



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic And Atmospheric Administration
Office of Acquisition and Grants

August 9, 2012

Mr. Perry Movick
Senior Vice President of Operations
Eagle-Net Alliance
11800 Ridge Parkway, Suite 450
Broomfield, CO 80021

Re: Broadband Technology Opportunities Program (BTOP)
Grant Award No. NT11BIX5570001
Reimbursement-Only Status and Notice of Suspension

Dear Mr. Movick:

Thank you for your time and effort in preparing for the National Telecommunications and Information Administration (NTIA) BTOP site visit on June 12-14, 2012. This letter is to notify you of certain financial control, match, and budgetary issues that you must address. Addressing these issues quickly and comprehensively is essential to ensuring that the grant-funded project is compliant with the award terms and conditions, is completed on time, and is able to deliver the benefits described in the final award agreement.

Upon acceptance of a grant from the Department of Commerce, EAGLE-Net Alliance (EAGLE-Net) agreed to comply with the requirements specified in the terms and conditions of the award. The National Oceanic and Atmospheric Administrative (NOAA) Grants Office received notice from NTIA that you have not complied with these terms and conditions, as noted below. Consequently, NTIA has recommended that NOAA place your BTOP award under the corrective action plan (CAP) detailed below and that NOAA place your Automated Standard Application for Payments (ASAP) account on reimbursement only status to protect taxpayer funds and to ensure that expenditures comply with the terms and conditions of the award. NTIA has also recommended that NOAA suspend your award effective September 14, 2012 if you have not fulfilled the requirements of the CAP. We require your complete CAP response by September 7, 2012 to allow the Program Office to review the response.

REASONS FOR REIMBURSEMENT-ONLY STATUS AND POSSIBLE SUSPENSION OF AWARD

1. Financial Controls and Questionable Costs

At the site visit, EAGLE-Net acknowledged that its former chief financial officer (CFO) had been the single point of contact for most financial management responsibilities, including bank reconciliations. EAGLE-Net also disclosed to NTIA that its auditors had found that EAGLE-Net

had a lack of financial internal controls and processes, which is a violation of 15 C.F.R. § 24.20.¹ At the site visit, EAGLE-Net also noted that based on an internal cost allowability review, there were approximately \$250,000-\$500,000 of questionable costs associated with the BTOP grant, which EAGLE-Net's processes had failed to prevent. EAGLE-Net subsequently reallocated these questionable costs to operational expenses.

EAGLE-Net also revealed to NTIA that the former CFO had not been tracking financial information in the SunGard System. In EAGLE-Net's August 26, 2011 performance improvement plan (PIP) response, EAGLE-Net indicated that it would complete all SunGard implementation and training and convert and import all financial data into the SunGard system by September 30, 2011. Instead of tracking grant-related transactions in SunGard, the former CFO had been tracking financial information in spreadsheets, which did not fulfill EAGLE-Net's August 26, 2011 PIP response. The Department of Commerce (DOC) Uniform Administrative Requirements require grantees to maintain effective control and accountability for all grant cash, real and personal property, and other assets² and to maintain records which adequately identify the source and application of funds provided for financially-assisted activities.³

2. Match

As you know, pursuant to the terms of its BTOP award, EAGLE-Net is required to provide \$34,665,587 (25.6%) in project-related costs from non-federal sources. Since February 2012, NTIA has been working to address questions and issues related to EAGLE-Net's non-federal match requirement, but there remains a significant portion of match for which the source and/or value is in question. Per the DOC Financial Assistance Standard Award Terms and Conditions, the non-federal share of the award is expected to be paid out at the same general rate as the federal share.⁴ (b) (4)

(b) (4)

3. Budget

At the site visit, NTIA learned that EAGLE-Net had not been tracking its actual expenditures against its approved BTOP budget and was thus unable to discuss its progress against its budget. Actual expenditures or outlays must be compared with the budgeted amounts for each grant.⁵

RESULT: For the above reasons, NOAA has placed EAGLE-Net's ASAP account on reimbursement-only status immediately. This means that you will not be permitted to draw down funds through the ASAP system until authorized by the NOAA Grants Office. You may submit a request for payment at most monthly, but you must submit a request at least quarterly. Information on award payments can be found in Section A.02 of the DOC Financial Assistance Standard Terms and Conditions. Due to the relatively short period of time remaining in the

¹ See 15 C.F.R. § 24.20(b)(3).

² See 15 C.F.R. § 24.20(b)(3).

³ See 15 C.F.R. § 24.20(b)(2).

⁴ http://www2.ntia.doc.gov/files/award_docs/DOC-STCsMAR08Rev.pdf.

⁵ See 15 CFR § 24.20(b)(4).

period of performance, NOAA and NTIA expect that your award will remain on reimbursement-only status until the end of the closeout period.

REQUIRED CORRECTIVE ACTION: The CAP items below apply to your BTOP Comprehensive Community Infrastructure grant award. Please respond to your NTIA Program Officer and NOAA Grants Specialist no later than *September 7, 2012* regarding the requests below.

1. Financial Controls and Unallowable Costs

- A. Please provide documentation showing that EAGLE-Net has fully implemented SunGard and that this system is now being used to track BTOP grant-related accounts and expenditures. This should include a copy of EAGLE-Net's financial management procedures, which indicate how SunGard is being used.
- B. Please submit a copy of the BTOP general ledger, from the start of the BTOP award. The general ledger should show that EAGLE-Net's accounts have been reconciled and that all transactions have been captured in SunGard.
- C. Please submit a detailed description of (1) recent measures taken to improve its financial controls and (2) financial controls it will continue to implement to safeguard BTOP assets.
- D. Please provide a listing of all unallowable costs that were removed from the BTOP grant and the costs to which the funds were reallocated. This list should provide the amount of each unallowable cost, the date of each unallowable cost, a detailed description of each unallowable cost, and a description of how the costs were allocated to the BTOP project and then reallocated to other costs. EAGLE-Net must also fully describe the costs to which the funds were reallocated.
- E. Please provide brief narrative responses to the questions below.
 - i. Does EAGLE-Net owe the Federal government any funds as a result of the unallowable costs it identified?
 - ii. When EAGLE-Net reallocated the unallowable costs to other costs, were all of the new costs allowable?
 - iii. Had any of those new costs already been paid with grant funds or program income?

2. Match

A. G4S

- i. Please provide a copy of the signed match agreement between EAGLE-Net and G4S, noting principal, interest rate, payment terms, and other terms and conditions. In the documentation, G4S should acknowledge the Federal Government's first priority security interest in the grant-funded assets.
- ii. Please provide a schedule of loan disbursements from G4S and provide the estimated quarters when EAGLE-Net plans to book the G4S contribution.

B. CDOT ROW

- i. Please explain the discrepancy between the numbers of CDOT ROW miles in the match matrix (572 miles) and in the environmental assessment (305 miles).
 - ii. Please provide additional detail regarding the valuation of the CDOT ROW. Specifically:
 1. Who performed the valuation (CDOT or an independent third party)?
 2. What is the dollar value of the benefits CDOT will derive from the EAGLE-Net project? Does CDOT's valuation take this value into account?
 3. How do the three conduits that CDOT is receiving on the Interstate-25 corridor and fibers on other routes factor into the valuation of CDOT's match contribution?
 - iii. Please clarify whether EAGLE-Net will use all 572 miles listed on the CDOT valuation or whether EAGLE-Net plans to purchase IRUs on some of the routes.
 - iv. If EAGLE-Net plans to use any additional miles of CDOT ROW as match, please provide information regarding those miles, including the number and location of additional miles and whether they are along approved BTOP routes. If any of these miles have been valued, please provide a copy of the valuation.
- C. Tri-State Generation and Transmission Association, Inc.
- i. Please provide documentation describing the terms and conditions of the (b) (4) proposed match from Tri-State, including the timing of payments and the benefits to be provided to Tri-State.

3. Budget

- A. Please submit a revised SF-424C, detailed budget, and budget narrative to the Grants Online System via an Award Action Request. Your budget revision should take into account actuals to date and include all proposed sources of match.
- B. Using the categories described on the SF-424C and detailed budget from your application, please provide a summary of your budget status, reflecting the project's budget, as well as the current and project budget performance for each category (under/over/in-line).
- C. For any deviations in budget which may impact your ability to complete your project as awarded, please provide a narrative explaining the situation, how it will impact the project, and what action you are taking to address the budgetary issue.
- D. Please provide a copy of your updated pro forma projections and detail any need for bridge financing.

Please provide all necessary information to address these CAP items no later than the date noted above. Failure to respond to this CAP in a timely or comprehensive manner may result in additional corrective action, including suspension of your award.

If you have any questions on how to complete the information requests described above and/or questions regarding EAGLE-Net's payment on a reimbursement basis, please contact your Federal Program Officer, Elaine Sloan at 202-482-8231.

Thank you for your cooperation and assistance.

Sincerely,



Alan Conway, Branch Chief
NOAA Grants Management Division

cc: Larry Jenkins, NOAA
Arlen Simpson Porter, NOAA
Andrea Mack, NOAA
Anthony G. Wilhelm, NTIA
Laura Dodson, NTIA
Elaine Sloan, NTIA