



# PROFESSIONAL SERVICES AGREEMENT

PSA No: 25-23-1-019  
Program No: RSA1039366  
DOI Grant No: D22AP00258-00

Project Title: **Alaska Oil and Gas Conservation Commission Orphan Well Plugging and Remediation Program CMGC**

To this Agreement between **THE STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES, NORTHERN REGION**

hereafter the **CONTRACTING AGENCY**, and **ASRC Energy Services Alaska, Inc.**

hereafter the **CONTRACTOR**, effective on the last date executed by its parties, in consideration of the terms, conditions and promises of Articles 1 through 7 in this document, the parties hereby agree.

### CONTRACTOR

Signature: <u>Christine A. Resler</u>	<u>2/8/2023</u>	Signature: _____	_____
Name: Christine Resler	Date	Name: _____	Date
Title: President/Director		Title: _____	

### CONTRACTING AGENCY

<u>Contract Manager</u>		<u>Contracting Officer</u>	
Signature: <u>[Signature]</u>	<u>2/9/2023</u>	Signature: <u>Joseph Kemp</u>	<u>2/9/2023</u>
Name: Lauren Little, P.E.	Date	Name: Joseph P. Kemp, P.E.	Date
Title: NR Group Chief		Title: NR Acting Regional Director	

### ARTICLE 1 - PURPOSE

1.1 To provide construction manager/general contractor (CMGC) services for the Project.

### ARTICLE 2 - COMPENSATION

2.1 The maximum amount payable under this Agreement as set out in Appendix C, shall not exceed:

**Twenty-two-million, five-hundred thousand and No/100 Dollars**  
**(\$22,500,000.00)**

### ARTICLE 3 - PERIOD OF PERFORMANCE

3.1 CONTRACTOR shall commence services under this Agreement as authorized by written *Notice(s) to Proceed* and shall complete the services in accordance with any time schedule required by Appendices. This Agreement is of no force or effect until executed by the CONTRACTOR and the CONTRACTING AGENCY and no services shall be undertaken or performed until a Notice to Proceed is issued.

3.2 The Period of Performance under this Agreement shall end: **December 31, 2024**

DS  
SS

**ARTICLE 4 - APPENDICES**

4.1 The following Appendices are attached to this document and incorporated herein:

<u>Appendix</u>	<u>Title</u>	<u>Date Prepared</u>	<u>No. Pages</u>
A	General Conditions, Form 25A262	01/17/2023	7
B	Statement of Services	01/03/2023	4
C	Compensation, Form 25A280, plus Exhibits: C-1	01/20/2023	4
D	Indemnification & Insurance, Form 25A269, plus Certificates of Insurance (for the prime CONTRACTOR)	01/17/2023	8
E	Certification of Compliance (Alaska Licenses/Registrations and Insurance)	12/22/2022	1
F	D22AP00258-00 Grant Award & Conditions	08/24/2022	52

**ARTICLE 5 - CONTRACTING AGENCY DATA**

<u>Office Address</u>  Street: 2301 Peger Road PO Box: City, State, Zip: Fairbanks, AK, 99709 Phone-Voice: (907) 378-5911 Email: <a href="mailto:lauren.little@alaska.gov">lauren.little@alaska.gov</a>	Appeals Officer: Commissioner DOT&PF Authorization: AS 36.30.005 Funding Source: <b>Template: TRS001</b> <b>Program: RSA1039366</b> <b>Activity: 014P</b> <b>Phase: N/A</b>
<input type="checkbox"/> State <input type="checkbox"/> FHWA <input type="checkbox"/> FAA <input checked="" type="checkbox"/> Other: <u>DOI</u>	
(Check all that apply)	

**ARTICLE 6 - CONTRACTOR DATA**

Manager: Doug Cismoski, P.E. Title:  <u>Office Address</u>  Street: 3900 C Street, Suite 701 PO Box: City, State, Zip: Anchorage, AK, 99503 Phone-Voice: (907) 339-6318 Email: <a href="mailto:dcismoski@asrcenergy.com">dcismoski@asrcenergy.com</a>	Alaska Business License No.: 902116 Federal Tax Identification No.: 92-0044137  <u>Type of Firm</u>  <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation in state of: Alaska  <input type="checkbox"/> Other (specify):
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**ARTICLE 7 - SUBCONTRACTORS**

7.1 CONTRACTOR shall perform all professional services required under this Agreement except as may be performed by the Subcontractors listed below or as may be allowed under Appendix A, Article A19.

<u>Service or Engineering Discipline</u>	<u>Subcontractor</u>
Environmental Services	ASRC Consulting & Environmental Services, LLC
Civil Construction	Cruz Construction, Inc.

# GENERAL CONDITIONS

## APPENDIX A

PSA No: 25-23-1-019  
Program No: RSA1039366  
DOI Grant No: D22AP00258-00  
Date Prepared: 01/17/2023

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#### Article Number and Title

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### **ARTICLE A1 DEFINITIONS**

A1.1 Additional or Extra Services - Services, work products or actions required of the Contractor above and beyond provisions of the Agreement.

A1.2 Agreement - This Professional Services Agreement and its appendices that outline the terms and conditions regarding Contractor's services during the authorized period of performance.

A1.3 Amendment - A written change to this Agreement.

A1.4 Change - A revision in services, complexity, character, or duration of the services or provisions of this Agreement.

A1.5 Commissioner - Commissioner of Department.

A1.6 Contracting Agency - The Department of Transportation & Public Facilities (Department).

A1.7 Contracting Officer - The individual or a duly appointed successor designated as the official representative to administer contracts for the Contracting Agency.

A1.8 Contractor - The firm (person or any business combination) providing services.

A1.9 Contractor's Manager - The Contractor's representative in responsible charge of the project(s) and directly answerable for the required services.

A1.10 Contract Manager - Contracting Agency's representative and the Contractor's primary point of contract with the Contracting Agency.

A1.11 Contracts Officer - Contracting Agency's representative within the Contracts/Professional Services section.

A1.12 Funding Agency - An agency of a Federal, State, Political subdivision, or Local Government which furnishes funds for the Contractor's compensation under this Agreement and which may have established regulations and requirements binding upon the Contracting Agency and the Contractor.

A1.13 Notice to Proceed (NTP) - Written authorization from the Contracting Agency to the Contractor to provide all or specified services in accordance with an existing Agreement.

A1.14 Statement of Services - Services and work products required of the Contractor by this Agreement.

A1.15 Subcontractor - Contractor engaged to provide a portion of the services by subcontract with the firm which is a party to this Agreement.

### **ARTICLE A2 INFORMATION AND SERVICES FROM OTHERS**

A2.1 The Contracting Agency may, at its election or in response to a request from the Contractor, furnish information or services from other contractors. If, in the Contractor's opinion, such information or services is inadequate, the Contractor must notify the Contracting Agency of the specific service or material deemed inadequate and the extent of the inadequacy prior to use in the performance of this Agreement. The Contracting Agency will then evaluate and resolve the matter in writing. Unless so notified by the Contractor, the Contracting Agency may assume the information or services provided are adequate.

**ARTICLE A3  
HOLD HARMLESS**

A3.1 See Appendix D, "Indemnification and Insurance".

**ARTICLE A4  
INSURANCE**

A4.1 See Appendix D, "Indemnification and Insurance".

**ARTICLE A5  
OCCUPATIONAL SAFETY AND HEALTH**

A5.1 The Contractor and its Subcontractors shall observe and comply with the Federal Occupational Safety and Health act of 1970 and with all safety and health standards promulgated by the Secretary of Labor under authority thereof and with all State of Alaska Occupational Safety and Health Laws and regulations.

**ARTICLE A6  
EQUAL EMPLOYMENT OPPORTUNITY**

A6.1 The Contractor shall comply with the following applicable laws and directives and regulations of the Contracting Agency which effectuate them; all of which are incorporated herein by reference:

Title VI of Federal Civil Rights Act of 1964;

Federal Executive Order 11625 (Equal Employment Opportunity);

Title 41, Code of Federal Regulations, Part 60 (Equal Employment Opportunity);

Title 49 Code of Federal Regulations, Part 21 (Discrimination);

Title 49, Code of Federal Regulations, Part 26 (Minority Business Enterprises);

Office of Management and Budget (OMB) circular 102, Attachment O (Procurement Standards);

Alaska Statute (AS) 18.80.200-300 (Discrimination).

A6.2 The Contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, physical disability, sex, or marital status, change in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on such basis. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, age, physical disability, sex, or marital status. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor shall post in conspicuous places, available employees and applicants for employment, notices setting out the provisions of this paragraph.

A6.3 The Contractor shall state, in all solicitations or advertisements for employees to work in performance of this Agreement, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, physical disability, sex, or marital status.

A6.4 The Contractor shall send to each labor union or representative or workers with which the Contractor has a collective bargaining Agreement or other contract or understanding a notice advising the labor union or workers' representative of the Contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.

A6.5 In the event the Contractor subcontracts any part of the services to be performed under this Agreement, the Contractor agrees to make good faith efforts to utilize Disadvantaged Business Enterprises, to affirmatively solicit their interest, capability and prices and to furnish documentation of the results of all such direct contacts on forms provided by or acceptable to the Contracting Agency.

A6.6 The Contractor shall make, keep and preserve such records necessary to determine compliance with equal employment opportunity obligations and shall furnish required information and reports. All records must be retained and made available in accordance with Article A9, Audits and Records.

A6.7 The Contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its Subcontractors, so that these provisions will be binding upon each Subcontractor.

**ARTICLE A7  
PAYMENTS TO THE Contractor**

A7.1 Payments shall be based on approved Contractor's invoices submitted in accordance with this article and the provisions of Appendix C. The sum of payments shall not exceed allowable compensation stated in Notice(s) to Proceed and no payments shall be made in excess of the maximum allowable total for this Agreement.

A7.2 The Contracting Agency will exert every effort to obtain required Funding Agency approvals and to issue authorizations in a timely manner. Contractor shall not perform any services without a Notice to Proceed therefore. Accordingly, the Contracting Agency will not pay the Contractor for services or associated reimbursable costs performed outside those which are authorized by a Notice to Proceed.

A7.3 Contractor's invoices shall be submitted when services are completed or monthly, for months during which services are performed, as applicable, in a format provided by or acceptable to the Contracting Agency.

A7.4 In the event items on an invoice are disputed, payment on those items will be held until the dispute is resolved. Undisputed items will not be held with the disputed items.

A7.5 The Contractor shall submit a final invoice and required documentation within 90 days after final acceptance of services by the Contracting Agency. The Contracting Agency will not be held liable for payment of invoices submitted after this time unless prior written approval has been given. Total payment of all Subcontractors and satisfactory compliance with Article A22, Taxes, are conditions precedent to final payment.

#### **ARTICLE A8 CHANGES**

A8.1 Changes (including "Supplemental Agreements") in the period of performance, general conditions, statement of services, or other provisions established by this Agreement may be made by written Amendment only. If such changes cause an increase or a decrease in the Contractor's cost, an equitable adjustment shall be made and specified in the Amendment. The Contractor shall not perform any additional or extra services prior to receiving a fully executed copy of an Amendment and a Notice to Proceed, except as the Contractor may be directed under the provisions of Article A20, Claims and Disputes.

A8.2 If at any time the Contracting Agency through its authorized representatives, either verbally or in writing, requests or issues instructions for Additional or Extra Services or otherwise directs actions which conflict with any provision of this Agreement, the Contractor shall, within 30 days of receipt and prior to pursuing such instructions, so notify the Contracting Agency in writing, and to the extent possible, describe the services and estimated cost of any Additional or Extra Services. The Contracting Agency will then evaluate and, if appropriate, negotiate an Amendment. Unless so notified by the Contractor, the Contracting Agency will conclude such instructions have not changed any provisions of this Agreement nor require additional compensation. No additional payments shall be made to the Contractor without such notice.

#### **ARTICLE A9 AUDITS AND RECORDS**

A9.1 The Contractor shall maintain records of performances, communications, documents, correspondence and costs pertinent to this Agreement and the Funding or Contracting Agency's authorized representatives shall have the right to examine such records and accounting procedures and practices.

A9.2 The Funding or Contracting Agency's authorized representatives shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation, pricing and performance of this Agreement and any modification or change for the purpose of evaluating the accuracy, completeness and currency of the data submitted. The right of examination

shall extend to all documents necessary to permit adequate evaluation of the data, computations and projections used.

A9.3 The materials described in this article shall be made available at a business office of the Contractor at all reasonable times for inspection, audit or reproduction, for a minimum of 3 years from the date of any resulting final settlement.

A9.3.1 If this Agreement is completely or partially terminated, records relating to the services terminated shall be made available for a minimum of three (3) years from the date of any termination or resulting final settlement, whichever is later.

A9.3.2 Records which relate to appeals under Article A20, Claims and Disputes, or litigation or the settlement of Claims arising out of the performance of this Agreement shall be made available until such appeals, litigation or Claims have been concluded.\*

#### **ARTICLE A10 Contracting Agency INSPECTIONS**

A10.1 The Contracting Agency has the right to inspect, in the manner and at reasonable times it considers appropriate during the period of this Agreement, all facilities and activities of the Contractor as may be engaged in the performance of this Agreement.

#### **ARTICLE A11 TERMINATION OR SUSPENSION**

A11.1 This Agreement may be terminated by either party upon 10 days written notice if the other party fails substantially to perform in accordance with its terms through no fault of the party initiating the termination (default termination). If the Contracting Agency terminates this Agreement, the Contracting Agency will pay the Contractor a sum equal to the percentage of work completed that can be substantiated in whole or in part either by the Contractor to the satisfaction of the Contracting Agency or by the Contracting Agency. If the Contracting Agency becomes aware of any non-conformance with this Agreement by the Contractor, the Contracting Agency will give prompt written notice thereof to the Contractor. Should the Contractor's services remain in non-conformance, the percentage of total compensation attributable to the nonconforming work may be withheld.

A11.2 The Contracting Agency may at any time terminate (convenience termination) or suspend this Agreement for its needs or convenience. In the event of a convenience termination, or suspension for more than 3 months, the Contractor will be compensated for authorized services and authorized expenditures performed to the date of receipt of written notice of termination or suspension plus reasonable expenses. No fee or other compensation for the uncompleted portion of the services will be paid except for already incurred indirect costs which the Contractor can establish and which would have been compensated for over the life of this Agreement, but

because of the termination or suspension would have to be absorbed by the Contractor without further compensation.

A11.3 If federal funds support this Agreement, settlement for default or convenience termination must be approved by the Funding Agency.

A11.4 In the event of termination or suspension, the Contractor shall deliver all work products, reports, estimates, schedules and other documents and data prepared pursuant to this Agreement to the Contracting Agency.

#### **ARTICLE A12 OFFICIALS NOT TO BENEFIT**

A12.1 No member of or delegate to Congress, United States Commissioner or other officials of the Federal, State, Political subdivision or Local Government shall be admitted to any share or part of this Agreement or any benefit to arise therefrom.

#### **ARTICLE A13 INDEPENDENT Contractor**

A13.1 The Contractor and its agents and employees shall act in an independent capacity and not as officers or agents of the Contracting Agency in the performance of this Agreement except that the Contractor may function as the Contracting Agency's agent as may be specifically set forth in this Agreement.

A13.2 Any and all employees of the Contractor, while engaged in the performance of any work or services required by the Contractor under this Agreement, shall be considered employees of the Contractor only and not of the Contracting Agency and any and all Claims that may or might arise under the Worker's Compensation Act on behalf of said employees, while so engaged and any and all Claims made by a third party as a consequence of any negligent act or omission on the part of the Contractor's employees, while so engaged on any of the services to be rendered herein, shall be the sole obligation and responsibility of the Contractor.

A13.3 This Agreement will be declared null and void should the Contracting Agency determine that by Internal Revenue Service definitions the Contractor is an employee of the Contracting Agency.

#### **ARTICLE A14 PROSELYTIZING**

A14.1 The Contractor agrees that it will not engage on a full or part time basis, during the period of this Agreement, any person or persons who are or have been employed by the Contracting Agency during the period of this Agreement or during the 90 days immediately preceding the date of this Agreement except those who have been regularly retired or approved in writing by the Contracting Agency.

#### **ARTICLE A15 COVENANT AGAINST CONTINGENT FEES**

A15.1 The Contractor shall comply with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Federal Department of Labor regulations (29 CFR, part 3), which are incorporated by reference and made a part of this Agreement.

A15.2 The Contractor warrants that it has not employed or retained any organization or person, other than a bona fide employee, to solicit or secure this Agreement and that it has not paid or agreed to pay any organization or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Contracting Agency has the right to annul this Agreement without liability or, in its discretion, to deduct from the allowable compensation the full amount of such commission, percentage, brokerage or contingent fee.

A15.3 The Contracting Agency warrants that the Contractor or the Contractor's representative has not been required, directly or indirectly as an express or implied condition in obtaining or carrying out this Agreement, to employ or retain, or agree to employ or retain, any organization or person or to make a contribution, donation or consideration of any kind.

#### **ARTICLE A16 PRECEDENCE OF DOCUMENTS**

A16.1 Components of this Agreement shall stand and prevail in the following order: Agreement over General Conditions; General Conditions over Statement of Services; Statement of Services over Basis of Compensation; Basis of Compensation over any appendices beyond Appendix C.

A16.2 If a "Request for Proposal" (RFP) and/or a proposal are appended to this Agreement, the components described in paragraph A16.1 shall stand and prevail over the proposal and the proposal over the RFP.

**ARTICLE A17  
ENDORSEMENT ON DOCUMENTS**

A17.1 Endorsements and professional seals, if applicable, must be included on all final drawings, specifications, cost estimates and reports prepared by the Contractor. Preliminary copies of such documents submitted for review must have seals affixed without endorsement (signature).

**ARTICLE A18  
OWNERSHIP OF WORK PRODUCTS**

A18.1 Work products produced under this Agreement, except items which have pre-existing copyrights, are the property of the Contracting Agency. Payments to the Contractor for services hereunder include full compensation for all work products produced by the Contractor and its Subcontractors and the Contracting Agency shall have royalty free non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, such work products.

A18.2 Should the Contracting Agency elect to reuse work products provided under this Agreement for other than the original project and/or purpose, the Contracting Agency will indemnify the Contractor and its Subcontractors against any responsibilities or liabilities arising from such reuse. Additionally, any reuse of design drawings or specifications provided under this Agreement must be limited to conceptual or preliminary use for adaptation and the original Contractor's or Subcontractor's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed and dated by the professional who is in direct supervisory control and responsible for all adaptation.

**ARTICLE A19  
SUBContractorS, SUCCESSORS AND ASSIGNS**

A19.1 The Contracting Agency must concur in the selection of any person or firm that may be engaged in performance of this Agreement to provide negotiable professional or technical services, products, etc., (vs. commodity items available to the general public in stores at market prices).

A19.2 If this Agreement includes named firms or individuals, then such firms or individuals shall be employed for the designated services, unless the Agreement is changed by Amendments.

A19.3 The Contractor shall not assign, sublet or transfer any interest in this Agreement without the prior written consent of the Contracting Agency.

A19.4 The Contractor binds itself, its partners, its Subcontractors, assignees and legal representatives to this Agreement and to the successors, assignees and legal representatives of the Contracting Agency with respect to all covenants of this Agreement.

A19.5 The Contractor shall include provisions appropriate to effectuate the purposes of this Appendix A in all subcontracts executed to perform services under this Agreement which may exceed a cost of \$25,000.

**ARTICLE A20  
CLAIMS AND DISPUTES**

A20.1 If the Contractor becomes aware of any act or occurrence which may form the basis of a Claim by the Contractor for additional compensation or an extension of time for performance, or if any dispute arises regarding a question of fact or interpretation of this Agreement, the Contractor shall immediately inform the Contracts Officer. If the matter cannot be resolved within 7 days, the Contractor shall, within the next 14 days, submit an "Intent to Claim" in writing to the Contracts Officer.

A20.1.1 If the Contractor believes additional compensation is warranted, the Contractor shall immediately begin to keep and maintain complete, accurate and specific daily records concerning every detail of the potential Claim including actual costs incurred. The Contractor shall give the Contracting Agency access to any such record and, when so requested, shall forthwith furnish the Contracting Agency copies thereof.

A20.1.2 The Claim, if not resolved, shall be presented to the Contracting Officer, in writing, within 60 days following receipt of the "Intent to Claim". Receipt of the Claim will be acknowledged in writing by the Contracting Officer.

A20.1.3 The Contractor agrees that unless these written notices are provided, the Contractor will have no entitlement to additional time or compensation for such act, event or condition. The Contractor shall in any case continue diligent performance under this Agreement.

A20.2 The Claim shall specifically include the following:

A20.2.1 The act, event or condition giving rise to the Claim.

A20.2.2 The provisions of the Agreement which apply to the Claim and under which relief is provided.

A20.2.3 The item or items of project work affected and how they are affected.

A20.2.4 The specific relief requested, including Contract Time if applicable, and the basis upon which it was calculated.

A20.3 The Claim, in order to be valid, must not only show that the Contractor suffered damages or delay but that those conditions were actually a result of the act, event or condition complained of and that the Agreement provides entitlement to relief to the Contractor for such act, event, or condition.

A20.3.1 The CONTRACTING OFFICER reserves the right to make written requests to the Contractor at any time for additional information which the Contractor may possess relative to the Claim. The Contractor agrees to

provide the Contracting Officer such additional information within 30 days of receipt of such a request. Failure to furnish such additional information may be regarded as a waiver of the Claim.

A20.3.2 If the Claim is not resolved by Agreement within 90 days of its receipt, the Contracting Officer will issue a written decision to the Contractor.

A20.3.3 The Contractor shall certify that the Claim is made in good faith, that the supporting cost and pricing data are accurate and complete to the best of the Contractor's knowledge and belief, and that the amount requested accurately reflects the adjustment to the Agreement for which the Contractor believes the Contracting Agency is liable.

A20.4 The Contractor will be furnished a written signed copy of the Contracting Officer's decision within 90 days, unless additional information is requested by the Contracting Officer. The Contracting Officer's decision is final unless, within 14 days of receipt of the decision, the Contractor delivers a written Notice of Appeal to the Commissioner designated on Page 2 of this Agreement.

A20.5 Procedures for appeals and hearings are covered under AS 36.30.625 and AS 36.30.630.

#### **ARTICLE A21 EXTENT OF AGREEMENT**

A21.1 This Agreement including appendices represents the entire and integrated Agreement between the Contracting Agency and the Contractor and supersedes all prior negotiations, representations or Agreements, written or oral.

A21.2 Nothing contained herein may be deemed to create any contractual relationship between the Contracting Agency and any Subcontractors or material suppliers; nor may anything contained herein be deemed to give any third party Claim or right of action against the Contracting Agency or the Contractor which does not otherwise exist without this Agreement.

A21.3 This Agreement may be changed only by written Amendment executed by both the Contracting Agency and the Contractor.

A21.4 All communications that affect this Agreement must be made or confirmed in writing and must be sent to the addresses designated in this Agreement.

A21.5 The Contractor on receiving final payment will execute a release, if required, in full of all Claims against the Contracting Agency arising out of or by reason of the services and work products furnished and under this Agreement.

#### **ARTICLE A22 TAXES**

A22.1 As a condition of performance of this Agreement, the Contractor shall pay all Federal, State and Local taxes incurred by the Contractor and shall require their payment

by any Subcontractor or any other persons in the performance of this Agreement.

#### **ARTICLE A23 GOVERNING LAW**

A23.1 This Agreement is governed by the laws of the State of Alaska and Federal and Local Laws and Ordinances applicable to the work performed. The Contractor shall be cognizant and shall at all times observe and comply with such laws which in any manner affect those engaged or employed in the performance, or which in any way affects the manner of performance, of this Agreement.

#### **ARTICLE A24 FEDERAL AID CERTIFICATION (HIGHWAYS) (For Agreements exceeding \$100,000)**

A24.1 The Contractor certifies, by executing this Agreement, to the best of his or her knowledge and belief, that:

A24.1.1 No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employees of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and at the extension, continuation, renewal, Amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement.

A24.1.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Agreement, the undersigned shall complete and submit Standard Form LLL, Disclosure of Lobbying Activities, in accordance with its instructions. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

A24.2 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code.

A24.3 The Contractor also agrees by executing this Agreement that the Contractor shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

#### **ARTICLE A25 TRADE RESTRICTIONS**



The Contractor or Subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. Has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. Has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the Contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the Contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The Contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the

Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally posed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

#### **ARTICLE A26 SUSPENSION AND DEBARMENT**

The bidder/offeror certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/ proposal.

#### **ARTICLE A27 ADDITIONAL PROVISIONS**

*(Any deletion or modification of Articles A1 through A26 shall be approved "as to form" by the Contracting Agency's legal section, acknowledged in writing, and attached as an Exhibit to this Appendix.)*

A27.1 Grant D22AP00258-00 applicable award conditions are incorporated by reference. The grant and conditions have been included as Appendix F to this agreement.

# STATEMENT OF SERVICES

## APPENDIX B

PSA No:	25-23-1-019
Program No:	RSA1039366
DOI Grant No:	D22AP00258-00
Date Prepared:	01/03/2023

### PSA No. 25-23-1-019

## Alaska Oil and Gas Conservation Commission (AOGCC) Orphan Well Plugging and Remediation Program CMGC

The Northern Region State of Alaska Department of Transportation and Public Facilities (Department), Division of Preconstruction Services, Design Section is contracting with ASRC Energy Services Alaska, Inc. (Contractor) to provide Construction Manager/General Contractor services for the AOGCC Orphan Well Plugging and Remediation Program project (Project).

### SCOPE

Provide preconstruction services in support of construction contract development for the Project.

#### **Stage 1 – Preconstruction Services**

During Stage 1 the Contractor is awarded a professional services agreement (PSA). The Contractor will participate in the Project's design development including but not limited to:

- Participate in project meetings including kick-off meetings and risk management workshops
- Perform site assessments
- Assist in shaping the project scope of work to the available budget
- Propose innovations
- Identify and manage risk
- Provide pricing information
- Evaluate project schedule, logical work packages and phasing
- Provide detailed cost estimates and cost estimate breakdowns of elements of the work using open-book methods.

The Department and Contractor may agree to early work packages and therefore multiple Stage 2 construction contracts may be developed, requiring tasks identified in Stage 1 to be repeated through each work package. Once the final Project Plans and Specifications are complete for an agreed-upon work package, the Contractor, Department and Independent Cost Estimator (ICE) will each develop final construction cost estimates which will be used to arrive at an Agreed Price (AP). The AP will be negotiated by the Department and the Contractor. If the AP is agreed upon, the Department will award the Stage 2 contract.

If the AP is not agreed upon for a work package or total project cost, the Department reserves the right to end the CMGC contract for all or portions of the contract and proceed with the project under separate contract(s).

#### **Stage 2 - Construction**

The Contractor will construct the project within the agreed upon schedule and AP, and to the standards and requirements set forth in the Plans and Specifications. The Department will administer the construction contract similar to a design-bid-build project. Stage 2 services will be conducted through construction contracting procedures and will not be contracted through this PSA. Construction is anticipated to consist of the following general scope.

#### Well Plugging & Abandonment:

1. Properly plug and abandon each well in accordance with approved work plans and pertinent laws and regulations.
2. Provide monthly accounting of funds spent to date for site clearance (debris and ground disturbance) including:
  - a. Bureau of Labor Statistics NAICS codes for each of the employees working on each well site, along with the hours each employee spent on each site

- b. Verify all laborers and mechanics employed shall be paid wages at rates not less than those prevailing on similar projects in the locality, (Davis-Bacon Act and Alaska Title 36)
- c. Actual total cost per well of plugging
- d. Actual total cost per well of surface reclamation

Remediating Well Sites:

1. Environmental Remediation - soil and groundwater:
  - a. Remediate soil and restore native species habitat that has been degraded due to the presence of orphaned wells and associated pipelines, facilities, and infrastructure.
  - b. Remediate land adjacent to orphaned wells and decommission or remove associated pipelines, facilities, debris, and infrastructure.
2. Perform post-remediation monitoring and sampling to confirm site closure in accordance with DEC requirements (reference Attachment A in posted RFP).
3. Provide monthly accounting of funds spent to date.
  - a. Bureau of Labor Statistics NAICS codes for each of the employees working on each well site, along with the hours each employee spent on each site
  - b. Verify all laborers and mechanics employed shall be paid wages at rates not less than those prevailing on similar projects in the locality, (Davis-Bacon Act)
  - c. Actual total cost per well of plugging
  - d. Actual total cost per well of surface reclamation

Reserve Pits:

1. All solid waste at the site not otherwise approved for disposal under a corrective action plan under 18 AAC 60.440 should be removed and disposed at a site permitted to accept that waste.

**STAGE 1 TASKS**

As a part of the project team, develop schedule and phasing plans, provide input on constructability, materials availability and cost throughout Stage 1 of the contract. Specific work items have been broken out into the following primary tasks.

***Task 1 – Preconstruction Services***

1.1 Project Kick-Off.

- a. Participate in a project kick-off meeting with the Department. Meeting will be in Anchorage and scheduled by the Department.

1.2 Preconstruction Planning.

- a. Collaborate with the Department on project planning, permitting, and all necessary coordination.

1.3 Site Investigation Planning.

- a. Develop plan for performing reconnaissance visits to all well sites.
- b. Establish well type (e.g. orphaned, already abandoned, or responsible party exists)
- c. Estimate the population living within a half mile radius of each well being plugged.

1.4 Estimating.

- a. Complete open book cost estimates at agreed milestones.
- b. Revise cost proposals as necessary based on negotiations to arrive at the AP.
- c. Multiple packages are anticipated as part of this CMGC and may include materials purchase, well plugging and abandonment, contaminated site remediation, and physical construction of the full project or components of the project as funding and schedule allows.

**Scheduling.** Develop and update as needed a critical path construction schedule for the work packages.

Costs for Task 1 under the initial award will include Tasks 1.1-1.3 and an initial “green sheet” estimate for Task 1.4.

***Task 2 – Site Investigations***

Conduct site investigations in support of work plan development and risk management during the preconstruction stages as agreed to between the Department and the Contractor. Specific schedule and deliverables for this task will be as agreed upon prior to conducting the work. Costs for this work will be negotiated under a subsequent amendment.

Specific work for the various well site locations is anticipated to include, but not limited to:

2.1 Perform initial site assessments.

- a. Verify or establish latitude/longitude of orphan wells and associated surface equipment and debris
- b. Verify well type (e.g. orphaned, already abandoned, or responsible party exists)
- c. Assess surface debris removal and site clearance requirements for each wellsite
- d. Photograph relevant site features, including aerial drone imagery as needed to support the project.
- e. Assess requirements for equipment access and site preparation
- f. Locate any reserve pit at the site. For each reserve pit provide the following:
  - i. Specific location data, including global positioning system (GPS) coordinates of the four corners of the reserve pit
  - ii. A map showing all surface water within 1,000 feet of the inactive reserve pit
  - iii. A detailed description or photographs demonstrating the existing site conditions and indicating any potential exposed drilling waste, ponding, or signs of ponding within the boundaries of the inactive reserve pit
  - iv. Analytical data, including parameters specified by the department, for surface water located within 1,000 feet of the inactive reserve pit, including any surface water within the inactive reserve pit; and,
  - v. A proposal to either:
    - 1. Perform a corrective action under 18 AAC 60.440 (c)&(d) or,
    - 2. If no water is present within the reserve pit and no drilling waste is evident on the surface at the site, request permanent closure of the inactive reserve pit under 18 AAC 60.440(e)

2.2 Complete preliminary environmental survey and characterization (sampling, mapping extent of contamination)

- a. See Attachment A from posted RFP.

**Task 3 – Work Plan Development**

To be negotiated. This task will be used to develop the work plans that will be used to guide work package development in Task 4.

3.1 Develop work plans for Stage 2:

- b. Logistics planning
- c. Accessing site
- d. Site preparation
- e. Plugging wells

**Task 4 – Work Package Development**

To be negotiated. This task will be used to develop complete work packages, including necessary permitting to complete fully executable construction work packages to be completed under Stage 2.

**SCHEDULE**

The anticipated milestone schedule is as follows:

<b>Milestone</b>	<b>Date</b>
Present preliminary plan for performing reconnaissance visits to all well sites by 9/30/23 and plugging all orphan wells by 9/30/2025 (excepting P&A of Iniskin wells)	3 months after contract award date
Present revised plan for plugging all wells and remediating reserve pits after having completed reconnaissance visits.	10/15/2023
Perform well plugging and site clearance of all 8 southcentral wells.	9/30/2024
Perform plugging and site clearance of North Slope and Southeast wells.	9/30/2025
Remediation or closure of all reserve pits associated with orphan wells.	9/30/2025

**ADMINISTRATIVE REQUIREMENTS**

**Project Staff.** All services must be performed by or under the direct supervision of the following individuals. Only prior written approval from the Department shall accomplish replacement of, or addition to, the Project Staff named below:

<u>Name</u>	<u>Project Responsibilities</u>
Doug Cismoski, P.E.	Contract Manager
Amanda Dial	Project Manager
Clint Spence	Well Site Supervisor
Michael Quick, P.E.	Drilling/Petroleum Engineer
William Isaacson	Drilling/Petroleum Engineer
Joseph Christopher	Qualified Environmental Professional
Tony Lamping	Logistics Manager

**Professional Registration.** *Where applicable*, all reports, plans, specification, estimates and similar work products provided by the Consultant shall be prepared by or under the supervision of the Registered Engineer, Architect or Land Surveyor in responsible charge for the services. These Engineers, Architects, or Land Surveyors shall be currently registered in the State of Alaska and they shall sign and seal as to the accuracy of each final work product for which they are responsible.

**Consultant Name on Plan Sheets and Documents.** No Consultant logos shall be allowed on any electronic or hard copy document produced for the DEPARTMENT. Consultant letterhead shall be allowed only as exhibits in document appendices. The Consultant name shall be in the same font as other lettering on the plan sheet or document, shall be 0.05" in height on 11"x17" plan sheets, and shall be included in the binding edge of each sealed and signed plan sheet in the following format:

PLANS DEVELOPED BY: CONSULTING FIRM NAME, LLC, CERT. OF AUTHORIZATION NO.  
ADDRESS  
PHONE NUMBER

**Submittal Requirements.** Deliverables shall be compatible with DEPARTMENT standard software, and submitted in their original electronic format as well as PDF.

# COMPENSATION

## APPENDIX C

<b>PSA No:</b> 25-23-1-019
<b>Program No:</b> RSA1039366
<b>DOI Grant No:</b> D22AP00258-00
<b>Date Prepared:</b> 01/20/2023

C1. Payments will be made on approved invoices submitted for months during which costs are incurred. Except for Fixed Price(s) and Fixed Fees, compensation shall be cost-based on actual costs to the Contractor for providing services. Provisions for Audit are contained in Appendix A.

C2. EXCEPT WHEN PAYMENT IS BY FIXED PRICE, PRIME CONTRACTOR'S LABOR AND ASSOCIATED INDIRECT COST SHALL BE INVOICED TO THE CONTRACTING AGENCY WITHIN 45 DAYS OF PERFORMANCE. SUBCONTRACTORS' LABOR AND ASSOCIATED INDIRECT COST SHALL BE INVOICED TO THE CONTRACTING AGENCY WITHIN 60 DAYS OF PERFORMANCE. ALL OF THE CONTRACTOR'S AND SUBCONTRACTORS' OTHER DIRECT COSTS (EXPENSES) SHALL BE INVOICED TO THE CONTRACTING AGENCY WITHIN 90 DAYS OF BEING INCURRED. **CHARGES SUBMITTED AFTER THE ABOVE STATED TIMES WILL, AT THE CONTRACTING AGENCY'S DISCRETION, NOT BE PAID.**

C3. Price proposals and Notices-to-Proceed (NTPs) for this Agreement must conform to the Labor Rates, Indirect Cost Rate(s), Unit Prices, Fee/Profit Arrangements, Estimated Costs, and Price Caps contained in the Exhibits attached to this Appendix C.

C4. Payments are limited to the amount(s) cited in each Notice-to-Proceed (NTP) issued for this Agreement. The Contractor expressly has no right to any payment in excess of each NTP amount.

C5. Final payment to the Contractor may be withheld until a Release from Agreement, on a form prescribed by the Contracting Agency, is executed by the Contractor.

C6. Payments for this Agreement and any Amendment, including Costs and Fee, will be adjusted to exclude any significant sums by which the Contracting Agency finds that payments are increased because the cost or pricing data furnished by the Contractor or prospective Contractor is inaccurate, incomplete, or not current on the date of the Agreement or subsequent submittal date of pricing data (AS 36.30.400).

C7. The following terminology and explanations are applicable to this Agreement; any inconsistencies appearing in this Agreement must be resolved in accordance with the terminology in paragraphs C7.1-C7.6 and C8.

C7.1 Direct Costs of Direct Labor - Base salary and/or wages paid to employees charged directly to this Agreement exclusive of Fringe Benefits or other Indirect Costs and Fees (including profit).

C7.2 Other Direct Costs ("Expenses") - **PRE-APPROVED** unit priced items, actual costs for specific subcontracts identified in this Agreement, and actual costs for the following:

Transportation (economy rate/air-coach);  
Food and lodging (Generally, not to exceed agency per diem rates);  
Incidental travel expenses; and  
- If not recovered in the Indirect Cost Rate - the following:  
Equipment & computer use at **PRE-APPROVED** rates;  
Specific materials and supplies; and  
Other **PRE-APPROVED** direct expenses.

Each Expense is limited to reasonable costs which do not exceed that which would be incurred by an ordinarily prudent person in the conduct of competent business.

C7.3 Indirect Costs - Allowable expenses that, because of their incurrence for common or joint cost objectives, must be allocated to this Agreement using a specified Indirect Cost Rate. A cost objective is a function, organizational subdivision, contract, project or work unit for which cost data is accumulated under the Contractor's accounting system. Generally, the Contracting Agency requires Indirect Costs to be segregated into the following categories: Fringe Benefits, Overhead (General & Administrative Expenses - including Indirect Labor), and Allocated Home Office Overhead (if applicable).

C7.3.1 Fringe Benefits - Costs for items such as:

Vacation time, holidays and authorized leave;  
Group and Worker's Compensation Insurance;  
Deferred Compensation/Retirement plans;  
Social Security and Unemployment Taxes; and  
Group Medical plan and Life Insurance Premiums.

C7.3.2 Overhead - Costs for items such as the following, if they are not included in Direct Costs:

Indirect Labor (Supervisory, Administrative, etc., base salary or wages)  
Recruiting expenses, travel, food and lodging;  
Rent, heat, power, light and janitorial services;  
Office supplies, reproduction costs, communications;  
Upkeep and depreciation of equipment and computers;  
Rentals of equipment and computers; and,  
Business Insurance premiums not billed to clients;

C7.3.3 Allocated Home Office Overhead (if applicable) - Costs for management, supervisory, and administrative functions which benefit separate unit operations.

C7.3.4 Indirect Cost Rate - An established percentage of incurred expenses for Direct Costs of Direct Labor which is used as a basis of compensation for Indirect

Costs. Fees or Profit are not included in the Indirect Cost Rate.

C7.4.1 If this Agreement wholly or partially allocates Indirect Costs on other than a Direct Labor dollar basis, a description of the Indirect Cost pools or service centers used, and the Indirect Cost Rates(s) and base(s), shall be attached in an Exhibit to this Appendix C; otherwise, such an allocation shall not be allowed for this contract.

C7.4.2 Indirect Cost Rates may be fixed or provisional and will be established for the duration of the Agreement, fiscal year, or other time period.

C7.4.3 Provisional Indirect Cost Rates or "Fixed/Provisional" Rates require a Contracting Agency approved audit of accounting records after each of the Contractor's or Subcontractor's fiscal years during which they perform work under the Agreement.

C7.5 Non-allowable Costs - Payments for the following items and certain other costs defined in 48 CFR Part 31 and related regulations are not allowable. Such costs shall not be included as billable Direct or Indirect Costs or in the calculation of the Indirect Cost Rate.

Interest and other financial costs  
Contributions and donations  
Federal income taxes & tax return preparation fees  
Deferred state income taxes

Bad debts  
Fines and penalties  
Entertainment, social club memberships, etc.  
Goodwill  
Provisions for contingencies  
Losses on other contracts and related legal fees  
Legal fees, etc., related to contract claims

C7.6 Fee - Profit plus any costs not allocable to this contract. The amount of Fee may be fixed or variable, depending on the method of payment used. Non allocable costs shall not be considered by the Contracting Agency when negotiating Fee.

C8. Markup of any costs as compensation for administration, management or handling, etc., is prohibited. Costs of such efforts are included within the elements of Direct Labor and/or Indirect Labor. Compensation for any risk associated with incurring costs is included within Fee (Profit).

C9. The following Exhibits complete this Appendix C (Components of Appendix C - Compensation, shall stand and prevail in the following order: DOT&PF Form 25A280, Exhibit C-1, Exhibit C-2, et al, in the order of their number):

Exhibit C-1 Method(s) of Payment  
Exhibit C-2 NTP & Invoice Summary

# COMPENSATION

## APPENDIX C EXHIBIT C-1, METHOD(S) OF PAYMENT

### AOGCC Orphan Well Plugging and Remediation Program CMGC

PSA No: 25-23-1-019
Original Agreement
Program No: RSA1039366
DOI Grant No: D22AP00258-00
Date Prepared: January 20, 2023

1. Payments will be made in accordance with Article A7 (Basic Agreement), Articles C1 - C9 (Appendix C), the following, and the applicable discussions of Methods of Payment presented below.

<u>CONTRACTOR &amp; SUBCONTRACTORS</u>	<u>SUBCONTRACTOR TO: (FIRM)</u>	<u>METHOD OF PAYMENT</u>	<u>ESTIMATED COST</u>	<u>FEE</u>	<u>ESTIMATED PRICE</u>
ASRC Energy Services Alaska, Inc.		T&E	\$6,000.00		\$6,000.00
ASRC Consulting & Environmental Services, Inc.	AES Alaska, Inc.	T&E	\$117,500.00		\$117,500.00
Cruz Construction, Inc.	AES Alaska, Inc.	T&E	\$55,000.00		\$55,000.00
<b>Authorized and Funded by this Amendment</b>					\$178,500.00
<b>Previously Authorized and Funded</b>					\$0.00
<b>Total Amount Authorized and Funded through this Amendment</b>					\$178,500.00
<b>Amount Remaining to be Authorized and Funded</b>					\$22,321,500.00

Note: If a Method of Payment is "Fixed Price", then the amount listed under "Estimated Price" is the Fixed Price.

<u>Item</u>	<u>Description</u>	<u>Amount</u>	<u>PSA Document</u>	<u>NTP #</u>
Task 1	Preconstruction Services	\$178,500.00	Original Agreement	1

2. **FIXED PRICE(S)** payments will be a single lump sum payment equal to the Fixed Price upon acceptable completion of this Agreement, or progress payments not to exceed the Fixed Price.

3. **FIXED PRICE(S) PLUS EXPENSES** payments will be as follows:

3.1 Payments of the **FIXED PRICE** will be a single lump sum payment equal to the Fixed Price upon acceptable completion of services, or progress payments not to exceed the Fixed Price(s).

3.2 Payments for Other Direct Costs (**EXPENSES**) will be made for actual substantiated costs not to exceed the total specified amount for expenses which are directly chargeable to and necessary for performance of the services assuming they are not recovered through the Indirect Cost Rate.

4. **COST PLUS FIXED FEE** payments will be made according to the following:

4.1 Payments for **DIRECT COST OF DIRECT LABOR** will be equivalent to the number of hours expended by each job classification multiplied by the applicable Direct Labor Rate. Job Classifications, Labor Hours and Direct Hourly Rates are estimated for this contract. Work shall be performed by the lowest paid qualified personnel. Further, when performing work for which they are over qualified, individuals will charge time at rates equivalent to skill levels commensurate with the work they perform. Contract payments will be based on the actual Direct Labor Rates paid to employees in any direct labor job classification who work on the contract, except that no Direct Hourly Rate shall exceed \$\_\_\_**PER HOUR** except for the following individuals whose rates are capped (fixed) as listed below for the duration of this Agreement:

<u>FIRM</u>	<u>JOB CLASSIFICATION</u>	<u>PERSON'S NAME</u>	<u>DIRECT RATE (\$/HR)</u>
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4.2 Payments for **INDIRECT COSTS** shall be equivalent to the amounts for Direct Cost of Direct Labor multiplied by the following applicable **INDIRECT COST RATES (IDCR)** :

<u>CONTRACTOR / SUBCONTRACTOR</u>	<u>IDCR (%)</u>	<u>IDCR TYPE</u> (F,F/P, P) F/P
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4.2.1 IDCR with "F" is Fixed for the duration of this Agreement.

4.2.2 IDCR with "F/P" is Fixed for the last half of the firm's current fiscal year plus not to exceed six months of its next fiscal year, after which the IDCR becomes a Provisional Rate until an audit is completed and a Fixed IDCR is negotiated for each successive twelve month interval.

4.2.3 IDCR with "P" is Provisional until completion of post performance audit to establish actual incurred rate which is used to negotiate a final IDCR for the period covered by the audit. Post performance audits may be done after each fiscal year of a multi-year contract or once after completion of the contract. Audit findings and other rationale will be used to negotiate a final IDCR that appropriately allocates Indirect Costs to this Agreement for each fiscal year.

4.2.4 Revisions to any IDCR may be implemented only by a contract Amendment. Further, adjustment of any payments made based on Provisional IDCRs will not be done without a contract Amendment that fully explains the amount of the adjustments.

4.3 Payments for **OTHER DIRECT COSTS** (Expenses) will be made for actual substantiated costs which are directly chargeable to and necessary for performance of services assuming they are not recovered through the Indirect Cost Rate. "Markup" of Other Direct Costs is prohibited (reference paragraph C8).

4.4 If not defined elsewhere in this Appendix C, progress payments for a firm's (Contractor or any Subcontractor) **FIXED FEE** will be equivalent to the ratio of the firm's Direct Cost of Direct Labor to date, divided by the firm's total estimated Direct Cost of Direct Labor, multiplied by the total amount of the firm's Fixed Fee. The Fee amount for each firm participating in this Agreement was determined as follows:

5. **TIME AND EXPENSES** payments will be made according to the following:

5.1 Payments for **TIME** will be equivalent to the number of hours expended by each job classification multiplied by the applicable Billing Rate. Work will be performed by personnel with the lowest reasonable skill levels and hourly rates. Further, when performing work for which they are over qualified, individuals will charge time at rates equivalent to skill levels commensurate with the work they perform.

5.1.1 BILLING RATES for persons who work on this contract shall be the sum of the person's actual Direct Labor Rate plus an allowance for Indirect Cost at the then current Agency approved Indirect Cost Rate for the person's employer (firm) plus a fee (profit) of ten percent; e.g.:  $\$25 + (1.50 \times \$25) + (.10 \times [\$25 + (1.50 \times \$25)]) = \$68.75$ , however, not to exceed \$ PER HOUR except for the following individuals whose rates are capped (fixed) as listed below for the duration of this Agreement.

<u>FIRM</u>	<u>JOB CLASSIFICATION</u>	<u>PERSON'S NAME</u>	<u>BILLING RATE (\$/HR)</u>
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5.1.2 **BILLING RATES** are negotiated hourly labor rates which include compensation for all Costs (Direct Cost of Direct Labor and all Indirect Costs) plus Fee, except for allowable direct Expenses.

5.1.3 **Time & Expenses Overtime** shall be calculated at 1.5 times the base labor rate (DL & IDCR) and then the profit factor added.

5.2 Payments for Other Direct Costs (**EXPENSES**) will be made for actual substantiated costs which are directly chargeable to and necessary for performance of services assuming they are not recovered through the Indirect Cost Rate. "Markup" of Expenses is prohibited (reference paragraph C8).

# INDEMNIFICATION AND INSURANCE

## Appendix D in Professional Services Agreements

PSA No:	25-23-1-019
Program No:	RSA1039366
Federal No:	D22AP00258-00
Date Prepared:	01/17/2023

CONTRACTOR shall include the provisions of this form in all subcontracts which exceed \$25,000 and shall ensure Subcontractor's compliance with such provisions.

### ARTICLE D1 INDEMNIFICATION

D1.1 The CONTRACTOR shall indemnify, hold harmless, and defend the CONTRACTING AGENCY from and against any claim of, or liability for negligent acts, errors or omissions of the CONTRACTOR under this Agreement. The CONTRACTOR shall not be required to indemnify the CONTRACTING AGENCY for a claim of, or liability for, the independent negligence of the CONTRACTING AGENCY. If there is a claim of, or liability for, the joint negligent error or omission of the CONTRACTOR and the independent negligence of the CONTRACTING AGENCY, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "CONTRACTOR" and "CONTRACTING AGENCY", as used within this article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "Independent Negligence" is negligence other than in the CONTRACTING AGENCY's selection, administration, monitoring, or controlling of the CONTRACTOR and in approving or accepting the CONTRACTOR's Work.

D1.2 The CONTRACTOR shall exercise that degree of skill, care and judgment commensurate with the professional standards for the services of a similar nature. When such standards are in dispute, they shall be established by a panel of three qualified, impartial professionals objectively selected and appointed by the Appeals Officer.

D1.3 The CONTRACTOR shall correct, through re-performance at its expense, any services which are deficient or defective because of the CONTRACTOR's failure to perform said services in accordance with professional standards, provided the CONTRACTING AGENCY has notified the CONTRACTOR in writing within a reasonable time, not to exceed 60 days, of the discovery of any such deficiency during the performance of the services and within 12 months of the date of final payment under this Agreement.

### ARTICLE D2 INSURANCE

D2.1 Without limiting the CONTRACTOR's indemnification, it is agreed that CONTRACTOR shall purchase at its own expense and maintain in force at all times for the duration of this Agreement, plus one year

following the date of final payment, the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the CONTRACTOR's policy contains higher limits, the CONTRACTING AGENCY shall be entitled to coverage to the extent of such higher limits. Certificates of insurance must be furnished to the CONTRACTING AGENCY and incorporated into this Agreement with copies attached to this document. Certificates must provide for the CONTRACTING AGENCY to receive notice of any policy cancellation or reduction per AS 21.36 Sections 210-310. Failure to furnish certificates of insurance or lapse of the policy is a material breach and grounds for termination of the CONTRACTOR's services and may preclude other Agreements between the CONTRACTOR and the CONTRACTING AGENCY.

D2.1.1 Worker's Compensation Insurance: The CONTRACTOR shall provide and maintain, for all employees engaged in work under this Agreement, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal USL&H and Jones Act requirements. The policy(s) must waive subrogation against the State of Alaska.

D2.1.2 Commercial General Liability Insurance: Such policy shall have **minimum** coverage limits of \$300,000 combined single limit per occurrence, covering all business premises and operations used by the Contractor in the performance of services under this agreement. The policy shall be written on an "occurrence" form and shall not be written as a "claims-made" form unless specifically reviewed and agreed to by the CONTRACTING AGENCY.

D2.1.3 Comprehensive Automobile Liability Insurance: Such policy shall have **minimum** coverage of \$300,000 combined single limit per occurrence covering all vehicles used by the Contractor in the performance of services under this agreement.

D2.1.4 Professional Liability (E&O) Insurance: Covering all negligent errors or omissions, and negligent acts, which the CONTRACTOR, Subcontractor or anyone directly or indirectly employed by them, make in the performance of this Agreement which result in financial loss to the State of Alaska. Limits required are per the following schedule:

**MINIMUM LIMITS OF E&O INSURANCE**

Contract Amount	Combined Single Limit, Per Occurrence & Annual Aggregate
Under \$25,000	As Available
\$25,000 to \$100,000	\$300,000
\$100,000 to \$499,999	\$500,000
\$500,000 to \$999,000	\$1,000,000
\$1,000,000 and over	Negotiable

D2.1.5 Professional Liability Insurance required for this Agreement is \$ Not Required

**ARTICLE D3  
MODIFICATION OF INSURANCE REQUIREMENTS**

(Article D3 is completed only when some of the standard insurance coverages are not applicable.)

**CONTRACTOR RELATED MODIFICATIONS**

- D3.1  **Workers Compensation Insurance** is not required because the CONTRACTOR is an Independent Contractor, Sole Proprietor or Self-Employed Person having no employees in any sense of AS 23.30.045.
- D3.2  **Comprehensive or Commercial General Liability Insurance** is not required because the general public and clients do not have any business access to a place of business or home office maintained by the CONTRACTOR.
- D3.3  **Comprehensive Automobile Liability Insurance** is not required because only public transportation, or a rented passenger vehicle with business use insurance, will be used to accomplish requirements of this Agreement.

**PROJECT RELATED MODIFICATIONS FOR E&O COVERAGE**

***When services may apply to fire, life safety or structural aspects and/or wherever the services should safeguard life, limb, health or property, Professional Liability Insurance shall be required.***

(E&O Coverage may be waived only if it was specifically not required within the solicitation for proposals.)

- D3.4  **Professional Liability (E&O) Insurance** is not required because: 1) the CONTRACTING AGENCY's use of the services or Work products obtained from the CONTRACTOR will not result in significant exposure to any third party claims for loss or damage; and 2), the CONTRACTOR services will not apply to any construction, alteration, demolition, repair or direct use of any highway, airport, harbor, building or other structure.
- D3.5  **Professional Liability (E&O) Insurance** is not required because this Agreement is for one of the following applicable (*checked*) services for which E&O coverage is not needed:
  - Right-of-Way Fee Appraisals
  - Photogrammetric Mapping Services
  - Architectural/Engineering review of Construction Bid Documents wherein design responsibility clearly remains with the designer of record.

**OTHER BASIS FOR MODIFICATIONS**

(Requires written concurrence from Division of Risk Management)

- D3.6  Attached Exhibit D-1 identifies and provides justification for insurance modifications.

Above *checked* modifications of the insurance requirements specified in Article D2 are hereby approved:

**CONTRACTING OFFICER**

Signature:

DocuSigned by:  
*Joseph Kemp*

Name: Joseph P. Kemp, P.E.

Title: Acting Regional Director

Date: 2/9/2023



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/5/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Alliant Insurance Services Houston, LLC 5444 Westheimer RD 9th fl Houston TX 77056	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> (832) 485-4000		<b>FAX (A/C, No):</b> (832) 485-4001
	<b>E-MAIL ADDRESS:</b> arctic.certs@alliant.com		
<b>INSURER(S) AFFORDING COVERAGE</b>			<b>NAIC #</b>
<b>INSURER A:</b> Berkley Assurance Company			39462
<b>INSURER B:</b> Everest National Insurance Com			10120
<b>INSURER C:</b> American International Group U			19402
<b>INSURER D:</b>			
<b>INSURER E:</b>			
<b>INSURER F:</b>			


**COVERAGES** **CERTIFICATE NUMBER:** 724633352 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			EN6GL00162-221	6/1/2022	6/1/2023	EACH OCCURRENCE	\$ 3,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 3,000,000
							GENERAL AGGREGATE	\$ 6,000,000
							PRODUCTS - COMP/OP AGG	\$ 6,000,000
								\$
B	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			EN6CA00287-221	6/1/2022	6/1/2023	COMBINED SINGLE LIMIT (Ea accident)	\$ 5,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
							Comp/Coll Ded	\$ 1,000
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			62785812	6/1/2022	6/1/2023	EACH OCCURRENCE	\$ 10,000,000
							AGGREGATE	\$ 10,000,000
								\$
B B B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	EN6WC00185-221 (AOS) EN6EW00002-221 (AK) EN6WC00186-221 (WI,MA) EN6WC00187-221 (FL,NJ,ME)	6/1/2022 6/1/2022 6/1/2022 6/1/2022	6/1/2023 6/1/2023 6/1/2023 6/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT	\$ 2,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 2,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 2,000,000
A	Contractors Pollution Liability			PCAB50182820622	6/1/2022	6/1/2023	Per Incident Aggregate Limit	\$ 5,000,000 \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

See Attached...

<b>CERTIFICATE HOLDER</b>  State of Alaska Department of Transportation and Public Facilities 2301 Peger Road Fairbanks, AK 99709	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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**ADDITIONAL REMARKS SCHEDULE**

AGENCY Alliant Insurance Services Houston, LLC		NAMED INSURED ASRC Energy Services Alaska, Inc. 3900 C Street, Suite 701 Anchorage, AK 99503	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER:** 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

INSURER AFFORDING COVERAGE: Berkley Assurance Company	NAIC#: 39462
POLICY NUMBER: PCAB50182820622	EFF DATE: 06/01/2022
TYPE OF INSURANCE: Professional Liability	EXP DATE: 06/01/2023
LIMIT DESCRIPTION: Each Claim	LIMIT AMOUNT: \$5,000,000
Aggregate Limit	\$5,000,000

Re: Alaska Oil and Gas Conservation Commission (AOGCC) Orphan Well and Remediation Program GMGC / RSA 1039336/DOI Grant No. D22AP00258-00 / Agreement No. 25-23-1-019  
 Workers' Compensation policy includes a Waiver of Subrogation in favor of the Certificate Holder as required by written contract, subject to the policy terms, conditions, and exclusions. General Liability, Auto Liability and Workers' Compensation policies include 30 Notice of Cancellation as required by written contract subject to the policy terms, conditions, and exclusions.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**NOTICE OF CANCELLATION BY US TO THIRD PARTY –  
BLANKET**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE PART

Schedule
30 days before the effective date of cancellation by us we will mail or deliver notice to any additional insured or "certificate holder" under this Coverage Part:

The following Condition is added to the policy:

**Notice of Cancellation By Us To Third Party**

1. If we cancel this policy for any reason other than non-payment of premium, notice of cancellation of not less than the number of days shown in the Schedule will be mailed or delivered to any third party identified in the list you have provided to us as described below.
2. We will mail or deliver our notice to the third party at the address shown in the list you have provided to us.
3. If notice is mailed, proof of mailing will be sufficient proof of notice.
4. We will not notify the third party if cancellation is at your request.
5. We will not notify the third party in the event of non-renewal.
6. We will not notify the third party if cancellation is due to non-payment of premium.
7. We will not notify any third party not contained on the list you have provided to us.
8. Our failure to notify the third party does not invalidate cancellation as respects you.

You agree that as a condition precedent for us providing such notice, you will:

- a. Provide us with a complete list of each additional insured or "certificate" holder, including appropriate designees and complete mailing addresses;
- b. Provide the list to us no less than 7 days from the date we request it; and
- c. Notify us of any changes to the list within 5 business days of such change.

For the purpose of this endorsement, "certificate" shall mean a certificate of insurance issued as evidence of this insurance.

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**ANY PERSON OR ORGANIZATION FOR WHOM YOU ARE REQUIRED BY  
WRITTEN CONTRACT OR AGREEMENT TO OBTAIN THIS WAIVER OF  
RIGHTS FROM US.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.  
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **06-01-22** Policy No. **EN6WC00186221**  
Insured **ARCTIC SLOPE REGIONAL CORPORATION**  
Insurance Company **EVEREST NATIONAL INSURANCE COMPANY**

Endorsement No.  
Premium \$ **INCL.**

Countersigned By \_\_\_\_\_

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NOTICE OF CANCELLATION BY US TO THIRD PARTY ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **Schedule**

30 days before the effective date of cancellation by us we will mail or deliver notice to:

Name: BLANKET WHERE REQUIRED BY WRITTEN CONTRACT  
Address:

The following condition is added to the policy:

#### **Notice of Cancellation by Us to Third Party**

1. If we cancel this policy for any reason other than non-payment of premium, notice of cancellation of not less than the number of days shown in the Schedule will be mailed or delivered to the third party identified in the Schedule.
2. We will mail or deliver our notice to the third party at the address shown in the Schedule.
3. If notice is mailed, proof of mailing will be sufficient proof of notice.
4. We will not notify the third party if cancellation is at your request.
5. We will not notify the third party in the event of non-renewal.
6. Our failure to notify the third party does not invalidate cancellation as respects you.



NOTICE OF CANCELLATION TO DESIGNATED PERSON OR ORGANIZATION

If we cancel this policy for any statutorily permitted reason other than nonpayment of premium, we shall endeavor to mail or deliver a written notice in accordance with state law to the person or organization shown in the Schedule below. Proof of mailing will be sufficient proof of such notice.

This endorsement shall not operate directly or indirectly to benefit any person or organization not named in the schedule below.

SCHEDULE

Designated Person or Organization:

AS PER WRITTEN CONTRACT

Designated Person or Organization Address:

Contract, Permit or Job Number:

Number of Days Notice: 30

All other terms and conditions of this policy remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 06/01/2022 Policy No. EN6WC00186221

Endorsement No.

Insured ARCTIC SLOPE REGIONAL

Premium \$ INCL.

Insurance Company EVEREST NATIONAL INSURANCE COMPANY

Countersigned By \_\_\_\_\_

# CERTIFICATION OF COMPLIANCE

## APPENDIX E

<b>PSA No:</b> 25-23-1-019
<b>Program No:</b> RSA1039366
<b>DOI Grant No:</b> D22AP00258-00
<b>Date Prepared:</b> 12/22/2022

### ALASKA LICENSES/REGISTRATIONS AND INSURANCE

Contractor and all Subcontractors shall comply with the following applicable requirements of Alaska Statutes:

1. For Procurements over the Small Procurement Limits, **Alaska Business License** (Form 08-070 issued under AS 43.70) at the time designated for award as required by AS 36.30.210(e) for Contractor and all Subcontractors.
2. **Certificate of Registration** for each individual to be in "responsible charge" (AS 08.48.341(14)) for Architecture, Engineering or Land Surveying (Form 08-2407 issued under AS 08.48.211) issued prior to submittal of proposal. Associates, consultants, or specialists under the supervision of a registered individual in "responsible charge" are exempt from registration requirements (AS 08.48.331).
3. **Certificate of Incorporation (Alaska firms) or Certificate of Authorization** for Foreign Firm ("Out-of-State" firms). All corporations, regardless of type of services provided, must have one of the certificates (AS 10.06.218 and other sections of Title 10.06 - Alaska Corporations Code).
4. **Current Board of Director's Resolution** for incorporated Contractors and incorporated Subcontractors for Architecture, Engineering or Land Surveying (reference AS 08.48.241) which names the person(s) designated in "responsible charge" for each discipline. Such persons shall be licensed in Alaska and shall participate as project staff in the Contract/Subcontracts.

5. **Corporations, limited liability companies, and limited liability partnerships** shall have a valid Certificate of Authorization under 08.48.241 prior to award.
6. **All partners** in a Partnership to provide Architectural, Engineering, or Land Surveying **must be legally registered in Alaska** prior to submittal of proposal for at least one of those disciplines (AS 08.48.251) which the Partnership offers.
7. **Joint Ventures**, regardless of type of services provided, must be licensed/registered in the legal name of the Joint Venture as used in this proposal (AS 43.70.020 and 43.70.110(4)).
8. The Contractor certifies that firms or individuals **debarred or suspended by the Department, State or Federal agencies** are not employed or subcontracted under this Professional Services Agreement.

Contractor will ensure that it and all Subcontractors have insurance coverage to effectuate the requirements of Appendix D, "Indemnification and Insurance", DOT&PF Form 25A269, as prepared for this Agreement.

**I certify that I am a duly authorized representative of the Contractor and that the above requirements for Alaska Licenses, Registrations and Insurance will be complied with in full. This certification is a material representation of fact upon which reliance will be placed if the proposed contract is awarded.**



1/11/2023

Signature

Date

Name ..... : Christine Resler

Title ..... : President/Director

For information about licensing, Offerors may contact the Alaska Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing at P.O. Box 110806, Juneau, AK 99811-0806, or at Telephone (907) 465-2550, or at Internet address:

<http://www.commerce.alaska.gov/web/cbpl/home.aspx>.

1. DATE ISSUED MM/DD/YYYY 08/24/2022		1a. SUPERSEDES AWARD NOTICE dated except that any additions or restrictions previously imposed remain in effect unless specifically rescinded	
2. CFDA NO. 15.018 - Energy Community Revitalization Program			
3. ASSISTANCE TYPE Project Grant			
4. GRANT NO. D22AP00258-00 Originating MCA #		5. TYPE OF AWARD Other	
4a. FAIN D22AP00258		5a. ACTION TYPE New	
6. PROJECT PERIOD MM/DD/YYYY From 10/01/2022		Through MM/DD/YYYY 09/30/2025	
7. BUDGET PERIOD MM/DD/YYYY From 10/01/2022		Through MM/DD/YYYY 09/30/2023	
8. TITLE OF PROJECT (OR PROGRAM) Alaska Oil and Gas Conservation Commission Large-Scale Initial Project Grant Application Orphan Well Plugging and Remediation Program			

# NOTICE OF AWARD



AUTHORIZATION (Legislation/Regulations)

P.L. 117-58 The Infrastructure Investment and Jobs Act, Part Title VI,  
Section 40601

9a. GRANTEE NAME AND ADDRESS COMMERCE, COMMUNITY & ECONOMIC DEVELOPMENT, ALASKA DEPARTMENT OF 333 W 7th Ave STE 100 Anchorage, AK, 99501-3572		9b. GRANTEE PROJECT DIRECTOR Mr. Chris Wallace 333 West 7TH Avenue STE 100 Anchorage, AK, 99501-3572 Phone: 907-793-1250	
10a. GRANTEE AUTHORIZING OFFICIAL Jeremy Price 333 West 7TH Avenue STE 100 Anchorage, AK, 99501-3572 Phone: 907-793-1234		10b. FEDERAL PROJECT OFFICER Mr. Matthew Reichert 1849 C St NW Washington, DC, 20240-0001 Phone: 111-111-1111	

**ALL AMOUNTS ARE SHOWN IN USD**

11. APPROVED BUDGET (Excludes Direct Assistance)				12. AWARD COMPUTATION			
I Financial Assistance from the Federal Awarding Agency Only				a. Amount of Federal Financial Assistance (from item 11m) \$ 25,000,000.00			
II Total project costs including grant funds and all other financial participation				b. Less Unobligated Balance From Prior Budget Periods \$ 0.00			
a. Salaries and Wages .....\$ 0.00				c. Less Cumulative Prior Award(s) This Budget Period \$ 0.00			
b. Fringe Benefits .....\$ 0.00				d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION \$ 25,000,000.00			
c. Total Personnel Costs .....\$ 0.00				13. Total Federal Funds Awarded to Date for Project Period \$ 25,000,000.00			
d. Equipment .....\$ 0.00				14. RECOMMENDED FUTURE SUPPORT			
e. Supplies .....\$ 0.00				(Subject to the availability of funds and satisfactory progress of the project):			
f. Travel .....\$ 0.00				YEAR TOTAL DIRECT COSTS YEAR TOTAL DIRECT COSTS			
g. Construction .....\$ 0.00				a. 2 \$ d. 5 \$			
h. Other .....\$ 25,000,000.00				b. 3 \$ e. 6 \$			
i. Contractual .....\$ 0.00				c. 4 \$ f. 7 \$			
j. TOTAL DIRECT COSTS → \$ 25,000,000.00				15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES:			
k. INDIRECT COSTS \$ 0.00				a. DEDUCTION			
l. TOTAL APPROVED BUDGET \$ 25,000,000.00				b. ADDITIONAL COSTS			
m. Federal Share \$ 25,000,000.00				c. MATCHING			
n. Non-Federal Share \$ 0.00				d. OTHER RESEARCH (Add / Deduct Option)			
				e. OTHER (See REMARKS)			
				16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:			
				a. The grant program legislation			
				b. The grant program regulations.			
				c. This award notice including terms and conditions, if any, noted below under REMARKS.			
				d. Federal administrative requirements, cost principles and audit requirements applicable to this grant.			
				In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.			

REMARKS (Other Terms and Conditions Attached -  Yes  No)  
See Continuation Pages.

**GRANTS MANAGEMENT OFFICIAL:**

Matthew Reichert, Grants Management Specialist  
1849 C St NW  
Washington, DC, 20240-0001  
Phone: 111-111-1111

17. VENDOR CODE 0071428832		18a. UEI NQ6DMLY8J778		18b. DUNS		19. CONG. DIST. 00	
LINE#	FINANCIAL ACCT	AMT OF FIN ASST	START DATE	END DATE	TAS ACCT	PO LINE DESCRIPTION	
1	0051025329-00010	\$25,000,000.00	10/01/2022	09/30/2023	2641	BIL ECRP State Grant - AK	

# AWARD ATTACHMENTS

COMMERCE, COMMUNITY & ECONOMIC DEVELOPMENT, ALASKA  
DEPARTMENT OF

D22AP00258-  
00

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1. Schedule
2. Technical Proposal
3. Exhibits

**DEPARTMENT OF THE INTERIOR  
Interior Business Center  
Acquisition Services Directorate  
381 Elden Street  
Herndon, VA 20170**

**Agent for:  
U.S. Department of the Interior, Office of Policy, Management and Budget,  
Office of Environmental Policy and Compliance (OEPC)**

**GRANT SCHEDULE**

- 1. Agreement Number: D22AP00258**
- 2. Recipient Name: Community & Economic Development, Alaska Department of Commerce**
- 3. Identification Numbers:**
  - Tax Identification Number (TIN): **926001185**
  - Unique Entity Identifier (UEI) Number: **NQ6DMLY8J778**
  - ASAP Recipient Number: **0229310**
- 4. Recipient Project Manager:**
  - Chris Wallace
  - Title: Senior Petroleum Engineer
  - Organization: Alaska Oil and Gas Conservation Commission
  - Address: 333 West 7<sup>th</sup> Avenue Anchorage, AK 99501-3539
  - Telephone: 907-793-1250
  - E-mail: [chris.wallace@alaska.gov](mailto:chris.wallace@alaska.gov)
- 5. Approved Indirect Cost Rate:** No indirect costs were proposed
- 6. Statement of Work:** The project to be accomplished is identified in the Recipient's Technical Proposal in accordance with the Statement of Work titled, "**Alaska Oil and Gas Conservation Commission Large-Scale Initial Project Grant Application Orphan Well Plugging and Remediation Program**" on May 12, 2022 and is incorporated in full text as part of this agreement.
- 7. Points of Contact:**
  - **Grant Administrator (GA):**
    - Matthew Reichert
    - Interior Business Center
    - Acquisition Services Directorate
    - 381 Elden St., Suite 4000
    - Herndon, VA 20170
    - Telephone: (703) 914-3710
    - E-mail: [matthew\\_reichert@ibc.doi.gov](mailto:matthew_reichert@ibc.doi.gov)
  - **Agreements Officer (AO):**
    - Matthew Reichert

Interior Business Center  
 Acquisition Services Directorate  
 381 Elden St., Suite 4000  
 Herndon, VA 20170  
 Telephone: (703) 914-3710  
 E-mail: [matthew\\_reichert@ibc.doi.gov](mailto:matthew_reichert@ibc.doi.gov)

- **Agreements Officer's Representative (AOR):**

Gregory P. Nottingham  
 State and Tribal Grants Program Manager -  
 BIL/ECRP Office of Environmental Policy and  
 Compliance.  
 1849 C Street NW, Room 2624, Washington,  
 DC 20040  
 Telephone: (202) 513-0361  
 Email: [gregory\\_nottingham@ios.doi.gov](mailto:gregory_nottingham@ios.doi.gov)

- **Program Manager (PM):**

Gregory P. Nottingham  
 State and Tribal Grants Program Manager -  
 BIL/ECRP Office of Environmental Policy and  
 Compliance.  
 1849 C Street NW, Rm 2624, Washington, DC  
 20040  
 Telephone: (202) 513-0361  
 Email: [gregory\\_nottingham@ios.doi.gov](mailto:gregory_nottingham@ios.doi.gov)

**8. Period of Performance:**

**Base Period 10/01/2022 –09/30/2025**

**9. Funding:** The federal share of this grant is fully funded. The following funds are allotted to this Grant. **FY2022: \$25,000,000.00**

- a. Federal share: **\$25,000,000.00**
- b. Non-Federal Share: **\$0.00**
- c. Total Award Amount: **\$25,000,000.00**

**10. Program Description:** The Bipartisan Infrastructure Investment and Jobs Act (Pub. L. 117-58) passed Congress on November 5, 2021, provides under Section 40601(c)(3) for historic investments to plug orphaned wells and reclaim abandoned mine lands, to help communities eliminate dangerous environmental conditions and pollution caused by past coal mining and legacy energy development. The Act allows state officials to begin building out their well plugging programs, remediating high-priority wells, and collecting additional data regarding the number of orphaned wells in their states. This grant award reflects the substantive application of the Act as it relates to the State of Arkansas.

**11. Appropriation Data:** Pursuant to this action:

**PR# 51025329                      \$25,000,000.00**

Account Assignment: 6100.411G0

Business Area: D000

Commitment Item: 411G00

Cost Center: DS61100000

Functional Area: DEC200000.000000  
Fund: 220D2641EC  
Fund Center: DS61100000  
Project/WBS: DG.611AK.22000000  
PR Acct Assign: **\$25,000,000.00**

**12. Authority:** Infrastructure Investment and Jobs Act, Pub. L. 117-58 Sec. 40601(c)(3); and Federal Grant and Cooperative Agreement Act of 1977, 31 U.S.C. § 6304, as implemented under Title 2, Code of Federal Regulations. (CFR).

**13. Payments:** This Grant is placed on **REIMBURSEMENT** payment method where the recipient will request for funds in the Department of the Treasury's Automated Standard Application Payments System (ASAP).

Requests for payment for this effort shall be submitted through the Treasury's ASAP. Once the Government has submitted a completed ASAP Participation Request forms to ASAP, Recipient will receive an e-mail with further instructions from ASAP.

The recipient organization shall use the on-line process to request payments. Payment requests are approved or rejected automatically unless placed on review or based on the amount of available funds in the ASAP account. The available balance for an ASAP account is displayed when initiating the payment request. Recipient organizations will receive immediate notification of approval or rejection for all on-line payment requests except for those subject to review. The timing and amount of cash advances shall be as close as is administratively feasible to the Recipient's actual disbursements for direct program costs and the proportionate share of any allowable indirect costs.

Reimbursement is the preferred method when the requirements for advance payment cannot be met.

**14. Expenditure and Reimbursement:** A State that receives funds under the Initial grant authority shall reimburse the Secretary in an amount equal to the amount of funds that remain unobligated on the date that is one year after the date of receipt of the funds. In other words, all funds must be obligated within a year of date of receiving the funds otherwise unobligated funds shall be reimbursed to the Secretary.

**15. Reporting Requirements:** Performance, Financial and Final Reporting requirements are as follows:

REPORT TYPE	DUE DATE	SUBMIT TO
Quarterly Performance (Technical) Reports	Within 30 days of the end of each quarter: <b>December 31, March 31, June 30, and September 30.</b>	AOR, AO, GA, <a href="mailto:aqdfa@ibc.doi.gov">aqdfa@ibc.doi.gov</a> , <a href="mailto:orphanedwells@ios.doi.gov">orphanedwells@ios.doi.gov</a>
Quarterly Performance (Financial) Reports (SF-425)	Within 30 days of the end of each quarter: <b>December 31, March 31, June 30, and September 30.</b>	AOR, AO, GA, <a href="mailto:aqdfa@ibc.doi.gov">aqdfa@ibc.doi.gov</a> <a href="mailto:orphanedwells@ios.doi.gov">orphanedwells@ios.doi.gov</a>
Annual Tangible Personal Property (SF-428 - if applicable)	<b>December 31<sup>st</sup></b> of each year during the project	AOR, AO, GA, <a href="mailto:aqdfa@ibc.doi.gov">aqdfa@ibc.doi.gov</a> , <a href="mailto:orphanedwells@ios.doi.gov">orphanedwells@ios.doi.gov</a>
*15 Month Report	15 months after the Effective Date of the Agreement <b>December 31, 2023.</b>	AOR, AO, GA, <a href="mailto:aqdfa@ibc.doi.gov">aqdfa@ibc.doi.gov</a> , <a href="mailto:orphanedwells@ios.doi.gov">orphanedwells@ios.doi.gov</a>

Final Performance (Technical) Report	Within 120 days of the end of the Agreement performance period <b>January 30, 2025.</b>	AOR, AO, GA, <a href="mailto:aqdfa@ibc.doi.gov">aqdfa@ibc.doi.gov</a> , <a href="mailto:orphanedwells@ios.doi.gov">orphanedwells@ios.doi.gov</a>
Final Financial Report (SF-425)	Within 120 days of the end of the Agreement performance period <b>January 30, 2025.</b>	AOR, AO, GA, <a href="mailto:aqdfa@ibc.doi.gov">aqdfa@ibc.doi.gov</a> , <a href="mailto:orphanedwells@ios.doi.gov">orphanedwells@ios.doi.gov</a>
Final Tangible Personal Property SF-428 (if applicable)	Within 120 days of the end of the Agreement performance period <b>January 30, 2025.</b>	AOR, AO, GA, <a href="mailto:aqdfa@ibc.doi.gov">aqdfa@ibc.doi.gov</a> , <a href="mailto:orphanedwells@ios.doi.gov">orphanedwells@ios.doi.gov</a>

**\*15-Month Report:**

States receiving either type of Initial grant must submit a report, no later than 15 months after the effective date, describing the means by which the State used the funds in accordance with its certification. If the 15-month report includes all of the detail that would have been provided in the corresponding quarterly and final Financial and Performance Report described in VII.C of the State Initial Grant Guidance Document, a separate quarterly Financial and Performance Report need not be submitted for that period.

### **Performance Report Content**

All Performance Reports should include the following information and data:

- Inventory of orphaned wells on State and private lands (including latitude and longitude coordinates in decimals).
- Number of jobs created or saved through the funded activities.
- Number of orphaned wells plugged, remediated, and reclaimed.
- P&A witnessing documentation for each plugged well.
- Methane emissions reduced as a result of plugging, remediating, and reclaiming orphaned wells (including a description of the methodologies used for this parameter).
- Acres of habitat restored.
- Other parameters describing the means by which the State used the funds in accordance with the certification submitted in the application.

**16. Property Management:** Procedures prescribed in 2 CFR 200.313 shall be applicable to this section. Property disposal and disposition: The Recipient Project Manager or Authorized Representative must send a letter (electronic mail is acceptable) to the AOR requesting property disposition instruction after the end of period of performance or when the equipment is no longer needed.

An inventory list of property in use under this Agreement must be submitted annually to the AO with the following data:

- a. Make
- b. Model
- c. Serial Number or Vehicle Identification Number
- d. Purchase Date and Price
- e. Location of the Property
- f. Percentage of Vested Federal Interest in Title

For equipment that has a memory card or other data retention capability, the data must be cleared (removed) prior to disposal. The letter must certify that the equipment items were “cleared of all data” naming the type of software used. The statement must also include that the equipment will be disposed of in an environmentally safe manner. Contact the AOR if guidance is needed regarding clearing memory or if disposal is needed.



**17. Terms and Conditions:**

The Award is subject to compliance with the applicable Federal Statutes, Federal Regulations, 2 CFR 200, Department of Interior Terms and Conditions, and Award Specific Terms and Conditions.

**ORDER OF PRECEDENCE**

Any inconsistencies in the requirements of this award shall be resolved in the following order:

- Federal statutes
- Federal regulations
- [2 CFR Part 200](#),
- [DOI Standard Terms and Conditions](#)
- Award-specific terms and conditions (In case of disagreement, the Recipient shall not assess any of the Grant funds until such disagreement(s) is/are resolved).

**AWARD TERM 1****Site Visits**

The Federal Awarding Agency and Program Staff may make sites visits as warranted to ensure appropriate fiscal accountability, project oversight, and project completion meet the Program requirements. States shall provide the Federal Awarding Agency and Program Staff any relevant documentation in the Recipient's possession and facilitate access to project sites. This access will be provided to the extent necessary and appropriate, on-site, and remote, for the Federal Awarding Agency to monitor performance and compliance. (2 CFR § 200.329 - Monitoring and reporting program performance)

**AWARD TERM 2****Application of Buy America Preference**

None of the funds under a federal award that are part of Federal financial assistance for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products. (SEC. 70914, PUBLIC LAW 117-58)

- All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation;

- All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.
- The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project. See Exhibit A (DOI Buy America Domestic Procurement Preference Term) for further instructions.

### **AWARD TERM 3**

#### **Reimbursement of Unobligated Funds after Expenditures**

All unobligated funds, funds without a definite commitment, remaining after 12 months from the effective date of the Agreement, 10/1/2022, will be reimbursed to the Secretary of the Interior.

### **AWARD TERM 4**

#### **90 Day Obligation Requirement**

10/1/2022-12/30/2022

The State will use not less than 90% of its requested funding to issue new contracts, amend existing contracts, or issue grants for plugging, remediation, and reclamation work by not later than 90 days after the effective date. States may not use more than 10% of the funds received for administrative costs. (Section 40601(c)(A)(i)(II)(cc) & 40601(c)(A)(i)(III)(bb), PUBLIC LAW 117–58)

### **AWARD TERM 5**

#### **Total Obligation Period**

10/1/2022-09/30/2023

### **AWARD TERM 6**

#### **Construction Wage Rate (Davis-Bacon Act)**

The Davis-Bacon Act requires that all contractors and subcontractors performing construction, alteration, and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Construction or renovation projects funded by federal funds, in whole or in part, are subject in their entirety to the Davis-Bacon Act as amended 40 U.S.C. parts 276(a) through 276(a5). Award recipients are required by law to furnish assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on DOI-supported construction projects shall be paid wages at rates that are not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor. (40 U.S.C. parts 3141–3144, 3146, 3147; 42 U.S.C. part 3212)

**AWARD TERM 7****Use of Geospatial Data**

Federal recipient collection of geospatial data using the Department of the Interior financial assistance funds requires a due diligence search at the [GeoPlatform.gov](https://www.geoplatform.gov) list of datasets to discover whether the needed geospatial-related data, products, or services already exist. If the required data set already exists, the recipient must use it. If the required data is not already available, the recipient must produce the proposed geospatial data, products, or services in compliance with applicable proposed guidance and standards established by the Federal Geospatial Data Committee (FGDC) posted at [www.fgdc.gov](https://www.fgdc.gov).

Recipients must submit a digital copy of all GIS data produced or collected as part of the award funds to the bureau or office via email or data transfer. All GIS data files shall be in open format. All delineated GIS data (points, lines, or polygons) should be established in compliance with the approved open data standards with complete feature level metadata. Geospatial Data Act of 2018, Pub. L. 115-254, Subtitle F – Geospatial Data, §§ 751-759C, codified at 43 U.S.C. §§ 2801–2811.

**AWARD TERM 8****Program Income**

The Recipient shall report sale proceeds of any salvage and scrap materials from project as program income. Any income generated by the project shall be treated as a deduction that reduces the amount of Federal funds obligated to the project. (2 CFR 200.307)

**AWARD TERM 9****Equipment**

The title to all equipment procured under this Agreement will remain vested with the non-Federal entity. The Recipient must follow all applicable requirement found in 2 CFR § 200.313 and 2 CFR 200 Subpart D Property Standards. When the Equipment is no longer needed for the project, or the Agreement period of performance is closed the Recipient will request Disposition instructions in writing to the Agreement Officer.

**AWARD TERM 10****Conflict of Interest**

- Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the Acquisition Services Directorate AQD awarding agency or pass-through entity in accordance with 2 CFR 200.112.
- Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Agreements Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.
- Review procedures. The Agreements Officer will examine each conflict-of-interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement and will determine whether a potential conflict exists and, if it does, develop an appropriate means for resolving it.

- Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for noncompliance, including suspension or debarment (see also 2 CFR part 180).

#### **AWARD TERM 11**

##### **Restrictions on Lobbying**

Restrictions on lobbying. Non-Federal entities are strictly prohibited from using funds under a grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR part 18 and 31 U.S.C. 1352.

#### **AWARD TERM 12**

##### **Prohibition on Providing Funds to the Enemy**

The recipient must—

- Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through process in [2 CFR §180.300](#) prior to issuing a subaward or contract and;
- Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to [Public Law 113-291](#), unless the Federal awarding agency provides written approval to continue the subaward or contract.
- The recipient may include the substance of this clause, in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.
- The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

#### **AWARD TERM 13**

##### **Additional Access to Recipient Records**

In addition to any other existing examinations-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing the United States or coalition

forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations.

The substance of this clause is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

#### **AWARD TERM 14**

##### **Prohibition on certain telecommunication and video surveillance services or equipment**

Federal award recipients are prohibited from using government funds to enter contracts (or extend or renew contracts) with entities that use covered telecommunications equipment or services as described in section 889 of the 2019 National Defense Authorization Act. This prohibition applies even if the contract is not intended to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services.

#### **AWARD TERM 15**

##### **Prohibition on Issuing Financial Assistance Awards to Entities that Require Certain Internal Confidentiality Agreements**

Section 742 of Division E, Title VII of the Consolidated Appropriations Act of 2020 (Pub. L. 116-93) prohibits the use of funds appropriated or otherwise made available under that or any other Act for grants or cooperative agreements to an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information.

Recipients must not require their employees or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information.

Recipients must notify their employees or contractors that existing internal confidentiality agreements covered by this condition are no longer in effect.

- 18. Resolving Disputes:** Disagreements between DOI and the Recipient over the interpretation of provisions or terms in this Grant shall be resolved according to the procedures below.

- DOI shall attempt first to resolve disagreements with the Recipient through informal discussion among the AO, AOR, and the Recipient's POC.
- If the disagreement is not resolved informally, the AO, AOR, and the Recipient's POC shall document the nature of the disagreement and bring it to the attention of the Head of Contracting Activity of the U.S. Department of the Interior, Office of the Secretary, Interior Business Center, Acquisition Services Directorate (AQD). The final agency action for DOI will be made by the Head of Contracting Activity of the AQD

**19. Termination of Agreement:** This Agreement may be terminated in whole or part at any time by mutual agreement and under any terms and conditions agreed to by the State and OEPC.

**20. Acceptance and Amendment of Grant:** The Recipient is not required to countersign the Grant document; however, the Recipient agrees to the conditions specified in the Grant Schedule and the Award Terms herein unless notice of disagreement is furnished to the AO within 15 calendar days after the date of the AO's signature. The only method by which this Grant can be amended is by a formal, written amendment signed by the AO. No other communication, whether oral or in writing, are valid.

**Exhibits:**

- A. DOI Buy America Domestic Procurement Preference Term
- B. DOI Terms and Conditions
- C. 2 CFR 200 Subpart D Federal Financial Assistance Procurement Standards
- D. 2 CFR 200 Subpart D Property Standards

**Work Commitment**  
**Alaska Oil and Gas Conservation Commission**  
**Large-Scale Initial Project Grant Application**  
**Orphan Well Plugging and Remediation Program**  
July 1, 2022 through June 30, 2025

**Program Objective**

The objective of Alaska's Orphan Well Plugging and Remediation Program is to identify, plug and abandon, and remediate all orphan wells and sites within the State of Alaska. Accompanying goals are methane monitoring and reduction through source control, and identification and remediation of any contamination occurring to surface and groundwater.

The State of Alaska, through the Alaska Oil and Gas Conservation Commission (AOGCC) has promulgated and adopted Statutes and Regulations that allows the AOGCC to regulate well plugging and abandonment and site clearance of oil and gas wells within the State. The Alaska Department of Environmental Conservation (ADEC) is responsible for the remediation of well sites including contamination to surface and groundwaters.

Initial grant money from the Federal Department of the Interior (DOI) will be instrumental in the demonstrated success of Alaska's Orphan Well Plugging and Remediation Program.

**Estimated Funding**

AOGCC is applying for the Large-Scale Initial Grant of up to \$25.0 million. AOGCC believes we can meet the grant objectives and requirements and perform the work proficiently and expeditiously. Other state agencies are being seconded to assist AOGCC in completing the processes required for the implementation and efficiencies in expending these monies. AOGCC initial estimates are above the initial \$25 million and so AOGCC looks forward to working with DOI and partners on any additional orphan wells grant opportunities that may become available to the State of Alaska.

**Scope of Work and Projections**

Project Purpose:

Identify, catalogue, risk evaluate and prioritize, plug and abandon, and site remediation of Orphan Wells located in the State of Alaska.

In the fulfillment of the objectives of the program, AOGCC and other state agencies will:

- maintain the Alaska Orphan Wells listing and update this listing when necessary
- perform community outreach
- perform project management
- evaluate and engage with various agencies and contractors in planning and prioritizing the work
- perform initial site surveys and evaluation of the orphan wells and sites

- develop a methodology for prioritizing the well plugging and site remediation according to current risk to the community and environment, impact on disadvantaged communities, logistical constraints, and economies of scale.
- verify equipment and personnel suitability for the program
- verify the mobilization/transportation plan
- evaluate and approve the detailed plugging and abandonment plans
- assist ADEC in the groundwater and surface water contamination remediation
- assist ADEC in site remediation approval
- perform site clearance witnessing and approval
- verify equipment demobilization planning and perform evaluations
- complete reporting to AOGCC, ADEC, and DOI websites utilizing provided guidance and templates.
- remove the remediated orphan wells from the Alaska Orphan Wells listing.
- Provide feedback to the interested parties through public hearings and community outreach

AOGCC currently plans to contract with sub-recipients who will be responsible for the majority of the plugging and abandonment and site remediation activities associated with the orphan wells plugging and abandonment and site remediation program. Activities of sub-recipients may include:

- project management
- planning
- equipment and personnel mobilization/transportation
- initial and post P&A and site remediation methane monitoring as per third-party methodology such as the American Carbon Registry's draft methodology
- initial and post P&A and site remediation groundwater and surface water contamination monitoring
- plugging wells as per AOGCC regulation
- groundwater and surface water contamination remediation as per ADEC regulation
- site remediation as per ADEC regulation
- site clearance requirements as per AOGCC regulation
- equipment demobilization
- reporting

The AOGCC, based on the current initial survey work and data records available, expects orphan well work to include the plugging and abandonment of approximately 12 to 18 orphan wells located within the state of Alaska. AOGCC estimates that full site clearance and remediation of four orphan well sites can be completed within a one-year time frame and an additional four wells can be plugged and abandoned in a two-year time frame. Full P&A and site remediation is forecasted to be achievable within a three-year period. Budgetary estimates will be revised based on actual costs but at this time AOGCC estimates additional funding through alternative grant mechanisms will be required. As AOGCC outreach is implemented, additional orphan wells may be discovered and depending on location and risk priority may change the order or work performed. The AOGCC is committed to continuing its high level of regulatory oversight to ensure



compliance with orphan well plugging and site clearance requirements and protection of freshwater.

### **Performance Reports and Reviews**

Formal reports of accomplishments during the ensuing grant year will document the AOGCC’s commitment to achieving the orphan wells initial grant objectives. Quarterly updates will be provided to DOI as required in a format acceptable to DOI according to this schedule:

<b>Quarter</b>	<b>End of Quarter</b>	<b>Report to DOI by</b>
1	September 30, 2022	October 31, 2022
2	December 31, 2022	January 31, 2023
3	March 31, 2023	April 30, 2023
4	June 30, 2023	July 31, 2023
5	September 30, 2023	October 31, 2023
6	December 31, 2023	January 31, 2024
7	March 31, 2024	April 30, 2024
8	June 30, 2024	July 31, 2024
9	September 30, 2024	October 31, 2024
10	December 31, 2024	January 31, 2025
11	March 31, 2025	April 30, 2025
12	June 30, 2025	July 31, 2025

The 15 month reporting requirement will correspond to the end of 5th quarter report of September 30, 2023 and will be submitted before October 31, 2023. A written closeout report will be provided prior to September 30, 2025 summarizing performance and compliance with orphan well plugging and remediation large scale grant objectives and mandates.

In addition to the grant-specific reports, the AOGCC is aware of the DOI information gathering and publication requirements. AOGCC will utilize the provided template for well plugging, remediation, methane, and surface and groundwater contamination monitoring and remediation. Additionally, AOGCC will provide information on our program on the AOGCC website at <https://www.commerce.alaska.gov/web/aogcc> and add information to our existing Risk Based Data Management System (RBDMS) and Laserfiche well repository.

The AOGCC will be available to DOI personnel to discuss information presented in the quarterly reports. A resolution plan with a specific target closure date will be established for any items of concern identified by the DOI review. The AOGCC will be available for a formal grant close-out meeting with DOI personnel should such be necessary.

### **Program Accomplishments/Objectives**

The AOGCC publishes orphan well information on its website at <https://www.commerce.alaska.gov/web/aogcc> . AOGCC has held a public hearing where this grant opportunity and the orphan well plugging and remediation program was introduced and public and industry input was sought. AOGCC recognizes that an important aspect of the program

is the identification of all potential orphan wells so that a systematic prioritization process can be implemented to determine authenticity of an orphan claim, followed by appropriate steps to plug and abandon the well, and complete site remediation. AOGCC is engaged with various state and local agencies as well as native communities and corporations and the public to assist in identifying potential orphan wells. The list of known orphan wells will potentially grow over the initial grant program and AOGCC would be looking to include newly discovered orphan wells in the DOI orphan wells formula grant funding opportunity to ensure that over time these wells can be remediated.

During the initial large-scale grant period, AOGCC will begin the evaluation of the existing orphan wells, contract plugging and abandonment of high priority wells and create a timeframe and workscope for remaining wells and remediations that may span several years.

### **Orphan Wells Plugging and Remediation Program Support and Outreach**

As needed, the AOGCC will coordinate with other state and federal agencies to ensure underground sources of drinking water are protected and that surface impacts are minimized. Efforts will continue to provide staff with relevant and effective training. The AOGCC continues to be actively engaged with both Ground Water Protection Council (GWPC) and the Interstate Oil and Gas Compact Commission (IOGCC) in their efforts targeting improvements to protections of subsurface, surface, and groundwaters.

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### **Recommended Elements**

The following list includes the features the Department of the Interior has determined are important components of a successful orphaned well program. Although not required in relation to Initial grant funding, many will be further refined in coordination with the States and may be required for subsequent grants. States are encouraged to incorporate these features into projects funded with Initial grants.

- (a) The State's process for determining that a well has been orphaned, including what efforts will be made to redeem financial assurances or otherwise recoup remediation costs from any parties responsible under State law;

*AOGCC has a robust statute and regulatory framework in place to ensure all oil and gas wells drilled on state regulated lands do not become orphaned. AOGCC has recently reinforced its bonding requirements to more accurately reflect each operators estimated P&A liability costs. Prior to these robust regulations taking effect, and in most cases prior to Alaska achieving statehood, there were wells drilled in the state that are now considered orphaned. AOGCC has determined a hierarchical process of well ownership that begins firstly with the current operator, then former operators, and lastly based on land ownership (surface and subsurface). Bankruptcy proceedings, mergers/sales, and court cases have the*

*potential to infringe upon the normal well ownership hierarchy. AOGCC and other state agencies are engaged in land ownership and land transfer reviews.*

- (b) A description of the State’s plugging standards, including the witnessing requirements (qualifications of witness, documentation);

*AOGCC has regulations covering proper plugging and abandonment as per 20 AAC 25.105 through to location clearance onshore and offshore as per regulation 20 AAC 25.172. Basically, each well branch and motherbore must be correctly abandoned by setting cement plugs. Plugging requirements differ for cased and uncased portions of the well. Cased and uncased sections of the well must be separated by cement plug. Hydrocarbon zones must be isolated and covered by cement. Abnormally geopressured zones must be isolated and covered by cement. Freshwater zones must be isolated and covered by cement. Cementing to the surface is required. All annuli must be cemented to surface or the pipe pulled to avoid annuli. Testing of plugs by setting down weight or pressure testing is required. Notice must be given to AOGCC 24 hours prior to allow AOGCC the opportunity to witness plugging operations.*

- (c) Details of the State’s prioritization process for evaluating and ranking orphan wells and associated surface reclamation, including criteria, weighting, and how such prioritization will address resource and financial risk, public health and safety, potential environmental harm (including methane emissions where applicable), and other land use priorities;

*AOGCC will work in conjunction with other state agencies to prioritize and rank orphan wells. Considerations in this process include criteria such as:*

- *Current well condition.*
- *Methane emissions risk (current and future).*
- *Groundwater and surface water contamination risk (current and future)*
- *Remoteness*
- *Proximity to population.*
- *Accessible by general public.*
- *Public health and safety risk.*
- *Ease of plugging. Technical and economic.*
- *Availability of equipment and personnel to perform the work in the required timeframes.*
- *Grouping of wells to reduce mobilization/demobilization charges.*
- *Ease of remediation. Different levels of remediation acceptable?*
- *Other land use priorities*
- *Budgetary restraints.*
- *AOGCC priorities*
- *ADEC priorities*

- *ADNR priorities*

- (d) If no prioritization process currently exists, the State should describe its plans to develop and implement a prioritization process;

*AOGCC has a prioritization methodology as described in (c) above. Results of the RFP process may change the actual well remediation order or completeness during the grant period. Some identified work may be shifted into a forthcoming orphan well formula grant if/where appropriate.*

- (e) Details of how the State will identify and address any disproportionate burden of adverse human health or environmental effects of orphaned wells on communities of color, low-income communities, and Tribal and Indigenous communities;

*AOGCC has performed initial outreach to identify well locations and prioritize plugging and site remediation of wells that are impacting a community of any type or demographic. Most wells are in remote locations and inaccessible by the road system. Wells located within or near a community are being prioritized - and they are often also more economic to remediate due to existing infrastructure.*

- (f) The methodology to be used by the State to measure and track methane and other gases associated with orphaned wells, including how the State will confirm the effectiveness of plugging activities in reducing or eliminating such emissions;

*AOGCC will be working with ADEC for methane and other gasses detection and remediation where warranted. AOGCC and ADEC will perform initial site surveys where this is a priority. AOGCC plans to follow the third-party methodology for measurement and verification per the American Carbon Registry's methodology (once finalized and if the final version is practical for AOGCC to implement on these wells).*

- (g) The methodology to be used by the State to measure and track contamination of groundwater and surface water associated with orphaned wells, including how the State will confirm the effectiveness of plugging activities in reducing or eliminating such contamination;

*AOGCC will be working with ADEC for groundwater and surface water contamination detection and remediation where warranted. AOGCC and ADEC will perform initial site surveys where this is a priority. ADEC has specific policies and procedures to test and where necessary remediate.*

- (h) The methodology to be used to decommission or remove associated pipelines,

facilities, and infrastructure and to remediate soil and restore habitat that has been degraded due to the presence of orphaned wells and associated infrastructure;

*AOGCC will work in close coordination with ADEC to decommission or remove associated pipelines, facilities, and infrastructure. ADEC has established processes to remediate soil and restore habitat. Initial site surveys will allow more detailed planning to be undertaken to ensure efficiencies are gained by completing the remediation while workers are on site performing the plugging operation.*

- (i) Methods the State will use to solicit recommendations from local officials and the public regarding the prioritization of well plugging and site remediation activities, and any other processes the State will use to solicit feedback on the program from local officials and the public;

*AOGCC has held public hearings where input has been sought from State Agencies, Tribes, Native communities, Native Corporations, and all landowners to assist AOGCC in identifying and providing feedback on the program. AOGCC is conducting records searches for title and appropriate parties will be notified prior to any work being performed.*

- (j) Latitude/Longitude and all other data elements and associated units of measure as indicated in the Orphaned Well Data Reporting Template that accompanies this guidance;

*AOGCC will utilize the Risk Based Data Management System (RBDMS) to record well information as it is identified and also utilize the provided Orphaned Well Data Reporting Template.*

- (k) How the State will use funding to locate currently undocumented orphaned wells;

*AOGCC, in conjunction with other state agencies including Office of Project Management and Permitting (OPMP) will publish information about this grant and project on our website and provide notices to our mailserver notices email listings. AOGCC will hold monthly public hearings where updates to the program will be periodically presented.*

- (l) Plans the State has to engage third-parties in partnerships around well plugging and site remediation, or any existing similar partnerships the State currently belongs to;

*AOGCC is in partnership with IOGCC and GWPC, and is actively engaged with landowners and sub-surface owners (State of Alaska, Mental Health Land Trust, Native Corporations, Native communities, Tribal Communities, Homesteaders, and general public)*

*through our public hearings, outreach meetings, project meetings. As additional wells are identified, interest/affected parties will be engaged on the process to plug and abandon and remediate the orphan well sites. OPMP has extensive contacts in major projects across Alaska and will be a valuable resource in coordinating local, borough, state, and federal agencies. AOGCC will work with the Bureau of Land Management to coordinate the plugging efforts between the State and Federal orphaned wells programs.*

- (m) Training programs, registered apprenticeships, and local and economic hire agreements for workers the State intends to conduct or fund in well plugging or site remediation;
- (n) Plans the State has to support opportunities for all workers, including workers underrepresented in well plugging or site remediation, to be trained and placed in good-paying jobs directly related to the project;
- (o) Plans the State has to incorporate equity for underserved communities into their planning, including supporting the expansion of high-quality, good paying jobs through workforce development programs and incorporating workforce strategy into project development;

*AOGCC will be assisted by the Alaska Department of Transportation (DOT) procurement departments in contracting the orphan well plugging and abandonment and site remediation work. DOT works closely with the federal government on major road projects and airport projects and is capable of managing the contracting and procurement procedures required to administer the project.*

- (p) Procedures the State will use to coordinate with Federal or Tribal agencies to determine whether efficiencies may exist by combining field survey, plugging, or surface remediation work across private, State, Federal, and Tribal land;
- (q) The State's authorities to enter private property, or a State's procedures to obtain landowner consent to enter private property, in the event that any wells to be plugged will be accessed from privately owned surface;

*AOGCC has by statute 31.05.027 and 31.05.030 and Regulation the authority to enter land and require plugging and abandonment and site clearance for oil and gas wells drilled within the state. AOGCC is working with ADEC on ensuring correct notification of landowners is provided prior to AOGCC and ADEC persons entering private surface lands. This is the established/common process of notification ADEC and ADNR uses with their survey crews*

*when they perform work.*

- (f) A work schedule covering the period of performance of the Initial grant; and

*A work schedule will be developed as part of the Request For Proposals (RFP) process the State of Alaska procurement department will solicit from interested capable contracted parties. AOGCC estimates, based on seasonal availability, wells will be grouped to reduce mobilization/demobilization costs and reclamation work will be performed in conjunction with the actual well P&A work. It is currently envisaged work can be completed within two winters and two summers.*

- (s) If applicable, a federally approved Indirect Cost Rate Agreement or statement regarding State’s intention to negotiate or utilize the de minimis rate.

Within this document, acronyms include:

AOGCC – Alaska Oil and Gas Conservation Commission

ADEC – Alaska Department Environmental Conservation

ADNR – Alaska Department of Natural Resources

AMHLT – Alaska Mental Health Land Trust

BLM – Federal Bureau of Land Management

OPMP – Office of Project Management and Permitting

EPA/USEPA – United States Environmental Protection Agency

DOI – Department of the Interior

IOGCC – Interstate Oil and Gas Compact Commission

GWPC – Ground Water Protection Council

DOT/ADOT – Alaska Department of Transportation

RBDMS – Risk Based Data Management System

## EXHIBIT A

### **Buy America Domestic Procurement Preference:**

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit [www.doi.gov/grants/BuyAmerica](http://www.doi.gov/grants/BuyAmerica). Additional information can also be found at the White House Made in America Office website: [www.whitehouse.gov/omb/management/made-in-america/](http://www.whitehouse.gov/omb/management/made-in-america/).

### *Waivers*

When necessary, recipients may apply for, and the Department of the Interior (DOI) may grant, a waiver from these requirements, subject to review by the Made in America Office. The DOI may waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:



## EXHIBIT A

1. Non-availability Waiver: the 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;
2. Unreasonable Cost Waiver: the 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; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where an award qualifies, in whole or in part, for an existing DOI general applicability waiver as described at: [www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers](http://www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers). If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the recipient is not required to request a separate waiver for non-domestic materials.

If a general applicability waiver does not already apply, and a recipient believes that one of the above circumstances applies to an award, a request to waive the application of the domestic content procurement preference may be submitted to the financial assistance awarding officer in writing. Waiver requests shall include the below information. The waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to [www.doi.gov/grants/buyamerica](http://www.doi.gov/grants/buyamerica) and are subject to public comment periods of no less than 15 days.

Waiver requests will also be reviewed by the Made in America Office.

1. Type of waiver requested (non-availability, unreasonable cost, or public interest).
2. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
3. Department of Interior Bureau or Office who issued the award.
4. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award)
5. Financial assistance title of project (reference block 8 on DOI Notice of Award).
6. Federal Award Identification Number (FAIN).
7. Federal funding amount (reference block 11.m. on DO Notice of Award).
8. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
9. Infrastructure project description(s) and location(s) (to the extent known).
10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant [PSC](#) or [NAICS](#) code for each.
11. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
13. Anticipated impact if no waiver is issued.

Approved waivers will be posted at [www.doi.gov/grants/BuyAmerica/ApprovedWaivers](http://www.doi.gov/grants/BuyAmerica/ApprovedWaivers); recipients requesting a waiver will be notified of their waiver request determination by an awarding officer.

## EXHIBIT A

Questions pertaining to waivers should be directed to the financial assistance awarding officer.

### *Definitions*

“Construction materials” includes an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Construction Materials” does **not** include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States

Exhibit B  
Department of the Interior Standard  
Award Terms and Conditions  
Effective December 2, 2019

I. PREFACE

Recipients and subrecipients of the Department of the Interior (DOI) grant and cooperative agreement awards (hereafter referred to as ‘awards’) must comply with the applicable terms and conditions incorporated into their Notice of Award. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions or restrictions reflected on the official financial assistance award document. Recipients indicate their acceptance of an award by drawing down funds, or accepting the award through electronic means. Recipient acceptance of an award from the DOI carries with the responsibility to be aware of and comply with all terms and conditions applicable to the award. Recipients are responsible for ensuring their subrecipients and contractors are aware of and comply with applicable award statutes, regulations, and agency requirements. Recipients must review their official award document for additional administrative and programmatic requirements. Recipient and subrecipient failure to comply with the general terms and conditions outlined below and those directly reflected on the official financial assistance award document can result in the DOI taking one or more of remedies described in [2 Code of Federal Regulations \(C.F.R.\) parts 200.338 and 200.339](#).

The DOI will notify the recipient whenever terms and conditions are updated to accommodate instances in the passage of a regulation or statute that requires compliance. Also, the DOI will inform the recipient of revised terms and conditions in the action of an award modification of adding additional funds. The DOI bureaus and offices will make such changes by issuing a Notice of Award amendment that describes the change and provides the effective date. Revised terms and conditions do not apply to the recipient’s expenditures of DOI funds or activities the recipient carries out before the effective date of the revised DOI terms and conditions.

II. PAYMENT SYSTEMS (and alternate payments)

For domestic financial assistance awards: All domestic financial assistance award payments/disbursements shall be made using a US-based financial institution. Payments shall be made using the Automated Standard Application for Payments (ASAP), a system administered by the Department of the Treasury.

For foreign financial assistance awards: The preferred method of payment is with a US-based financial institution. For foreign assistance awards where no such US-based banking relationship exists, payments may be made using the standard method established by the Department of the Treasury for International Treasury Services (ITS).

### III. GENERAL PROVISIONS

The Recipient shall be subject to the following administrative, cost principles, and single audit requirements found in financial assistance regulations. Copies of these regulations can be obtained by visiting the [Electronic C.F.R.](#) website.

#### A. Institutions of Higher Education, State and Local Governments , Tribal Governments, and Non-Profit Organizations

- [2 C.F.R. part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards](#)
  - 2 C.F.R. subpart A, Acronyms and Definitions
  - 2 C.F.R. subpart B, General Provisions
  - 2 C.F.R. subpart C, Pre-Federal Award Requirements and Contents of Federal Awards
  - 2 C.F.R. subpart D, Post Federal Award Requirements
  - 2 C.F.R. subpart E, Cost Principles
  - 2 C.F.R. parts 200.416 and 200.417, Special Cost Considerations for State, Local Governments, and Indian Tribes
  - 2 C.F.R. parts 200.418 and 200.419, Special Cost Considerations for Institutions of Higher Education
  - 2 C.F.R. subpart F, Audit Requirements parts 200.501 to 200.512
- [2 C.F.R. parts 1402.103, 1402.112, 1402.113 and 1402.315 Financial Assistance Interior Regulation.](#)
- Publications– Results of any project carried out under a financial assistance award are to be published in professional journals, trade magazines, or publications otherwise made by the DOI. Such manuscripts or publications submitted to journals or professional books for publication shall be accompanied by the following notation: Submission of this manuscript for publication with the understanding that the United States Government is authorized to reproduce and distribute reprints for Governmental purposes. Publishers are required to send copies, whether they be in print or electronic format (CD-ROM, DVD). Materials born digitally and not produced in print or a tangible electronic format like a CD-ROM or DVD must send a link to the digital document. The address of the library is: U.S. Department of the Interior, Natural Resources Library, Division of Information and Library Services, Gifts and Exchange Section, 18th and C Streets, NW. Washington, DC 20240. For additional information please visit the website for the [Natural Resources Library](#).
- Indirect Costs Proposals
  - [Appendix III to 2 C.F.R. part 200 – Indirect \(F&A\) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education \(IHEs\)](#)
  - [Appendix IV to 2 C.F.R. part 200 – Indirect \(F&A\) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations](#)
  - [Appendix V to 2 C.F.R. part 200 – State/Local Government and Indian Tribe Wide Central Service Cost Allocation Plans](#)
  - [Appendix VI to 2 C.F.R. part 200 – Public Assistance Cost Allocation Plans](#)
  - [Appendix VII to 2 C.F.R. part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals](#)

#### B. Foreign Entities

- Foreign entities are subject to the administrative requirements applicable to non-Federal entities in [2 C.F.R. part 200, subparts A through E](#) and:
  - 2 C.F.R. subpart A, Acronyms and Definitions
  - 2 C.F.R. subpart B, General Provisions
  - 2 C.F.R. subpart C, Pre-Federal Award Requirements and Contents of Federal Awards
  - 2 C.F.R. subpart D, Post Federal Award Requirements
  - 2 C.F.R. subpart E, Cost Principles, parts 200.400 to 200.411
- [2 C.F.R. parts 1402.103, 1402.112, 1402.113, 1402.300 and 1402.315 Financial Assistance Interior Regulation](#) (Please see exceptions in [2 C.F.R. part 1402.102](#))
- *Foreign public entities* are also subject to the requirements specific to States, with the following exceptions:
  - The State payment procedures in part 200.305(a) do not apply. Foreign public entities must follow the payment procedures in part 200.305(b).
  - The requirements in part 200.321 “Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms” do not apply.
  - The requirements in part 200.322 “Procurement of recovered materials” do not apply.
- *Foreign non-profit organizations* (see definition in 2 C.F.R. part 200.70) are also subject to the requirements specific to non-profit organizations.
- *Foreign Institutions of Higher Education* (IHEs) Institutions located outside the United States that meet the definition in [20 United States Code \(U.S.C.\) part 1001](#) are also subject to the requirements specific to IHEs.
- Publications— Results of any project carried out under a financial assistance award are to be published in professional journals, trade magazines, or publications otherwise made by the DOI. Such manuscripts or publications submitted to journals or professional books for publication shall be accompanied by the following notation: Submission of this manuscript for publication with the understanding that the United States Government is authorized to reproduce and distribute reprints for Governmental purposes. Publishers are required to send copies, whether they be in print or electronic format (CD-ROM, DVD). Materials born digitally and not produced in print or a tangible electronic format like a CD-ROM or DVD must send a link to the digital document. The address of the library is: U.S. Department of the Interior, Natural Resources Library, Division of Information and Library Services, Gifts and Exchange Section, 18th and C Streets, NW. Washington, DC 20240. . For additional information please visit the website for the [Natural Resources Library](#).
- *Foreign for-profit entities* are subject to the cost principles in [48 C.F.R. 1, subpart 31.2](#)
- *All other foreign entities* are subject to the requirements applicable to non-Federal entities in 2 C.F.R. part 200, Subpart E.
- *Foreign public entities* are also subject to the requirements specific to States.
- *Indirect Cost Foreign IHEs*: [Appendix III to part 200](#)—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for IHEs. The U.S. Department of Health and Human Services (HHS) is the cognizant agency for indirect costs for foreign IHEs. Please visit [HHS’ Cost Allocation Services](#) website for more information.
- *Indirect Cost Foreign non-profit organizations*: [Appendix IV to part 200](#)—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations.
- *Indirect Cost Foreign public entities*: [Appendix VII to part 200](#)—States and Local Government and Indian Tribe Indirect Cost Proposals.
- *Indirect Cost Foreign for-profit entities*: Contact the National Interior Business Center (IBC), Indirect Cost Services by telephone at (916) 566-7111 or by e-mail at: [ics@ibc.doi.gov](mailto:ics@ibc.doi.gov). Visit the [IBC’s Indirect Cost Services](#) website for more information.

#### C. For-Profit Entities, Individuals, and Others Not Covered Above

- [2 C.F.R. part 200, subparts A through D Administrative Requirements, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards](#)
  - 2 C.F.R. subpart A, Acronyms and Definitions
  - 2 C.F.R. subpart B, General Provisions
  - 2 C.F.R. subpart C, Pre-Federal Award Requirements and Contents of Federal Awards
  - 2 C.F.R. subpart D, Post Federal Award Requirements
  - 2 C.F.R. subpart E, Cost Principles, parts 200.400 to 200.411
- [2 C.F.R. parts 1402.206, 1402.207\(a\) and \(b\), 1402.112, 1402.113, 1402.300 and 1402.315 Financial Assistance Interior Regulation](#)
- Publications– Results of any project carried out under an assistance award are to be published in professional journals, trade magazines, or publications otherwise made by the DOI. Such manuscripts or publications submitted to journals or professional books for publication shall be accompanied by the following notation: Submission of this manuscript for publication with the understanding that the United States Government is authorized to reproduce and distribute reprints for Governmental purposes. Publishers are required to send copies, whether they be in print or electronic format (CD-ROM, DVD). Materials born digitally and not produced in print or a tangible electronic format like a CD-ROM or DVD must send a link to the digital document. The address of the library is: U.S. Department of the Interior, Natural Resources Library, Division of Information and Library Services, Gifts and Exchange Section, 18th and C Streets, NW. Washington, DC 20240. . For additional information please visit the website for the [Natural Resources Library](#).
- [48 C.F.R. 1 subpart 31.2 Contracts with Commercial Organizations](#) (not applicable to individuals or other entities not covered above).
- Indirect Cost Rate Negotiations – For information on indirect cost rate negotiations, contact the Interior Business Center (IBC) Indirect Cost Services Division by telephone at (916) 566-7111 or by e-mail at: [ics@ibc.doi.gov](mailto:ics@ibc.doi.gov). Please visit [IBC's Indirect Cost Services Division](#) website for more information.

#### IV. STATUTE AND REGULATION REQUIREMENTS

The following statutory and national policy requirements apply to individuals and non-Federal entities, including foreign public entities and foreign organizations, unless otherwise described in this section.

[2 C.F.R. part 25 Unique Entity Identifier](#) – Unless exempted from this requirement under 2 CFR 25.110, the recipient must maintain the currency of their information in the System for Award Management (SAM) until submission of their final financial report required under this award or receipt of final payment, whichever is later. The recipient must notify potential subrecipients of the requirement to provide its unique entity identifier. The requirements in this part do not apply to individuals or any entity with a qualifying condition and exempted by the awarding bureau or office before award per 2 CFR §25.110(d) and bureau or office policy.

[2 C.F.R. part 170 Reporting Subawards and Executive Compensation](#) – Unless the recipient is exempt from this award term, the recipient must report each action that obligates \$25,000 or more in federal funds for a sub-award to an entity. The recipient must report each obligating action to the [Federal Funding Accountability and Transparency Act Subaward Reporting System](#). No later than the end of the month following the month in which the obligation was made. Recipients must

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report executive total compensation described in paragraph (b)(1) of this award term as part of your SAM registration profile by the end of the month following the month in which this award is made, and annually thereafter. Recipients must include the award term at paragraph c. concerning reporting of subrecipient total executive compensation in subaward agreements. This rule applies to all other awards with a total Federal share of more than \$500,000. It does not apply to individuals.

[2 C.F.R. part 175 Award Term for Trafficking in Persons](#) – Applies to private entities as defined in 2 CFR §175.25(d) and awards to States, local governments, Indian tribes or foreign public entities, if funding could be provided under the award to a private entity as a subrecipient.

[2 C.F.R. part 200 Appendix XII Recipient Integrity and Performance Matters \(FAPIS\)](#) – Applies to awards with a total federal share of more than \$500,000.

[2 C.F.R. part 1400 Nonprocurement Debarment and Suspension](#) – A person or entity who is debarred or suspended is excluded from activities involving Federal financial and nonfinancial assistance and benefits. Recipients of DOI financial assistance (See exceptions in [part 1400.215](#) to "primary covered transactions"), are required to determine whether it or any of its principals (as defined in [2 C.F.R. part 180.995](#)) is excluded or disqualified from participating in a covered transaction (i.e., grant or cooperative agreement) prior to entering into the covered transaction, i.e., prior to the drawdown of funds which signals acceptance of the grant award. Individuals and entities excluded from receiving government financial assistance and contracts are can be found on the GSA's [System for Award Management](#) website.

[2 C.F.R. part 1401 Requirements for Drug-Free Workplace](#) – Under the Drug-Free Workplace Act of 1988, [41 U.S.C. parts 701-707](#) a drug-free workplace policy is required for any organizations receiving a federal financial assistance award of any size. At a minimum, such organizations must: (1) Prepare and distribute a formal drug-free workplace policy statement. (2) Establish a drug-free awareness program. (3) Ensure that all employees working on the federal contract understand their personal reporting obligations. (4) Take direct action against an employee convicted of a workplace drug violation. (5) Maintain an ongoing good faith effort to meet all the requirements of the Drug-free Workplace Act throughout the life of the award. This rule does not apply to foreign public entities or foreign organizations.

[43 C.F.R. part 18 New Restrictions on Lobbying](#) – The Authorized Representative's signature on the application submitted to the DOI bureau or offices certifies to the statements in [43 C.F.R. part 18, Appendix A Certification Regarding Lobbying](#). These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of non-Federal funds for lobbying ([31 U.S.C. part 1352](#)). Any recipient (See Definition in 43 C.F.R. part 18.105(o)) that requests or receives (31 U.S.C. part 1352(2)(b) more than \$100,000 in Federal funding and has made or agrees to make any payment using non-appropriated funds for lobbying in connection with a proposal or award shall submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Recipient includes all contractors and subgrantees at any tier of the recipient of funds received in connection with a Federal grant, loan, or cooperative agreement. These restrictions do not apply to an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law. Please visit [43 C.F.R. part 18.110 Certification and Disclosure Requirements](#) for more information.

## V. OTHER STATUTE AND REGULATION REQUIREMENTS

[Pub. L. 116-6 Representation and Certifications by Corporations Regarding Delinquent Tax Liability or a Felony Conviction](#) – As required by the provisions contained in the Consolidated Appropriations Act, 2019 sections 744 and 745, regarding unpaid federal tax liabilities and federal felony convictions. The DOI will not enter into a contract, cooperative agreement, grant, loan, or memorandum of understanding with any corporation that – (1) has any unpaid Federal tax liability currently assessed, for which all judicial and administrative remedies have been exhausted or have lapsed. Also, the tax liability is not being paid promptly under an agreement with the authority responsible for collection. Whereby the DOI is aware of the unpaid tax liability unless an agency has considered suspension or debarment of the corporation and decided that suspension or debarment is not necessary to protect the interests of the DOI. Or (2) was convicted of a felony criminal violation under any federal law within the preceding twenty-four (24) months preceding the award, where the DOI is aware of the conviction unless the DOI has considered suspension or debarment of the for-profit or non-profit and decided that this action is not necessary to protect the interests of the DOI. To comply with these provisions, only applicants that are or propose to be a corporation will submit a response to the representation and certifications as part of their pre-application. Applicants who do not furnish such information as may be requested by the contracting or financial assistance awarding officer shall be allowed to remedy the deficiency. Failure to provide an acceptable response may render the applicant ineligible to receive an award under this announcement or recover any funds the recipient has spent in violation of the above cited statutory provisions.

[41 U.S.C. part 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection](#) – Applies to all awards over the simplified acquisition threshold (currently \$250,000).

[41 U.S.C. part 6306 Prohibition on Members of Congress Making Contracts with Federal Government](#) – No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public's general benefit.

[Section 743 of Division E Title VII of Pub. L. 113-235 Prohibition on Issuing Financial Assistance Awards to Entities that Require Certain Internal Confidentiality Agreements](#)

[42 U.S.C. part 2000\(d\) Title VI of the Civil Rights Act of 1964](#), and the DOI implementing regulations published at [43 C.F.R. part 17](#) and Special Regulations at [43 C.F.R. part 4.800](#) prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance.

[20 U.S.C. part 1681 Title IX of the Education Amendments of 1972](#), and DOI implementing regulations published at [43 C.F.R. part 41.100](#) prohibiting discrimination on the basis of sex in Federally assisted education programs or activities.

[42 U.S.C. part 12101 The Americans with Disabilities Act of 1990](#) – Prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation.



[Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. part 794](#), and the DOI implementing regulations published at [43 C.F.R. part 17 subpart B](#) prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal financial assistance.

[41 C.F.R. parts 101-19.6 Accessibility Standards](#) – For purposes of complying with the standards set forth in non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) [28 C.F.R. part 35](#); and [Title III of the ADA 28 C.F.R. part 36](#). The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design,” which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

[42 U.S.C part 6101 The Age Discrimination Act of 1975](#), and DOI implementing regulations published at [43 C.F.R. parts 17.300-17.339](#) unless an exception applies in 43 C.F.R. part 17.302, the rule prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

[42 U.S.C. part 2000\(e\) Title VII of the Civil Rights Act of 1964](#) – Generally prohibits employers from discriminating against employees on the basis of religion. Title VII prohibits discriminatory treatment of employees on the basis of their religious beliefs and requires employers to make reasonable accommodations for employees’ religious practices. Religious organizations, however, may be exempt from some of the prohibitions of Title VII.

[49 U.S.C. part 40118 Fly American Act](#) – Federal travelers are required to use U.S. air carrier service for all air travel and cargo transportation services funded by the U.S. government. One exception to this requirement is transportation provided under a bilateral or multilateral air transport agreement, to which the U.S. government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act. The U.S. government has entered into several air transport agreements that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are currently bilateral/multilateral “Open Skies Agreements” (U.S. Government Procured Transportation) in effect:

- [U.S. Government and the European Union \(EU\)](#) effective April 30, 2007
- [U.S. - EU Amendment](#) effective June 24, 2010
- [U.S. - EU Amendment](#) effective June 21, 2011
- [U.S. - Australia Open Skies Agreement](#) effective October 1, 2008
- [U.S. - Switzerland Transport Agreement](#) effective October 1, 2008
- [U. S. and Japan](#) effective October 1, 2011

[Homeland Security Presidential Directive \(HSPD\) 12](#) – The subrecipient or contractor must comply with personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system. The subrecipient or contractor must account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor must return such identification to the issuing agency at the earliest of any of the following, unless

otherwise determined: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee's employment; (3) Upon subaward or contract completion or termination.

[54 U.S. Code part 312502 The Historical and Archeological Data Preservation Act of 1974](#) – Requiring appropriate surveys and preservation efforts if a Federally-licensed project may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data.

[Executive Order No. 11,988, 1977 Floodplain Management](#) and [Executive Order No. 11,990, 1977 Protection of Wetlands](#) – Non-Federal entities must identify proposed actions in federally defined floodplains and wetlands to enable DOI to make a determination whether there is an alternative to minimize any potential harm.

[Executive Order No. 11,246, 1965 Equal Employment Opportunity](#) – Requires federally assisted construction contracts to include the nondiscrimination provisions of parts 202 and 203 of Executive Order No. 11,246 and Department of Labor regulations implementing at [41 C.F.R. part 60-1.4\(b\)](#).

[Executive Order No. 12,432, 1983 Minority Business Enterprise Development](#)–Encourages recipients to utilize minority business enterprises in the performance of the award. When contracting for any supplies, services, research, or construction under the award, the recipients must make their best efforts to solicit bids, proposals, or quotations from minority business enterprises. A minority business enterprise is defined as a business that is at least 51 percent owned by one or more minority individuals, or in the case of any publicly owned business, at least 51 percent of the voting stock is owned by one or more minority individuals. The daily business operations are likewise managed by a minority owner. A minority individual is defined as a U.S. citizen who has been subjected to racial or ethnic prejudice or cultural bias because of his or her identity as a member of this group without regard to his or her individual qualities. Such groups include, but are not limited to: Black [African] Americans, Hispanic Americans, Native Americans, and Asian-Pacific Americans.

[Executive Order No. 13,043, 1997 Increasing Seat Belt Use in the United States](#) – Non-Federal entities are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees and contractors when operating company-owned, rented, or personally owned vehicles. Individuals are encouraged to use seat belts while driving in connection with award activities.

[Executive Order No. 13,166, 2000 Improving Access to Services for Persons with Limited English Proficiency](#)–Requires Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that non-Federal entities provide meaningful access to their LEP applicants and beneficiaries.

[Executive Order No. 13,513, 2009 Federal Leadership on Reducing Text Messaging While Driving](#) Non-Federal entities are encouraged to adopt and enforce policies that ban text messaging while driving company-owned, government-rented vehicles or while driving privately-owned vehicles in connection with award activities.

[Executive Order No. 13,798, 2017 Promoting Free Speech and Religious Liberty](#) –The order was issued to protect and promote free and open debate on college and university college campuses. Its application is for colleges and universities to follow their existing obligation to follow the Free Speech provisions of the Constitution.

## VI. REQUIREMENTS RELATED TO ENVIRONMENTAL PROJECTS

Recipients of financial assistance under this award must comply with the following: [Pub. L. No. 89-544 Laboratory Animal Welfare Act of 1966](#); and [7 U.S.C. part 2131](#) as pertains to animal acquisition, transport, care, handling, and use in projects, and the implementing regulations. [9 C.F.R. parts 1-3](#); [16 U.S.C. part 1531 The Endangered Species Act](#); [16 U.S.C. part 1361 The Marine Mammal Protection Act](#) prohibits “taking possession of, transport, purchase, sale, export or import of wildlife and plants.” [16 U.S.C. part 4701](#) The Non-indigenous Aquatic Nuisance Prevention and Control Act, which “ensure[s] preventive measures are taken or that probable harm of using species is minimal if there is an escape or release;” and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance.

[42 U.S.C. part 4321 The National Environmental Policy Act](#) – NEPA establishes protection of the environment as a national priority and mandates that environmental impacts must be considered before any federal action likely to significantly affect the environment is undertaken.

[42 U.S.C. part 7401 Clean Air Act](#), [33 U.S.C. part 1251 Clean Water Act](#), and [Executive Order No. 11,738 Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act](#) with respect to Federal contracts and financial assistance.

[42 U.S.C. part 4002 The Flood Disaster Protection Act](#) –Requires that projects receiving federal assistance and located in an area identified by the Federal Emergency Management Agency (FEMA) as being within a Special Flood Hazard Areas (SFHA) be covered by flood insurance under the National Flood Insurance Program (NFIP). This term does not apply to formula financial assistance to States.

[16 U.S.C. part 1531 The Endangered Species Act](#) –Ensures that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. The law also prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife. Likewise, import, export, interstate, and foreign commerce of listed species are all generally prohibited.

[16 U.S.C. part 1451 The Coastal Zone Management Act](#)–Directs coastal states to develop and implement coastal zone management plans. If a state or territory chooses to develop a coastal zone management program and the program is approved, the state or territory (1) becomes eligible for several federal financial assistance and (2) can perform reviews of federal agency actions in coastal areas (known as federal consistency determination reviews).

[16 U.S.C. part 3501 The Coastal Barriers Resources Act](#) –Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

[16 U.S.C. part 1271 The Wild and Scenic Rivers Act](#)–Applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

[42 U.S.C. part 300f The Safe Drinking Water Act of 1974](#)—Precludes Federal assistance for any project that the United States Environmental Protection Agency (US EPA) determines may contaminate a sole source aquifer so as to threaten public health.

[42 U.S.C. part 6901 The Resource Conservation and Recovery Act](#)—Regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that non-Federal entities give preference in their procurement programs to the purchase of recycled products pursuant to US EPA guidelines at [40 C.F.R. part 247](#). For more information on this requirement please visit [2 C.F.R. part 200.322](#), Procurement of recovered materials.

[42 U.S.C. part 9601 The Comprehensive Environmental Response, Compensation, and Liability Act](#)—These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

[Executive Order No. 13,658, 2014 Establishing a Minimum Wage for Contractors](#) —Establishes a minimum wage requirement for Federal contractors and subcontractors. The Order provides agencies shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under [29 U.S.C. part 214\(c\)](#), in the performance of the contract or any subcontract.

## VII. REQUIREMENTS RELATED TO CONSTRUCTION PROJECTS

[40 U.S.C. parts 3141–3144, 3146, 3147; 42 U.S.C. part 3212 The Davis-Bacon Act](#) – Requires that all contractors and subcontractors performing construction, alteration and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Construction or renovation projects funded by federal funds, in whole or in part, are subject in their entirety to the Davis-Bacon Act as amended 40 U.S.C. parts 276(a) through 276(a-5). Award recipients are required by law to furnish assurances to the Secretary of Labor that all laborers and mechanics employed by contractors or subcontractors on DOI-supported construction projects shall be paid wages at rates that are not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

[40 U.S.C. parts 3701-3708 The Contract Work Hours and Safety Standards Act](#)

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible

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therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The DOI or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the DOI and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

[54 U.S.C. part 300101 The National Historic Preservation Act of 1966](#), and the Advisory Council on Historic Preservation Guidelines - Projects involving construction, renovation, repair, rehabilitation, or ground or visual disturbances must comply with [36 C.F.R. part 800](#) that requires the DOI to consider the effects of projects offered or awarded funding on historic properties and, when applicable, to provide the Advisory Council on Historic Preservation an opportunity to comment on such projects.

[42 U.S.C. part 4151 The Architectural Barriers Act of 1968](#) - Architectural Barriers Act Accessibility Standards (ABAAS): Effective May 8, 2006, GSA, as the lead access design standard setting agency for DOI and other agencies, approved the use of the Access Board's ABAAS for federal sites, facilities, buildings, and elements. This includes federal facilities where federal assistance was fully or partly used for construction of the specific facility. Since federal agencies are subject to ABAAS, notification of complaints alleging that a facility subject to the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, is not readily accessible to and usable

by persons with disabilities must be reported to the United States Access Board pursuant to the requirements of [43 C.F.R. part 17.570](#).

[42 U.S.C. part 4601 The Uniform Relocation Assistance and Real Property Acquisition Policies of 1970](#), and implementing regulations issued at [49 C.F.R. part 24](#) (“Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs”), which establish uniform policies for the fair and equitable treatment of persons, businesses, or farm operations affected by the acquisition, rehabilitation, or demolition of real property acquired for a project financed wholly or in part with Federal financial assistance.

[42 U.S.C. part 6834 The Energy Conservation and Production Act](#) - Established energy efficiency performance standards for the construction of new residential and commercial structures undertaken with Federal financial assistance.

[Executive Order No. 13,858, 2017 Buy American and Hire American](#) – Encourages recipients of new federal awards for construction or infrastructure projects to use iron, aluminum, steel, cement, plastics, PVC pipe, concrete, glass, optical fiber, and lumber manufactured in the United States. This order expands the types of projects previously covered. It defines infrastructure projects to include those involving aviation, ports, water resources projects, energy production, generation, and storage, electricity transmission, gas, oil, and propane storage and transmission, electric, oil, natural gas, and propane distribution systems, broadband internet, pipelines, storm water and sewer infrastructure, and cybersecurity.

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This content is from the eCFR and is authoritative but unofficial.

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## Title 2 - Grants and Agreements

### Subtitle A - Office of Management and Budget Guidance for Grants and Agreements

#### Chapter II - Office of Management and Budget Guidance

#### Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Authority: 31 U.S.C. 503

Source: 78 FR 78608, Dec. 26, 2013, unless otherwise noted.

#### Subpart D - Post Federal Award Requirements

Source: 85 FR 49543, Aug. 13, 2020, unless otherwise noted.

#### Procurement Standards

- § 200.317 Procurements by states.
- § 200.318 General procurement standards.
- § 200.319 Competition.
- § 200.320 Methods of procurement to be followed.
- § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
- § 200.322 Domestic preferences for procurements.
- § 200.323 Procurement of recovered materials.
- § 200.324 Contract cost and price.
- § 200.325 Federal awarding agency or pass-through entity review.
- § 200.326 Bonding requirements.
- § 200.327 Contract provisions.

#### PROCUREMENT STANDARDS

#### § 200.317 Procurements by states.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

#### § 200.318 General procurement standards.

- (a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c)
  - (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
  - (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.
- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.



- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (j)
  - (1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:
    - (i) The actual cost of materials; and
    - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
  - (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

## § 200.319 Competition.

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.
- (b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
  - (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
  - (2) Requiring unnecessary experience and excessive bonding;
  - (3) Noncompetitive pricing practices between firms or between affiliated companies;
  - (4) Noncompetitive contracts to consultants that are on retainer contracts;
  - (5) Organizational conflicts of interest;

- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.
- (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
  - (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
  - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.
- (f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

## § 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

- (a) **Informal procurement methods.** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:
  - (1) **Micro-purchases** -

- (i) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
  - (ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
  - (iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.
  - (iv) **Non-Federal entity increase to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:
    - (A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;
    - (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
    - (C) For public institutions, a higher threshold consistent with State law.
  - (v) **Non-Federal entity increase to the micro-purchase threshold over \$50,000.** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.
- (2) **Small purchases -**
- (i) **Small purchase procedures.** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) **Simplified acquisition thresholds.** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) **Formal procurement methods.** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) **Sealed bids.** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

- (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
  - (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
  - (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
  - (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.
- (c) **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
  - (2) The item is available only from a single source;
  - (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
  - (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
  - (5) After solicitation of a number of sources, competition is determined inadequate.

### **§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
  - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

### **§ 200.322 Domestic preferences for procurements.**

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
  - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### **§ 200.323 Procurement of recovered materials.**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **§ 200.324 Contract cost and price.**

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

### § 200.325 Federal awarding agency or pass-through entity review.

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
  - (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
  - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
  - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
  - (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
  - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
  - (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
  - (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

### **§ 200.326 Bonding requirements.**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **§ 200.327 Contract provisions.**

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.



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## Title 2 - Grants and Agreements

### Subtitle A - Office of Management and Budget Guidance for Grants and Agreements

#### Chapter II - Office of Management and Budget Guidance

#### Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

**Authority:** 31 U.S.C. 503

**Source:** 78 FR 78608, Dec. 26, 2013, unless otherwise noted.

#### Subpart D - Post Federal Award Requirements

**Source:** 85 FR 49543, Aug. 13, 2020, unless otherwise noted.

#### Property Standards

- § 200.310 Insurance coverage.
- § 200.311 Real property.
- § 200.312 Federally-owned and exempt property.
- § 200.313 Equipment.
- § 200.314 Supplies.
- § 200.315 Intangible property.
- § 200.316 Property trust relationship.

#### PROPERTY STANDARDS

#### § 200.310 Insurance coverage.

The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.

#### § 200.311 Real property.

- (a) **Title.** Subject to the requirements and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.
- (b) **Use.** Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.
- (c) **Disposition.** When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:
  - (1) Retain title after compensating the Federal awarding agency. The amount paid to the Federal awarding agency will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market

value of the property. However, in those situations where the non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

- (2) Sell the property and compensate the Federal awarding agency. The amount due to the Federal awarding agency will be calculated by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.
- (3) Transfer title to the Federal awarding agency or to a third party designated/approved by the Federal awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

### § 200.312 Federally-owned and exempt property.

- (a) Title to federally-owned property remains vested in the Federal Government. The non-Federal entity must submit annually an inventory listing of federally-owned property in its custody to the Federal awarding agency. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the Federal awarding agency for further Federal agency utilization.
- (b) If the Federal awarding agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and nonprofit organizations in accordance with Executive Order 12999, "Educational Technology: Ensuring Opportunity for All Children in the Next Century."). The Federal awarding agency must issue appropriate instructions to the non-Federal entity.
- (c) Exempt property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further responsibility to the Federal Government, based upon the explicit terms and conditions of the Federal award. The Federal awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt property acquired under the Federal award remains with the Federal Government.

### § 200.313 Equipment.

See also § 200.439.

- (a) **Title.** Subject to the requirements and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further responsibility to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:

- (1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
  - (2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.
  - (3) Use and dispose of the property in accordance with paragraphs (b), (c), and (e) of this section.
- (b) **General.** A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.
- (c) **Use.**
- (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. The Federal awarding agency may require the submission of the applicable common form for equipment. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:
    - (i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then
    - (ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.
  - (2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.
  - (3) Notwithstanding the encouragement in § 200.307 to earn program income, the non-Federal entity must 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.
  - (4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.
- (d) **Management requirements.** Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:
- (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project

costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

- (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
  - (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
  - (4) Adequate maintenance procedures must be developed to keep the property in good condition.
  - (5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- (e) **Disposition.** When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:
- (1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further responsibility to the Federal awarding agency.
  - (2) Except as provided in § 200.312(b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
  - (3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.
  - (4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

## § 200.314 Supplies.

See also § 200.453.

- (a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See § 200.313 (e)(2) for the calculation methodology.

- (b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

### § 200.315 Intangible property.

- (a) Title to intangible property (see definition for *Intangible property* in § 200.1) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in § 200.313(e).
- (b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.
- (c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements."
- (d) The Federal Government has the right to:
  - (1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and
  - (2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- (e)
  - (1) In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the Federal awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the Federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).
  - (2) Published research findings means when:
    - (i) Research findings are published in a peer-reviewed scientific or technical journal; or
    - (ii) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. "Used by the Federal Government in developing an agency action that has the force and effect of law" is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

- (3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples). Research data also do not include:
  - (i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and
  - (ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

### **§ 200.316 Property trust relationship.**

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.