the Cooperative Science and Education Program was not adequate to guide agency officials in making merit-based discretionary funding decisions because NMFS did not develop and publish merit-based evaluation criteria and the noncompetitive award of 35 financial assistance cooperative agreements and grants did not comply with Department and NOAA policies of seeking maximum competition. Also, NMFS's written justifications for the awards did not cite any factual basis for its claims that the 35 applicants had unique capabilities and did not correctly demonstrate that the awards were legislatively mandated by citing legislative authorities that limited the awards to specific recipients. Despite these facts, the NOAA grants office did not question the awards. By not following competitive procedures, NOAA/NMFS could make questionable or even inappropriate noncompetitive program awards in instances where competition is available. In addition, by not seeking competition, NMFS misses the opportunity to consider proposals containing the ideas, technology, or services that other qualified organizations can produce and thus lose an opportunity to increase program quality.

NOAA Response

In its response to the draft report, NOAA stated that the agency agrees that more awards should

be granted competitively for all discretionary funding programs and that a rigorous solicitation process should be used. NOAA also stated that the agency is continuing to look at its current processes and will provide more specific comments and details as part of the audit action plan submitted in response to the final report.

OIG Comments

NOAA's concurrence that more awards should be competitively awarded is a positive reaction to this report. We look forward to the Cooperative Science and Education Program moving in that direction. We have modified our recommendations in response to discussions with NOAA officials regarding the draft report to clarify that we did not intend to suggest that *all* awards must be made competitively. We understand that an unsolicited research proposal may very well be justified for noncompetitive funding on an exception basis. However, we are emphasizing that an entire program should not be administered on a noncompetitive basis, as this one is, unless mandated by law.

IV. Recommendations

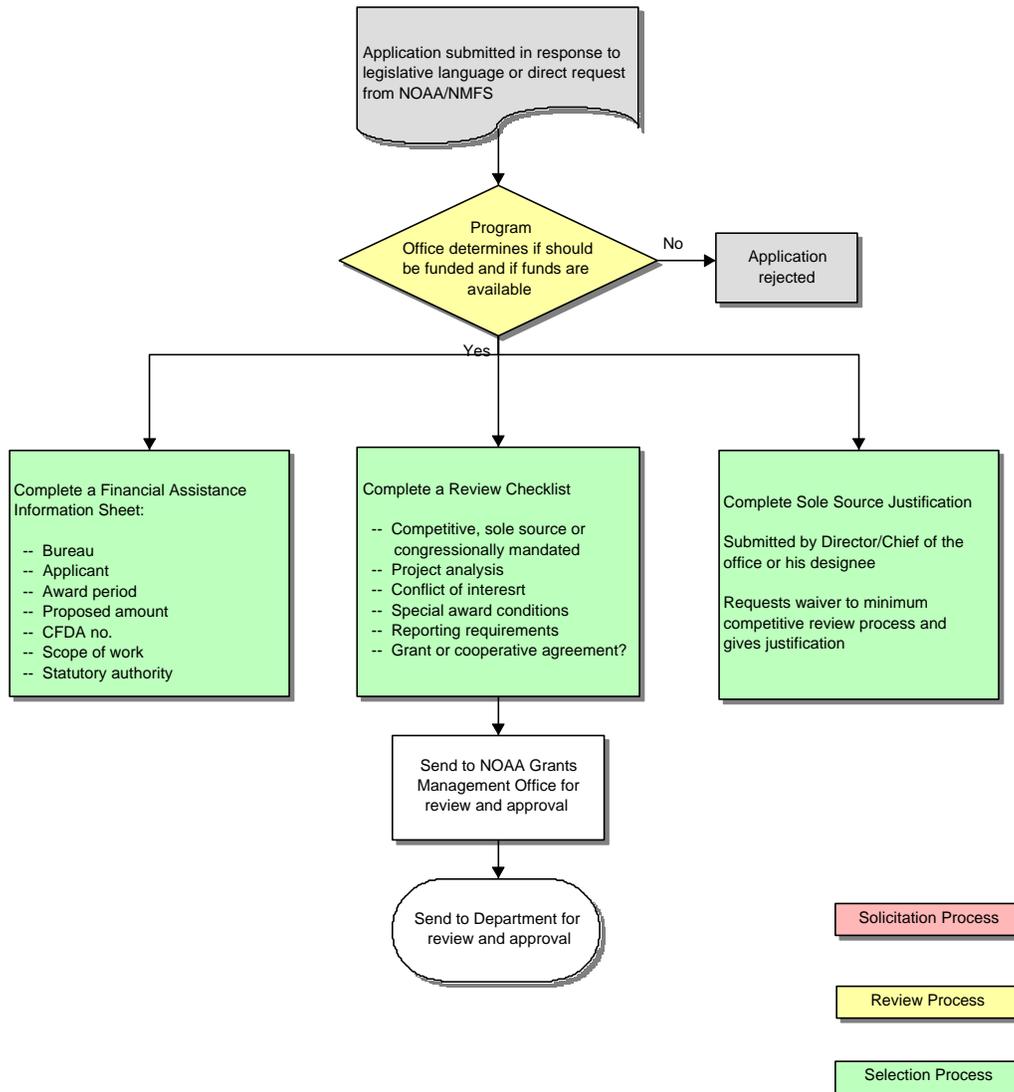
We recommend that the Assistant Administrator for Fisheries ensure that financial assistance awards under the Cooperative Science and Education Program are made through a competitive merit-based process, unless otherwise mandated by law or adequately justified, and that the award process complies with Department policies and procedures and includes the following four elements:

- (1) Widespread solicitation of eligible applications and disclosure of essential application and program information in written solicitations;
- (2) Independent applications reviews that consistently apply written program evaluation criteria;
- (3) Written justifications for award decisions that deviate from recommendations made by application reviewers; and
- (4) Adequate written justifications for noncompetitive awards which document appropriate market search efforts to validate the determination that there is only one source for the anticipated award. The market search should include, at a minimum, a preaward notice in the *Federal Register* stating that the agency expects to make a noncompetitive award and inviting other qualified parties to inquire.

We also recommend that the Chief Financial Officer/Chief Administrative Officer, as the Director of the Office of Finance and Administration, which includes the Grants Management Division, require that grants officer reviews of proposed noncompetitive awards include procedures designed to objectively determine compliance with Department and NOAA competitive requirements.

APPENDIX I

NOAA/NMFS Procedures for Review and Selection of Awards



APPENDIX II

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COOPERATIVE SCIENCE AND EDUCATION PROGRAM

Awards and Amendments for Fiscal Year 1997

<i>Number</i>	<i>Type</i>	<i>Recipient</i>	<i>Type of Work</i>	<i>Amount</i>
Northeast Science Center				
NA77FE0519	New Cooperative Agreement	Rutgers University	Atlantic Bluefish Stock Research	\$ 442,000
NA77FE0520	New Cooperative Agreement	Rutgers University	Living Marine Habitat Research	102,000
NA77FE0561	New Cooperative Agreement	Rutgers University	Essential Fish Habitat Research	73,000
NA67FE410	Amendment to Cooperative Agreement	Rutgers University	Recreational Anglers Study	60,000
NA77FE0497	New Cooperative Agreement	University of Massachusetts	Cooperative Marine Education	57,766
NA77FE0498	New Cooperative Agreement	University of Massachusetts	Atlantic Salmon Research	25,129
NA67FE0420	Amendment to Cooperative Agreement	University of Massachusetts	North Atlantic Fisheries	109,422
NA77FE0493	New Cooperative Agreement	University of Rhode Island	Narragansett Bay Joint Study	328,105
NA77FE0130	New Cooperative Agreement	University of Rhode Island	Lobster Habitat in Narragansett Bay	98,002
NA77FE0496	New Cooperative Agreement	University of Rhode Island	Atlantic Bluefin Tuna Market	72,503
NA77FE0495	New Cooperative Agreement	University of Rhode Island	Salmon Temperature Monitoring	34,895
NA77FE0494	New Cooperative Agreement	University of Rhode Island	Cod and Haddock Early Life Stages	30,702
NA47FE0457	Amendment to Cooperative Agreement	University of Rhode Island	Zooplankton on Georges Bank	150,000

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NA67FE0383	Amendment to Cooperative Agreement	University of Rhode Island	Right Whale Computer Database	\$ 122,564
NA67FE0425	Amendment to Cooperative Agreement	University of Rhode Island	Economic Status of NE Fishing Vessels	74,806
NA67FE0385	Amendment to Cooperative Agreement	University of Rhode Island	Maturity in Female Flounder and Cod	30,762
NA57FE0574	Amendment to Cooperative Agreement	University of Rhode Island	Georges Bank Essential Fish Habitat	24,403
NA57FE0542	Amendment to Cooperative Agreement	University of Rhode Island	Remote Sensing Laboratory	23,301
NA67FE0384	Amendment to Cooperative Agreement	University of Rhode Island	Acoustic Tracking for Harbor Porpoises	20,766
Southeast Science Center				
NA56FE0551	Amendment to Grant	North Carolina State University	Recruitment Population Study	350,909
NA56FE0551	Amendment to Grant	North Carolina State University	Recruitment Population Study	110,984
Northwest Science Center				
NA77FE0168	New Cooperative Agreement	Oregon State University	Ocean Ecology of North Pacific	93,700
NA77FE0490	New Cooperative Agreement	Oregon State University	Rockfish Food Habitats	27,607
NA77FE0489	New Cooperative Agreement	Oregon State University	Age and Growth of Sablefish	22,773
NA67FE0325	Amendment to Cooperative Agreement	Oregon State University	Biology of West Coast Salmon	93,033

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NA67FE0328	Amendment to Cooperative Agreement	Oregon State University	Zooplankton Survey Data	\$ 74,885
NA67FE0324	Amendment to Cooperative Agreement	Oregon State University	West Coast Fisheries Data Program	37,538
NA77FE0267	New Cooperative Agreement	University of Washington	Cooperative Education	394,204
NA77FE0535	New Cooperative Agreement	University of Washington	Cooperative Education	25,685
NA67FE0392	Amendment to Cooperative Agreement	University of Washington	Pacific Salmon Conservation	175,000
NA57FE0548	Amendment to Cooperative Agreement	University of Washington	Salmon and Steelhead in Snake River Basin	144,150
NA67FE0394	Amendment to Cooperative Agreement	University of Washington	Juvenile Salmon and Steelhead	99,666
NA67FE0393	Amendment to Cooperative Agreement	University of Washington	Electromagnetic Reading Tagged Fish	83,695
NA67FE0396	Amendment to Cooperative Agreement	University of Washington	Fish Bacteria Study	75,952
NA67FE0395	Amendment to Cooperative Agreement	University of Washington	Bycatch in Deepwater Trawl Fishery	46,197
Total				\$3,736,104



Appendix III

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
CHIEF FINANCIAL OFFICER/CHIEF ADMINISTRATIVE OFFICER

MAR 25 1999

MEMORANDUM FOR: Johnnie Frazier
Acting Inspector General

FROM: Paul F. Roberts *Paul F. Roberts*

SUBJECT: Office of Inspector General Draft Reports -
NOAA's Discretionary Funding Programs

Thank you for the opportunity to review and comment on the draft audits reports prepared by the Office of the Inspector General relating to NOAA's discretionary funding programs.

NOAA agrees that more awards should be granted competitively for all discretionary funding programs and that a rigorous solicitation process should be used. NOAA is committed to ensuring an awards program that is consistent with Department of Commerce policies and responsive to our research needs. We will continue to look at our current processes and I will provide more specific comments and details as part of the audit action plans submitted in response to the final reports.



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