Upper Basin Transit Loss Investigation
Request for Proposals

The Upper Colorado River Commission (UCRC) is an interstate water administrative agency established by action of five state legislatures and Congress with the enactment of the 1948 Upper Colorado River Basin Compact. The Commission's role is to ensure the appropriate allocation of water from the Colorado River to the Upper Division States of Wyoming, Colorado, Utah, and New Mexico and to ensure compliance with the 1922 Colorado River Compact to the Lower Division States of Nevada, Arizona, and California and to the Republic of Mexico. The Commission seeks to promote interstate comity, remove causes of present and future controversies, and to assure the storage of water and agricultural and industrial development of the Upper Basin.

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act, formally enacting the Bipartisan Infrastructure Law (BIL). The BIL allocates $8.3 billion through Fiscal Year 2026 for the United States Bureau of Reclamation (Reclamation) western water infrastructure projects. Specifically, $50 million is authorized to implement the Upper Colorado River Basin Drought Contingency Plan (DCP). In support of the activities contemplated under the Upper Colorado River Basin DCP, UCRC and the Upper Division States of Colorado, New Mexico, Utah, and Wyoming identified priority infrastructure and project needs, including the completion of special studies to investigate enhancing instrumentation and tools to quantify and track water resources in the Upper Basin.

The Colorado River Simulation System (CRSS) model is developed and maintained by the United States Bureau of Reclamation (Reclamation) to support operational decision-making and planning for the Colorado River Basin. The model is implemented in the RiverWare modeling platform. Transit losses (losses that occur from a stream system), include evapotranspiration (ET) from riparian vegetation, evaporation from open water, bank storage, and groundwater recharge, are modeled implicitly in CRSS, except for open water reservoir evaporation, which is estimated explicitly.

UCRC wishes to conduct an investigation on select reaches of the Colorado River and the Green River with the goal of better accounting for transit losses through explicit modeling of riparian ET. UCRC invites Consultants to respond to this Request for Proposal (RFP) to perform work to assist in achieving key study objectives.

Bea Gordon will serve as UCRC's Project Manager and will administer the contract in coordination with select representatives of the Upper Division States (UCRC project team) with the selected Consultant. All questions during the procurement period should be directed by email to:

Bea Gordon, Project Manager | Email: bgordon@ucrcommission.com

This RFP consists of the following three (3) sections and one (1) attachment:

- Section 1 – Project Description
- Section 2 – Submittal Instructions
- Section 3 – Selection Process
- Attachment A – DRAFT Professional Services Agreement

SECTION 1: PROJECT DESCRIPTION

The following sections describe the proposed project, including the anticipated schedule and scope of work.

1.1 PROJECT OBJECTIVES

The UCRC desires to better understand and address the following key study objectives:

- Develop seasonal volumetric estimates of riparian ET transit losses along specific reaches of the Colorado River and Green River using instrumented data, modeled data, remotely-sensed data, or some combination of the above. These estimates will be developed by UCRC staff in coordination with the selected Consultant and provided to the Consultant.
- Develop recommendations regarding approaches to explicitly incorporate riparian ET losses into CRSS and/or other tools with consideration of the potential impacts of various seasonal reservoir releases.
- Identify the infrastructure (e.g., instrumentation) and/or tools (e.g., modeling) necessary to better quantify and track water originating upstream along specific reaches of the Colorado River and Green River in the future.

Two study reaches are proposed for evaluation in this study:

Reach 1: Fontenelle Reservoir to Flaming Gorge Reservoir: This reach includes investigating the Green River in Wyoming between Fontenelle and Flaming Gorge Reservoirs (Figure 1).

Reach 2: Flaming Gorge Reservoir to Lake Powell: This reach includes investigating the Green River and Colorado River in Utah and Colorado between Flaming Gorge Reservoir and Lake Powell (Figure 2).

Figure 1: Fontenelle Reservoir to Flaming Gorge Reservoir (Reach 1) Extent

Figure 2: Flaming Gorge Reservoir to Lake Powell (Reach 2) Extent

The selected Consultant will work with the UCRC project team to coordinate and harmonize, to the extent possible, with relevant modeling efforts in the Upper Colorado River Basin, with the goal of ensuring consistency and agreement of modeling assumptions and approaches among the Upper Division States.

1.2 ESTIMATED PROJECT SCHEDULE

The estimated project schedule is provided below. A detailed schedule of deliverables will be developed in consultation with the UCRC project team upon notice of award.

- RFP issued: July 10, 2024
- Proposals due: July 23, 2024
- Notice of award: July 30, 2024
- Project kickoff: August 13, 2024
- Substantial project completion: December 1

1.3 SCOPE OF WORK

The following services are anticipated to be required. The final Scope of Work will be developed with the UCRC project team upon notice of award.

1.3.1 PROJECT MANAGEMENT

The Consultant shall submit to UCRC monthly invoices detailing costs incurred in conjunction with the Project. Each invoice shall cover a period of one calendar month (or a four-week timeframe) and shall be submitted to UCRC within six weeks after the end of each billing cycle. The minimum required information is provided below:

- Project title and number
- Invoice date
- Invoice number and billing period
- Summary of work performed during invoice period, broken down and detailed by task and subtask
- Consultant staff-hours utilized to date and total staff-hours allocated, for each task and subtask and a list of anticipated work during the next month
- Remaining funds by task and for total project shall be clearly presented

1.3.2 PROJECT MEETINGS

Upon receipt of a written Notice to Proceed from UCRC, the Consultant shall schedule and conduct a virtual kick-off meeting with the UCRC project team. At the kick-off meeting, the Consultant shall be prepared to discuss the scope, objectives, and approach of the project.

Over the duration of the project, the Consultant shall participate in 90-minute bi-weekly virtual meetings with the UCRC project team and others to discuss key issues, review harmonization with any other relevant modeling efforts in the Upper Colorado River Basin, and review project progress. Other meetings may be proposed by the Consultant or requested by UCRC during the project and should be anticipated.

1.3.3 REVIEW & OBTAIN EXISTING MODELING INPUTS

The Consultant will work with UCRC to obtain seasonal riparian ET transit loss estimates for the study reaches and develop estimates of reservoir releases.

1.3.4 TRANSIT LOSS INCORPORATION RECOMMENDATIONS

The Consultant will review the transit loss estimation approach in CRSS, review the riparian ET estimates provided by UCRC, and provide recommendations regarding approaches to explicitly incorporate riparian ET losses into CRSS and/or other tools with consideration of the potential impacts of various seasonal reservoir releases.

Following completion, a virtual workshop will be held with the UCRC project team to present the model, results, and recommended future efforts (defined as substantial project completion).

1.3.5 DOCUMENTATION

The Consultant will prepare a technical memorandum (TM) that summarizes recommended modeling approaches and assumptions.

The TM will also include recommendations for future monitoring and measurement infrastructure that may help refine future modeling efforts.

SECTION 2: SUBMITTAL INSTRUCTIONS

The following sections outline the submittal process, schedule, and requirements.

2.1 SUBMITTAL PROCESS AND SCHEDULE

The following is a tentative submittal schedule (all times Mountain time):

- RFP released: July 10, 2024
- Deadline for questions: July 18, 2024 @ 12:00 PM
- Submittal submission due: July 23, 2024 @ 2:00 PM

Responses to requests for clarification shall be in writing and will be distributed to proposing Consultants in the form of an addendum and without identification of the source of any inquiry. Requests for clarification submitted via telephone will not be accepted. Consultants are restricted from contact with UCRC staff, other than the Project Manager listed above, regarding the project during the procurement process. A violation of this may result in the disqualification of the Consultant.

Responses shall be submitted via email in PDF format to:

Bea Gordon, Project Manager | Email: bgordon@ucrcommission.com

Submittals must be received by the UCRC Project Manager by the date and time specified above. Any response received after the submittal deadline will be deemed non-responsive and not evaluated. Each submittal shall be valid for a period of not less than sixty (60) days from the date of receipt by UCRC.

UCRC reserves the right to request clarification of information submitted by a Consultant in a responsive solicitation response.

UCRC has no obligation to select qualified Consultants based on this RFP and may terminate the RFP process at any time. UCRC retains the discretion to modify, expand, or delete any portion of the project outlined in this RFP in the process of finalizing a Scope of Work for the project. UCRC retains the right to reject any or all of the responses to this RFP in accordance with the UCRC Procurement Policy UCRC assumes no responsibility for payment of any expenses incurred by Consultants responding to this RFP.

Best and final offers may be allowed from responsible Consultants who submit responsive proposals that meet minimum qualifications, evaluation criteria, or applicable score thresholds identified in this RFP.

2.2 SUBMITTAL FORMAT

Submittals shall be limited to ten (10) pages exclusive of the transmittal letter, index or tables of contents, section dividers, and resumes. Pages must be 8-1/2" x 11". Minimum font size shall be 11-point Calibri (or similar). Submittals shall be submitted in a searchable PDF format.

Submittals shall be clear, accurate, and comprehensive. Generic marketing material is discouraged. Excessive or irrelevant material will not be favorably received.

2.3 SUBMITTAL CONTENT

All submittals shall include the following minimum information. The order of the listed criteria is not indicative of their priority, weighting, or importance.

1. **Description of Organization and Team Members**

   Provide a description of the organization and identify the key personnel proposed to complete the work. The description should clearly identify who will be the project manager and serve as the UCRC point of contact. Include resumes of key personnel (limited to two pages) as an appendix. **Respondents must disclose any potential conflicts of interest.**

2. **Project Approach and Schedule**

   Provide a description of the Consultant's proposed approach to meet the project objectives, align with the stated major scope items, and harmonize with other relevant modeling efforts in the Upper Colorado River Basin. Consultant may provide alternative or supplemental tasks for consideration by the UCRC project team. Provide a timeline of milestones consistent with the proposed project approach.

3. **Qualifications**

   Provide a summary of the organization's qualifications indicating relevant background experience and capabilities for this work. Provide 3-5 examples of previous work accomplished by the proposed team that is similar in scope to the proposed project, including examples of previous work that involved integration of modeling work products completed by others.

   Provide client references for each of the examples of previous work. Specify the client, location, key participating individuals and role on team, type of work, and status.

4. **Fee**

The Consultant shall submit a proposed rate schedule for proposed staff and a fee for the project. Fee shall clearly indicate the hours, budget, and expenses broken out by task and subtask.

2.4 AWARD OF CONTRACT

After a Consultant is selected, contract award will be contingent upon successful negotiation of a professional services agreement. **Due to the expedited timeframe associated with the award process, Respondents are strongly encouraged to review the draft Professional Services agreement included as Attachment A and provide any requested modifications along with the submittal (does not count toward the page limit).**

SECTION 3: SELECTION PROCESS

Consultant will be selected based upon an evaluation of approach, demonstrated competence, professional qualifications necessary for the satisfactory performance of the services required, and fee. The UCRC project team will select the most qualified proposal(s) based on the following criteria:

1. **Project Approach and Ability of the Firm to Carry Out and Manage the Proposed Project (50%)**

   Demonstration of a clear and comprehensive project approach; the organization's ability to be responsive to UCRC's needs; the organization's ability to realize timetables and quality control objectives; and the ability to bring about a successful completion of the project under the respondent's direction.

2. **Capabilities of the Consultant Team Members (25%)**

   Assessment of the capabilities of the individuals that will be engaged in the project. Qualities and indicators that will receive consideration include the applicable experience of the proposed assigned staff, and the specific experience gained on similar projects.

3. **Rate Schedule and Fee (25%)**

   Cost, while not determinative, may be considered in the selection process. The selected firm will be expected to maintain the proposed rate schedule throughout the calendar year of the contract (through December 31, 2024).

ATTACHMENT A – UCRC DRAFT PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES CONTRACT (#UCRC-__-2024)

This Professional Services Contract ("Contract") is entered into between the Upper Colorado River Commission ("UCRC") and the ____________________________ ("Contractor"), collectively the "Parties", effective as of the date of execution by both Parties.

RECITALS

THE PARTIES enter into this Contract on the basis of the following recitals:

A. The Upper Colorado River Commission ("UCRC") was established by Article VIII of the Upper Colorado River Basin Compact ("Upper Basin Compact"). The UCRC is composed of commissioners representing their respective states: Colorado, New Mexico, Utah, and Wyoming (collectively, the "Upper Division States" or "States") and a commissioner representing the United States. It was created to perform all functions required by the Upper Basin Compact and to do all things necessary, proper, or convenient in the performance of its duties either independently or in cooperation with any state or federal agency.

B. Pursuant to the terms of the "United States Department of the Interior Assistance Agreement R23AP00295 Between Bureau of Reclamation and the Upper Colorado River Commission for Upper Basin Infrastructure Investment & Jobs Act and Drought Contingency Plan Implementation Activities" Notice of Award ("BIL Award"), the UCRC is operationalizing the drought contingency planning and implementation of the Upper Basin Drought Contingency Plan by identifying and contracting for the completion of certain projects.

C. The UCRC issued a request for proposals ("RFP") seeking qualified applicants to provide certain professional services to implement the Upper Basin Drought Contingency Plan and selected Contactor pursuant to its procurement standards and the applicable laws and regulations that govern the use of the BIL Award.

D. The UCRC desires to obtain professional services from the Contractor to better account for transit losses along select river reaches and explore the possibility of integrating them into the existing models such as the Colorado River Simulation System (CRSS) model and/or other existing modeling tools.

E. The Contractor has represented to the UCRC that the Contractor possesses the necessary skill to provide such services as are required for the BIL Project and is willing to do so pursuant to the terms of this Contract.

CONTRACT

In consideration of the foregoing recitals and the covenants and promises contained herein, the Parties agree as follows:

1. TERM

This Contract will begin upon execution of this Contract by both Parties and will expire on ____________________________ ("Contract Term") unless extended by amendment pursuant to Paragraph 17 (Amendment and Waiver), or unless terminated at an earlier date, pursuant to Paragraph 3(g) (Appropriations) or Paragraph 4 (Termination). The Funding Period began on ____________________________, and will expire on ____________________________. The Period of Performance began on____________________________, and will end on ____________________________.

2. SCOPE OF WORK

(a) *Generally.* The Contractor will perform the work described in the Scope of Work, attached hereto as **Exhibit "A"** and made a part hereof. If there are conflicts between the terms of this Contract and the Scope of Work, the terms of the Scope of Work shall apply.

(b) *Definitions.* For purposes of this Contract, the following definitions will apply:

(1) Contract Manager: The UCRC staff member authorized by the UCRC to manage and administer the professional service contracts under the BIL Award. The Contract Manager coordinates with the Project Manager and the Contractor. The Contract Manager will also review Contractor reporting, evaluate completed work, process invoices, and make payment to the Contractor. For the purposes of this Contract, the Contract Manager is hereby designated as ____________________________.

(2) Project Manager: UCRC staff member ____________________________ has been designated as the Project Manager. The Project Manager will coordinate with the Contract Manager on the assignment of task orders to the Contractors. The Project Manager will then oversee and manage all Contractor activities related to task progress and execution, evaluating completed work, and the disposition of submitted deliverables to the Contract Manager.

(c) *Review of Progress Reports; Invoices; Deliverables*. The Contract Manager will coordinate with the Project Manager and the Contractor concerning their progress reporting and invoicing for the duration of the Contract. The Contractor will provide progress reports in a format and at such times as described in the Scope of Work. The Project Manager and Contract Manager will review submitted progress reports, related invoices, and deliverables with final approval or rejection by the Contract Manager. If any problems arise while performing its duties, the Contractor will advise the Project Manager first, and if the problem cannot be resolved at that level, the Contractor will notify the Contract Manager.

(d) *Compliance with the BIL Award terms and conditions*. In performing the services described in the Scope of Work, the Contractor shall comply with all BIL Award terms and conditions ("BIL Conditions") and the UCRC's procurement standards, attached as **Exhibit "E"**, that apply to the Contractor and any subcontractors it may retain. All such applicable BIL Conditions and procurement standards are incorporated into and made part of this Agreement by this reference as though set forth fully herein.

3. COMPENSATION, PAYMENT, STATUS UPDATES, REPORTING

(a) *Cost Limitation*. The total amount payable by the UCRC under this Contract will not exceed ____________________________ ($XXX,XXX.XX), inclusive of applicable gross receipt tax ("Cost Limitation Amount"). The Cost Limitation Amount is a maximum and not a guarantee that the work to be performed will equal the Cost Limitation Amount. The Contractor will be paid based upon the Cost Schedule provided as **Exhibit "B"** hereto.

The Contractor is responsible for not billing in excess of the Cost Limitation Amount. The Contractor will not be compensated or reimbursed for work performed, or expenses incurred, in excess of the Cost Limitation Amount.

(b) *Quarterly Status Updates.* The Contract Manager and Project Manager will conduct teleconference calls or webinars with the Contractor approximately every quarter for the duration of the Contract Term. The Project Manager and Contractor will each provide a brief update as to their status and overall progress on their respective tasks.

(c) *Progress Reporting; Invoice Submission.* The Contractor will submit a short narrative report describing progress, along with signed invoices, semi-annually to the Contract Manager in a format similar to **Exhibit "C"** hereto. The invoices will contain the contract number, a short narrative description of the work conducted during the prior reporting period, upcoming tasks, any issues encountered, changes in approach, and a calculation of payment due, based upon the hourly rate identified in the Cost Schedule, and supported by documentation reflecting dates, tasks, and hours billed. The invoices will also contain all travel and other expense reimbursement requests for work performed prior to or during the invoiced period and will include supporting receipts. The Contractor will be entitled to receive payment only for work properly invoiced and supported by appropriate documentation. All invoices for services must be received by the Contract Manager no later than thirty (30) calendar days after the end of each semi-annual reporting period, which reporting periods end on April 30th and October 30th of each year of the Contract. Invoices received after their respective due dates will not be paid. Payment of the amount invoiced, or any part thereof, will not relieve the Contractor of any unperformed obligations or foreclose the UCRC's right to recover incorrect, excessive, or illegal payments.

(d) *Exception to Invoices*. If the Contract Manager finds that the services performed or the deliverables provided pursuant to this Contract are unacceptable, the Contract Manager will send to the Contractor a letter of exception explaining the deficiency, along with details of how the Contractor may remediate the deficiency. The Contract Manager will provide the letter of exception as soon as practicable, but in no event later than thirty (30) days following receipt of the Contractor's invoice for such services. Payment will be tendered to the Contractor within thirty (30) days after the date of acceptance of the Contractor's services. If payment is made by mail, the payment will be deemed tendered on the date it is postmarked. However, the UCRC will not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

(e) *Property*. Unless prior written approval is given by the Contract Manager, the Contractor will not be reimbursed for any personal property in excess of $1,000 over the Contract Term that the Contractor might acquire or store during, and related to, performance of this Contract.

(f) *Mistake in Compensation*. The Contractor will reimburse the UCRC for amounts paid to it in error within thirty (30) days of delivery of written notice of such error. The Contractor will promptly notify the Contract Manager if the Contractor independently becomes aware of such an error. Interest will accrue at the statutory rate upon any amounts not reimbursed to the UCRC after the thirtieth (30^{th}) day following the date of such notice to the Contractor.

(g) *Appropriations*. The terms of this Contract are contingent upon sufficient appropriations and authorizations being made by the U.S. Bureau of Reclamation and available to the UCRC for the performance of this Contract. If the UCRC, in its sole discretion, determines that sufficient appropriations or authorization are not available, this Contract will terminate immediately upon written notice by the UCRC to the Contractor and the Contractor will be reimbursed pursuant to Paragraphs 4(c) and 4(d). The UCRC's decision as to whether sufficient appropriations are available will be final and will be accepted by the Contractor. If the UCRC proposes an amendment to the Contract to unilaterally reduce funding, the Contractor will have the option to terminate the Contract or to agree to the reduced funding within thirty (30) days of receipt of the proposed amendment. Any amendment made under the terms of this Paragraph will be governed by the terms of Paragraph 20(c).

4. TERMINATION

(a) *Grounds.* The UCRC may terminate this Contract for any or no reason. The Contractor may only terminate this Contract based upon the UCRC's uncured, material breach of this Contract or as allowed in Paragraph 3(g) of this Contract.

(b) *Notice; Opportunity to Cure.*

(1) Except as otherwise provided in Paragraph 4(b)(3), the UCRC will give the Contractor written notice of termination at least thirty (30) days prior to the intended date of

termination. If the UCRC terminates this Contract for cause, the UCRC's notice will (i) identify the Contractor's material breaches of this Contract upon which the termination is based, and (ii) state what the Contractor must do to cure such material breaches. The UCRC's notice of termination will only be effective if (i) the Contractor does not cure all material breaches within the thirty (30) day notice period, or (ii) in the case of material breaches that cannot be cured within thirty (30) days, if the Contractor does not, within the thirty (30) day notice period, notify the UCRC of its intent to cure and begin with due diligence to cure the material breach.

(2) The Contractor will give the UCRC written notice of termination at least thirty (30) days prior to the intended date of termination. If the termination is for cause, the Contractor's notice will (i) identify all the UCRC's material breaches of this Contract upon which the termination is based, and (ii) state what the UCRC must do to cure such material breaches. The Contractor's notice of termination will only be effective if (i) the UCRC does not cure all material breaches within the thirty (30) day notice period, or (ii) in the case of material breaches that cannot be cured within thirty (30) days, if the UCRC does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

(3) Notwithstanding the foregoing, this Contract may be terminated immediately by UCRC pursuant to Paragraph 3(g) of this Contract.

(c) *Liability Upon Termination.* Except as otherwise expressly allowed or provided under this Contract, the UCRC's sole obligation upon termination of this Contract will be to pay for: (i) work performed prior to the date of termination, and (ii) any non-cancellable obligations approved by the UCRC prior to the issuance of the notice of termination; provided, however, that a notice of termination will not nullify or otherwise affect either Party's liability for pre-termination defaults under or breaches of this Contract. The Contractor will submit an invoice for such performed work and non-cancellable obligations within thirty (30) days of the date of termination. This provision is not exclusive and does not waive either Party's legal rights and remedies resulting from the other Party's default or breach of this Contract.

(d) *Termination Management.* Immediately upon receipt by either the UCRC or the Contractor of a notice of termination of this Contract, the Contractor will: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Contract without the written approval of the Contract Manager; 2) comply with all directives issued by the UCRC in the notice of termination as to the performance of work under this Contract; and 3) take such action as the UCRC will direct for the protection, preservation, retention or transfer of all property titled to the UCRC and records generated under this Contract. Unless otherwise agreed to in writing by the Contract Manager, any personal property or equipment provided to, or purchased by, the Contractor with contract funds with an original cost of $1,000 or more will become the property of the UCRC upon termination of this Contract and will be submitted to the UCRC as soon as practicable thereafter.

5. TRANSFER OF MATERIALS

Upon expiration or termination of this Contract, the Contractor will assist and cooperate with the Contract Manager in the orderly and timely transfer to the UCRC of files, documents, memoranda, notes, data, models, and related materials, whether provided by the UCRC to the Contractor or created by the Contractor pursuant to this Contract. The Contract Manager or Project Manager may request such transfer of materials at any time during the Contract Term.

6. DISPUTES

The Contractor and the Contract Manager will attempt to informally resolve any dispute that may arise in relation to this Contract. The Contractor, acting through the Contract Manager, will report in writing any dispute not so resolved to the Executive Director of the UCRC within thirty (30) days of the Contractor's knowledge of the circumstances giving rise to the dispute. The Executive Director will deliver his decision to the Parties within fifteen (15) days of receipt of the written dispute and the decision will be final unless, within ninety (90) days from the date of the decision, the Contractor notifies the UCRC that the Contractor intends to seek appropriate legal relief pursuant to Paragraph 17.

Upon receiving such notice, the UCRC reserves the right to, within fifteen (15) days of receipt of the notice, formally consider the dispute before the Contractor may seek legal relief. The Contractor's failure to use the procedure described in this Paragraph 6 will be deemed acceptance of the Executive Director's decision and constitute a waiver of any further claim or remedy available at law or in equity relating to the dispute.

7. STATUS OF CONTRACTOR

(a) *Independent Contractor; Costs of Business*. The Contractor and its agents and employees are independent contractors performing professional services for the UCRC and are not employees of the UCRC. The Contractor and its agents and employees will not accrue leave, retirement, insurance, bonding, or any other benefits afforded to employees of the UCRC as a result of this Contract. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax.

(b) *Authority of Contractor*. The Contractor will not purport to bind the UCRC, nor its officers or employees, to any obligation not expressly authorized herein. Without the UCRC's express written permission, the Contractor will not, in any manner, reference the UCRC in such a way that states or implies the UCRC's endorsement of the Contractor or the Contractor's work. The Contractor may use the UCRC as a reference. The Contractor agrees not to purport to bind the UCRC unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

(c) *Other Contractors*. The UCRC may, for any reason, enter into other agreements for services related or identical to the services contemplated by this Contract, whether or not this Contract has expired or been terminated. The Contractor will fully cooperate with the UCRC and its other contractors.

(d) *Subcontracting*. The Contractor will not subcontract any portion of the services to be performed under this Contract without the prior written approval of the Contract Manager. No such subcontract will relieve the primary Contractor from its obligations and liabilities under this Contract, nor will any subcontract obligate direct payment to any subcontractor from the UCRC.

8. RELEASE

By accepting payment of the amounts due under this Contract, the Contractor releases the UCRC, its officers, and employees, from all liabilities and obligations whatsoever related to this Contract or the services provided hereunder. Payment to the Contractor by the UCRC will not, however, constitute final release of the Contractor. Should audit or inspection of the Contractor's records subsequently reveal outstanding Contractor obligations, the UCRC shall inform the Contractor of the outstanding obligations and the Contractor will remain liable to the UCRC for such obligations, and all payments by the UCRC to the Contractor will be subject to any appropriate recoupment by the UCRC.

9. RECORDS AND FINANCIAL AUDIT

The Contractor will maintain detailed time and expenditure records that indicate the date, time, nature, and cost of services rendered during the Contract's term and effect. The Contractor will retain those records for a period of at least three (3) years from the date of final payment under this Contract. The records will be subject to inspection by the UCRC, and the U.S. Bureau of Reclamation. The UCRC will have the right to audit billings both before and after payment. Payment under this Contract will not foreclose the right of the UCRC to recover excessive or illegal payments.

10. INDEMNIFICATION

The Contractor agrees to indemnify, hold harmless, and release UCRC and all UCRC's officers, agents, volunteers and employees from and against any and all loss, damages, injury, liability, suits and proceedings arising out of the performance of this permit which are caused solely by the negligent acts, wrongful acts, errors, or omissions of the Contractor's officers, agents, employees, or volunteers. UCRC agrees to indemnify, hold harmless, and release the Contractor and all the Contractor's officers, agents, volunteers and employees from and against any and all loss, damages, injury, liability, suits and proceedings arising out of the performance of this permit which are caused solely by the negligence of UCRC or UCRC's officers, agents, employees, or volunteers, it being the intent of the parties that the Contractor will not indemnify, hold harmless or release UCRC from UCRC's own willful misconduct, gross negligence, or UCRC's negligent acts or omissions, and UCRC will not indemnify, hold harmless or release the Contractor from the Contractor's own willful misconduct, gross negligence, or the Contractor's negligent acts or omissions. If both parties are negligent or otherwise at fault, they shall each bear their proportionate share of any allocated fault or responsibility. Nothing contained in this Contract shall be construed as waiving immunity, the monetary damage limitations, or any other provision set forth in applicable State or Federal laws. If any action, suit, or proceeding related to the services performed by the Contractor or any of the Contractor's officers, agents, employees, servants, or subcontractors under this Contract is brought against the Contractor, the Contractor will, as soon as practicable but no later than ten (10) days after it receives notice thereof, notify the Contract Manager.

11. INSURANCE

The Contractor will maintain in full force and effect during the term of this Contract the insurance coverage set forth below, from a company authorized to write such insurance in the state(s) in which the Contractor is licensed or registered to do business. Upon request by the Contract Manager, the Contractor will furnish the UCRC with a certificate of such policy in a form satisfactory to the UCRC. Such certificate and policy will provide that the UCRC will be given fifteen (15) days advance written notice before the policies are canceled, materially changed, or not renewed. The UCRC reserves the right to reject insurance or insurers tendered by the Contractor. If such insurance or insurer is rejected, the Contractor will be granted reasonable additional time to obtain alternative coverage acceptable to the UCRC, but performance of services under this Contract may be suspended by the UCRC during such time.

(a) *Comprehensive General Liability Insurance*. The Contractor must have comprehensive general liability insurance with liability limits of not less than One Million Dollars ($1,000,000) combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said general liability insurance must include coverage for all operations performed by the Contractor. Contractual liability coverage will specifically insure the indemnification provisions of this Contract as coverage provides and the UCRC will be named as an additional insured.

(b) *Automobile Insurance*. The Contractor must have automobile insurance with liability limits of not less than One Million Dollars ($1,000,000) combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said automobile policy of insurance must include coverage for all operations performed by the Contractor, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment. Contractual liability coverage will specifically insure the indemnification provisions of this Contract and the UCRC will be named as an additional insured.

(c) *Workers' Compensation Insurance*. The Contractor agrees to comply with all applicable laws and rules of the state(s) within which the Contractor does business pertaining to workers compensation benefits for employees. If the Contractor fails to comply with the applicable laws and rules when required to do so, this Contract may be terminated by the UCRC.

(d) *Professional Liability Insurance*. The Contractor will maintain in full force and effect during the term of this Contract professional liability insurance, also known as malpractice insurance, with liability limits of not less than One Hundred Thousand Dollars ($100,000).

12. WORK PRODUCT, COPYRIGHT, TRADEMARK, OWNERSHIP OF MATERIALS

The Contractor warrants that nothing the Contractor produces pursuant to this Contract will infringe upon or violate any right to confidentiality or property right, whether intellectual or otherwise, of any third party. The Contractor will, subject to the provisions of paragraph 9, indemnify, defend, and hold harmless the UCRC, its officers, and employees, from and against any and all loss, cost, liability, or expense arising out of the breach or claimed breach of the foregoing warranty. Nothing the Contractor produces or develops, in whole or in part, pursuant to this Contract will be the subject of an application for copyright, trademark, or other property right by or on behalf of the Contractor.

13. CONFLICT OF INTEREST

(a) The Contractor will submit all potential conflicts of interest to the UCRC using the Disclosure and Certification Form attached hereto as **Exhibit "D"**.

(b) The Contractor specifically represents and warrants that:

(1) The Contractor does not employ, has not employed, and will not employ during the term of this Contract any UCRC employee while such employee was or is employed by the UCRC and participating directly or indirectly in the UCRC's contracting process.

(2) The Contractor has not contributed, and, during the term of this Contract, will not contribute or provide any gratuity to an employee or third-party contractor of the UCRC, including: gifts or favors; money; a loan; employment; admission to an event; a meal valued at more than $50, lodging, or travel; entertainment for which a charge is normally made; or a raffle, drawing for a prize, or lottery.

(c) The Contractor's representations and warranties in (a) and (b) of this Paragraph 13 are material representations of fact upon which the UCRC relied when this Contract was entered into by the Parties. The Contractor will provide immediate written notice to the UCRC if, at any time during the term of this Contract, the Contractor learns that the Contractor's representations and warranties in (a) and (b) of this Paragraph 13 were erroneous on the effective date of this Contract or have become erroneous by reason of new or changed circumstances. If, at any time, it is determined by the UCRC that the Contractor's representations and warranties in (a) and (b) of this Paragraph 13 were erroneous on the effective date of this Contract or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the UCRC, and notwithstanding anything in the Contract to the contrary, the UCRC may immediately terminate the Contract.

(d) The provision or acceptance of bribes, gratuities, and kickbacks by the Contractor will be subject to prosecution under federal law or, in the absence of applicable federal law, under the laws of the State of Utah.

14. FORMAT OF ELECTRONIC DELIVERABLES

Text documents and spreadsheet deliverables provided to the UCRC in an electronic format pursuant to this Contract will be prepared, stored, and delivered in Microsoft Corporation-produced software (e.g., Word or Excel), unless the Contract Manager approves the use of an alternate software format in writing. Database, spatial, and geographic information system deliverables provided to the UCRC in electronic format pursuant to this Contract will be prepared, stored, and delivered in a software format approved of in writing by the Contract Manager. The Contractor will be responsible for requesting and obtaining the Contract Manager's written approval of the software format the Contractor proposes to use prior to beginning the preparation of such deliverables. Should the Contractor utilize a software format not approved in writing by the Contract Manager, the Contractor will bear all costs or expenses, of any type whatsoever, incurred by the Contractor or the UCRC in converting or otherwise preparing such electronic deliverables into a software format acceptable to the UCRC.

15. EQUAL OPPORTUNITY COMPLIANCE

The Contractor agrees to abide by all federal rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, the Contractor assures that no person in the United States will, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental disability, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Contract. If the Contractor is found not to be in compliance with these requirements during the life of this Contract, the Contractor agrees to take appropriate steps to correct these deficiencies.

16. REMEDIES

The Parties may pursue any remedies available to them at law or equity, for violation of any of the terms herein.

17. CONFIDENTIALITY AND RELEASE OF INFORMATION

The Contractor will maintain the confidentiality of all information provided by the UCRC, derived from such information, or otherwise learned or developed by the Contractor pursuant to this Contract. The Contractor will neither use nor disclose such information without the UCRC's express written permission and will promptly notify the UCRC of any unauthorized disclosure and assist in investigating any unauthorized disclosure and preventing the recurrence thereof. The confidentiality obligations included in this Paragraph survive the expiration or termination of this

Contract. The Contractor assumes responsibility for all liability caused by any violation of this Paragraph.

Throughout the duration of this Contract term, the Contractor will secure from the UCRC written approval prior to the release of any information that pertains to the potential work or activities covered by this Contract. Failure to adhere to this requirement may result in termination of the Contract.

18. NOTICES

Any notice required to be given to either Party by this Contract will be in writing and will be delivered via electronic mail (email), and in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To UCRC: Chuck Collum
50 S 600 E Suite 100
Salt Lake City, UT 84111
Telephone: 801-531-1150
Email: ccollum@ucrcommission.com

To Contractor:

19. AMENDMENT AND WAIVER

(a) This Contract will not be altered, changed, or amended except by an instrument in writing executed by the Parties.

(b) A Party's failure to require strict performance of any provision of this Contract will not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights under this Contract will be effective unless express and in writing, and no effective waiver by a Party of any of its rights will be effective to waive any other rights.

20. ASSIGNMENT

The Contractor will not assign or transfer any rights, obligations, duties, or other interest in, or claim for money due under, this Contract without the prior written consent of the UCRC, which consent may be withheld in the UCRC's sole and absolute discretion.

21. INTERPRETATION

The captions and paragraph headings used herein are for descriptive purposes only and do not limit, define, or enlarge the terms of this Contract. Unless otherwise indicated by the context, use of the singular, plural, or a gender will include the other, and the use of the words "include" and "including" will be construed as if "without limitation" or "but not [be] limited to" were annexed thereafter.

22. APPLICABLE LAW; VENUE

The Contract will be enforced, governed by and construed in accordance with applicable law. Venue for resolution of any dispute brought in federal court will be the United States District Court for the District of Utah. Venue for resolution of any dispute brought under state law will be the Utah Third District Court in Salt Lake City, Utah.

23. SURVIVAL

Terms of this Contract that provide for rights, duties, or obligations that expressly or logically extend beyond its expiration or termination, including the Contractor's indemnity obligations, will survive such expiration or termination.

24. INVALID TERM OR CONDITION

If any term or condition of this Contract is held invalid or unenforceable, the remainder of this Contract will not be affected and will be valid and enforceable.

25. INCORPORATION AND MERGER

Each of the recitals set forth at the beginning of this Contract, and any exhibits referenced herein and attached hereto, are incorporated into this Contract by this reference. This Contract incorporates all agreements, covenants, promises and understandings between the Parties concerning the subject matter hereof, and all prior or contemporaneous agreements and understandings are merged into this Contract. No prior agreement or understanding, oral or otherwise, of the Parties or their agents will be valid or enforceable unless embodied in this Contract. This Contract may be executed in multiple counterparts, each of which will be deemed an original.

26. AUTHORITY

If the Contractor is other than a natural person, the individual(s) signing this Contract on behalf of the Contractor represent and warrant that they have the power and authority to bind the Contractor, and that no further action, resolution, or approval from the Contractor is necessary to enter into a binding contract.

27. THIRD PARTY BENEFICIARIES

No Party to this Contract intends to, and this Contract does not, confer any right or entitlement to benefits from this Contract on any person or entity that is not a Party to this Contract, regardless of the legal theory on which such a claim is made.

28. COUNTERPARTS

This Contract may be executed in counterparts, each of which is deemed an original, but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Contract.

CONTRACTOR	**UPPER COLORADO RIVER COMMISSION**
______________________________	______________________________
______________________________	Chuck Cullom, Executive Director
______________________________	Upper Colorado River Commission

EXHIBIT A – SCOPE OF WORK (EXAMPLE)

1. **Purpose and Background**: The purpose and background of the Study are as follows.

2. **Key Terminology:**

3. **Objectives:** The questions motivating the Study are:

4. **Proposed Scope of Work:** The following outlines the proposed scope of work to develop and implement the Study.

    1. **Project kick-off meeting**
    2. **Review and summarize existing information and data**
    3. **Conduct a gap analysis to identify additional needed information**
    4. **Communication and coordination plan**
    5. **Develop study implementation plan**
    6. **Model development**
    7. **Implement study**
    8. **Study Report**

5. **Project Management and Deliverables**

	2024 Quarters			
Task 4.1				
Task 4.2				
Task 4.3				
Task 4.4				
Task 4.5				
Task 4.6				
Task 4.7				

Task 4.8				

EXHIBIT B – COST SCHEDULE

Hourly Labor Rates:

Personnel	Rate
	$
	$
	$
	$

Travel Expenses:

Item	Price Per Unit
Per Diem and Mileage reimbursement at rates specified in the current Federal Per Diem policy for travel city, without markup.	

Any Other Anticipated Expenses:

Item	Price Per Unit
Indirect Cost	

EXHIBIT C – <u>SAMPLE</u> PROGRESS REPORT AND INVOICE

Date of Submission

UCRC Contract Manager or
DMI Project Manager
Address

Dear Contract Manager/Project Manager,

The following comprises a progress report, invoice, and supporting documentation of expenses related to the BIL Project (#UCRC-___) and its Scope of Work. This progress report and invoice covers the period from ______ 202_ to __________202_. During this reporting period, the following tasks and activities were completed:

- SOW Task Order #1 – Description of Work Conducted (% of Task Complete)

Work planned for the next reporting period includes:

- SOW Task Order #2 – Description of Work to be Conducted

Issues Encountered:

Changes in Approach or Staffing:

Please let us know if you have any questions on the above tasks or attached invoice and related documentation.

Thank You,

Add Signature
Title

CONTRACTOR NAME____________ CONTRACT #: __________________

INVOICE # _______________

EIN# _______________

REPORTING PERIOD: JUL. 1, 2020 - DEC. 31, 2020

INVOICE DATE: JAN 15, 2021

DATE	**CATEGORY**	**EXPENSE DESCRIPTION**	**RATE**	**HOURS**	**TOTAL**
7/1/2020	TRAVEL	AIRFARE*			$ 500.00
7/1/2020	PERSONNEL	PRINCIPAL INVESTIGATOR	$ 135.00	104.00	$ 14,040.00
7/1/2020	OTHER EXPENSE	STAMPS			$ 5.00
				TRAVEL TOTAL	$ 500.00
				PERSONNEL TOTAL	$ 14,040.00
				OTHER EXPENSE TOTAL	$ 5.00
				ALL CATEGORY TOTAL	**$ 14,545.00**

*Pre-approved travel – see attached memo from UCRC approving travel expense

COST LIMITATION AMOUNT (CLA)	**$ 85,000.00**
TOTAL OF ALL FUNDS EXPENDED PRIOR TO THIS REPORTING PERIOD	$ 10,000.00
FUNDS EXPENDED DURING THIS REPORTING PERIOD	$ 14,545.00
TOTAL CLA REMAINING	**$ 60,455.00**
PERCENTAGE OF CLA EXPENDED	**28.9%**

FOLLOWED BY SUPPORTING DOCUMENTATION
TIMESHEETS, RECEIPTS, ETC.

EXHIBIT D – CONTRACTOR CONFLICT OF INTEREST CERTIFICATION AND DISCLOSURE FORM

Conflict of Interest Guidelines for Completion of UCRC Contracts

Upper Colorado River Commission Contract #UCRC-__-2024

The Upper Colorado River Commission ("Commission") strives to provide full, fair, and open solicitation, competition, and sole-sourced contracting that is free of actual or perceived unfair advantage or conflict of interest. This document is intended to provide guidance on when a conflict of interest may exist, and instructions for disclosure of actual and/or perceived conflicts of interest. This document is not intended to be and should not be construed as legal advice. If you are unsure whether a conflict of interest exists, please consult your legal counsel.

In this document, "Offeror" means the person(s) or entity submitting a bid or proposal to a solicitation, an entity that has been selected for a sole-sourced contract, any subcontractors, and all related entities including parent companies, subsidiaries, and companies owned, controlled, or owned and controlled by the same or closely related people.

The Offeror, by signing the Disclosure and Certification form attached, certifies that to the best of its knowledge and belief there are no relevant facts or circumstances that could give rise to actual or perceived conflicts of interest, or has determined that one or more conflicts of interest exist and has disclosed all relevant facts pertaining to such conflict/s.

When does a conflict of interest exist?

A conflict of interest occurs when any of the following circumstances arise:

- **Lack of Impartiality or Objectivity.** When the Offeror is unable, or potentially unable, to provide impartial or objective assistance or advice to the Commission due to existing professional or personal relationships, past, present, or currently planned contracts or activities, or any other circumstances related to the work to be performed for this solicitation.
- **Unequal Access to Information**. The Offeror has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.

Conflicts of interest may exist at an organizational level and at a personal level. Conflicts of interest may be "actual" or they may be "perceived," meaning a reasonable person with knowledge of all the material facts believes there appears to be a conflict, whether or not the organizations or individuals involved are in relationships that actually create or experience bias or unfair advantage. Actual, potential, and perceived conflicts of interest are collectively referred to as "conflicts of interest" in this document.

Please note that the information provided serves as a guide only, and a conflict may arise in other situations not described in this document.

Disclosure of Conflict of Interest

An Offeror shall either: (1) disclose all conflicts of interest, or (2) certify that the Offeror is unaware of any facts or circumstances that would give rise to a conflict of interest in performing work under this solicitation. (See Disclosure and Certification, p. 3). **A disclosure will not necessarily disqualify the Offeror from being awarded a contract**.

Failure to Disclose

If, in the Commission's sole discretion, a conflict is discovered after award or execution of a contract, the Commission may cancel the contract if it deems such termination necessary. If the contractor was aware of a potential conflict of interest prior to award, or discovered an actual or potential conflict after award and did not disclose, or misrepresented, relevant information to the contracting officer, the Commission may terminate the contract for default, or pursue such other remedies as may be permitted by law or equity.

Instructions for Preparation of Disclosure and Certification Regarding Conflict of Interest Form

The Offeror must determine whether a conflict of interest exists. Offerors and their subcontractors or subconsultants must complete and submit the attached Disclosure and Certification Regarding Conflict of Interest form ("Disclosure and Certification Form"), including forms for all proposed subcontractors. If the Offeror determines that a conflict of interest exists, it must, when completing the Disclosure and Certification form, disclose the particular conflict of interest and provide a general description of the nature of the conflict of interest. The Commission and RFP Evaluation Committee, in their sole discretion, will make the final determination as to whether a conflict of interest exists and, if so, whether to disqualify the Offeror or proceed with the evaluation of Offeror's proposal and possible award of a contract.

Disclosure and Certification Regarding Conflict of Interest

Name: ____ (the "Offeror")

Relationship: ____ (i.e. contractor, consultant, subcontractor, etc.)

1. Certification. The Offeror hereby acknowledges that it has read the Upper Colorado River Commission Conflict of Interest Guidelines and has, to the best of its knowledge and belief:

(Choose One)

> _____ Certified that there are no relevant facts or circumstances which could give rise to actual or reasonably foreseeable conflicts of interest that would impinge on its ability to render impartial, technically sound, and objective assistance or advice, or result in the Offeror having an unfair competitive advantage. (Offeror may provide an explanation or any supporting documentation).

OR

_____ Determined that one or more conflicts of interest exists. Offeror must identify and provide a description of the conflict of interest on Attachment 1.

The Disclosure and Certification Regarding Conflict of Interest form(s) must be submitted to the UCRC Contract Manager.

2. Subcontractors and Subconsultants. The Offeror must include a signed copy of this certification form for each of its subcontractors and subconsultants. The Offeror must submit all subcontractor forms to the Commission.

3. Continuing Obligations. The Offeror has a continuing obligation to the Commission to disclose conflicts of interest during the solicitation or, if awarded a contract, throughout the duration of the contract.

4. Failure to Disclose. If the Offeror was aware of a potential conflict of interest prior to award, or discovered an actual or potential conflict after award and did not disclose, or misrepresented, relevant information to the contracting officer, the Commission may terminate the contract for default, or pursue such other remedies as may be permitted by law or equity.

By signing below, the Offeror certifies that the information contained in this form is accurate to the best of its knowledge and that the Offeror agrees to comply with the requirements herein. By signing below, the Offeror further acknowledges its continuing obligation to the Commission to disclose, as soon as practicable, conflicts of interest to the Commission, through the Contract Manager, during the solicitation phase or, if awarded a contract, at any time a conflict of interest arises throughout the duration of the contract.

Signed:

____ Title:

____

Name: ____ Date:

____

ATTACHMENT 1

Description of Conflict of Interest: Please identify all relevant facts relating to past, present, or planned interest(s) of the Offeror's team (including subcontractors, etc.) that may result in, or could be perceived as, a conflict of interest in connection with this solicitation. Please attach additional pages, as necessary.

EXHIBIT E – BIL CONDITIONS

11. REGULATORY COMPLIANCE

The Recipient (UCRC) agrees to comply or assist Reclamation with all regulatory compliance requirements and all applicable state, Federal, and local environmental and cultural and paleontological resource protection laws and regulations as applicable to this project. These may include, but are not limited to, the National Environmental Policy Act (NEPA), including the

Council on Environmental Quality and Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the State Historic Preservation Office. If the Recipient begins project activities that require environmental or other regulatory compliance approval prior to receipt of written notice from a Reclamation GO that all such clearances have been obtained, then Reclamation reserves the right to initiate remedies for non-compliance as defined by 2 CFR 200.339-340 up to and including unilateral termination of this agreement.

12. WAGE RATE REQUIREMENTS [Public Law 117-58, Sec. 41101]

Section 41101 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, requires that all laborers and mechanics employed by contractors or subcontractor in the performance of construction, alteration, or repair work on a project assisted in whole or in part by funding made available under BIL shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (commonly referred to as the Davis-Bacon Act).

13. BUY AMERICA DOMESTIC PROUREMENT 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. Additional information can also be found at the White House Made in America Office website: 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:

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. 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 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 DOI 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; recipients requesting a waiver will be notified of their waiver request determination by an awarding officer.

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.

II. RECLAMATION STANDARD TERMS AND CONDITIONS

1. REGULATIONS

The regulations at 2 CFR Subtitle A, Chapter II, Part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", are hereby incorporated by reference as though set forth in full text. Failure of a Recipient to comply with any applicable regulation or circular may be the basis for withholding payments for proper charges made by the Recipient and/or for termination of support.

2. PAYMENT

2.1 Payment (2 CFR 200.305).

(a) For states, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A-2000, "Overall Disbursing Rules for All Federal Agencies".

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also §200.302(b). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved, governmentwide information collection requests to request payment.

(1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.

   (i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.

   (ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

(3) Reimbursement is the preferred method when the requirements in this paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per §200.208, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.

(4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

(5) To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of §200.208, subpart D of this part, including §200.339, or one or more of the following applies:

(i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.

(ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Circular A-129, “Policies for Federal Credit Programs and Non-Tax Receivables.” Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for financial obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with §200.343.

(iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.

(i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for funds received, obligated, and expended.

(ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:

(i) The non-Federal entity receives less than $250,000 in Federal awards per year.

(ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of $500 per year on Federal cash balances.

(iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(iv) A foreign government or banking system prohibits or precludes interest-bearing accounts.

(9) Interest earned amounts up to $500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Bureau of Reclamation through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.

(i) For returning interest on Federal awards paid through ASAP, the refund should:

(A) Provide an explanation stating that the refund is for interest;

(B) List the ASAP Account

(C) List the Federal award number(s) for which the interest was earned; and

(D) Make returns payable to: Bureau of Reclamation.

(ii) For returning interest on Federal awards not paid through ASAP, the refund should:

(A) Provide an explanation stating that the refund is for interest;

(B) List the Federal award number(s) for which the interest was earned; and

(C) Make returns payable to: Bureau of Reclamation

(10) Funds, principal, and excess cash returns must be directed to the original Federal agency payment system. The non-Federal entity should review instructions from the original Federal agency payment system. Returns should include the following information:

(i) Agency information to indicate whom to credit the funding if the payment originated from ASAP, NSF, PMS, or another Federal agency payment system.

(ii) Relevant ASAP account numbers.

(iii) The reason for the return (e.g., excess cash, funds not spent, interest, part interest part other, etc.)

(11) When returning funds or interest to Reclamation you must include the following as applicable:

(i) For ACH Returns:
ABA Routing Number: 051036706
Account number: 312018
Bank Name and Location: Credit Gateway, Federal Reserve Bank, Richmond, VA
Agreement Number: Reclamation Grant or Cooperative Agreement Number

(ii) For Fedwire Returns[1]:
ABA Routing Number: 021030004
ABA Short Name: TREAS NYC
Account number: 14060905
Beneficiary Name: Bureau of Reclamation

Bank Name and Location: Federal Reserve Bank, 33 Liberty Street, Federal Reserve Post Office Station, New York, NY 10045

Agreement Number: Reclamation Grant or Cooperative Agreement Number

[1]Please note that the organization initiating payment is likely to incur a charge from their Financial Institution for this type of payment.

(iii) For International ACH Returns:
Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)
Bank: Citibank N.A. (New York)
Swift Code: CITIUS33
Account Number: 36838868

Bank Address: 388 Greenwich Street, New York, NY 10013 USA
Payment Details (Line 70): Agency Name (abbreviated when possible) and Agency Locator Code (ALC): 75010501

(iv) For recipients that do not have electronic remittance capability, please make check payable to: "Bureau of Reclamation" and **include** the award number and ASAP account number in the memo lines of the check.

Please note it can take up to three weeks to process once received.

Mail (by USPS only) the check to Treasury approved lockbox:
DOI-BOR-Region: Denver
P.O. Box 6200-21
Portland, OR
97228-6200

2.2 Payment Method.

Recipients must utilize the Department of Treasury Automated Standard Application for Payments (ASAP) payment system to request advance or reimbursement payments. ASAP is a Recipient-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds. ASAP is the only allowable method for request and receipt of payment. Recipient procedures must minimize the time elapsing between the drawdown of Federal funds and the disbursement for agreement purposes.

In accordance with 2 CFR 25.200(b)(2)(3) the Recipient shall "Maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency; and provide its unique entity identifier in each application or plan it submits to the Federal awarding agency. If the Recipient allows their SAM registration to lapse, the Recipient's accounts within ASAP will be automatically suspended by Reclamation until such time as the Recipient renews their SAM registration.

3. PROCUREMENT STANDARDS (2 CFR 200.317 through 200.327)

§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 use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(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.

(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 200.212 Suspension and debarment.

(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.

§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 though 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 amendments. 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 amendment 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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014, and 85 FR 49506]

4. EQUIPMENT (2 CFR 200.313)

See also §200.439 Equipment and other capital expenditures.

(a) Title. Subject to the obligations 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 obligation 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) 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. 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 Program income 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 obligation to the Federal awarding agency.

(2) Except as provided in 200.312 Federally-owned and exempt property, paragraph (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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75884, Dec. 19, 2014]

5. SUPPLIES (2 CFR 200.314)

See also 200.453 Materials and supplies costs, including costs of computing devices.

(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 Equipment, paragraph (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.

6. INSPECTION

Reclamation has the right to inspect and evaluate the work performed or being performed under this Agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If Reclamation performs inspection or evaluation on the premises of the Recipient or a sub-Recipient, the Recipient shall furnish and shall require sub-recipients to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

7. AUDIT REQUIREMENTS (2 CFR 200.501)

(a) Audit required. A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) Single audit. A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with 200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with 200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) Exemption when Federal awards expended are less than $750,000. A non-Federal entity that expends less than $750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(f) Subrecipients and Contractors. An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section 200.331 Subrecipient and contractor determinations sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) Compliance responsibility for contractors. In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also 200.332 Requirements for pass-through entities.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49571, Aug. 13, 2020]

8. REMEDIES FOR NONCOMPLIANCE (2 CFR 200.339)

200.339 Remedies for noncompliance.

If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in 200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances.

(a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.

(b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(c) Wholly or partly suspend or terminate the Federal award.

(d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).

(e) Withhold further Federal awards for the project or program.

(f) Take other remedies that may be legally available.

9. TERMINATION (2 CFR 200.340)

(a) The Federal award may be terminated in whole or in part as follows:

(1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;

(2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

(3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions,

including the effective date and, in the case of partial termination, the portion to be terminated;

(4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or

(5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.

(b) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in 200.344 Closeout and 200.345 Post-closeout adjustments and continuing responsibilities.

10. DEBARMENT AND SUSPENSION (2 CFR 1400)

The Department of the Interior regulations at 2 CFR 1400—Governmentwide Debarment and Suspension (Nonprocurement), which adopt the common rule for the governmentwide system of debarment and suspension for nonprocurement activities, are hereby incorporated by reference and made a part of this Agreement. By entering into this grant or cooperative Agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 1400, Subpart C, and agrees to include a similar term or condition in all lower-tier covered transactions. These regulations are available at http://www.gpoaccess.gov/ecfr/.

11. DRUG-FREE WORKPLACE (2 CFR 182 and 1401)

The Department of the Interior regulations at 2 CFR 1401—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), which adopt the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq, as amended) applicable to grants and cooperative agreements, are hereby incorporated by reference and made a part of this agreement. By entering into this grant or cooperative agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 182.

12. ASSURANCES AND CERTIFICATIONS INCORPORATED BY REFERENCE

The provisions of the Assurances, SF 424B or SF 424D as applicable, executed by the Recipient in connection with this Agreement shall apply with full force and effect to this Agreement. All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, and cooperative Agreements, loans, and other forms of Federal assistance. The Recipient shall comply with Title VI or the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the

Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and any program-specific statutes with anti-discrimination requirements. The Recipient shall comply with civil rights laws including, but not limited to, the Fair Housing Act, the Fair Credit Reporting Act, the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act.

Such Assurances also include, but are not limited to, the promise to comply with all applicable Federal statutes and orders relating to nondiscrimination in employment, assistance, and housing; the Hatch Act; Federal wage and hour laws and regulations and work place safety standards; Federal environmental laws and regulations and the Endangered Species Act; and Federal protection of rivers and waterways and historic and archeological preservation.

13. COVENANT AGAINST CONTINGENT FEES

The Recipient warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by the Recipient for the purpose of securing Agreements or business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

14. TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (2 CFR 175.15)

Trafficking in persons.

(a) *Provisions applicable to a recipient that is a private entity.* You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not

  (1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

  (2) Procure a commercial sex act during the period of time that the award is in effect; or

  (3) Use forced labor in the performance of the award or subawards under the award.

(b) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

  (1) Is determined to have violated a prohibition in paragraph a.1 of this award term; or

  (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either:

    (i) Associated with performance under this award; or

    (ii) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at *2 CFR part 1400*.

(c) *Provision applicable to a recipient other than a private entity*. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

(1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

(2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:

(i) Associated with performance under this award; or

(ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at *2 CFR part 1400*.

(d) *Provisions applicable to any recipient*.

(1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

(2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

(i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

(ii) Is in addition to all other remedies for noncompliance that are available to us under this award.

(3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

(e) *Definitions*. For purposes of this award term:

(1) "Employee" means either:

(i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

(ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

(2) "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(3) “Private entity”:

(i) Means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

Includes:

(A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

(B) A for-profit organization.

(4) “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

15. NEW RESTRICTIONS ON LOBBYING (43 CFR 18)

The Recipient agrees to comply with 43 CFR 18, New Restrictions on Lobbying, including the following certification:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and 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 the extension, continuation, renewal, amendment, or amendment of any Federal contract, grant, loan, or cooperative agreement.

(b) 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of 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 Form to Report Lobbying” in accordance with its instructions.

(c) The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly. 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. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (URA) (42 USC 4601 *et seq.)*

(a) The Uniform Relocation Assistance Act (URA), 42 U.S.C. 4601 *et seq.*, as amended, requires certain assurances for Reclamation funded land acquisition projects conducted by a Recipient that cause the displacement of persons, businesses, or farm operations. Because Reclamation funds only support acquisition of property or interests in property from willing sellers, it is not anticipated that Reclamation funds will result in any "displaced persons," as defined under the URA.

(b) However, if Reclamation funds are used for the acquisition of real property that results in displacement, the URA requires Recipients to ensure that reasonable relocation payments and other remedies will be provided to any displaced person. Further, when acquiring real property, Recipients must be guided, to the greatest extent practicable, by the land acquisition policies in 42 U.S.C. 4651.

(c) Exemptions to the URA and 49 CFR Part 24

(1) The URA provides for an exemption to the appraisal, review and certification rules for those land acquisitions classified as "voluntary transactions." Such "voluntary transactions" are classified as those that do not involve an exercise of eminent domain authority on behalf of a Recipient, and must meet the conditions specified at 49 CFR 24.101(b)(1)(i)-(iv).

(2) For any land acquisition undertaken by a Recipient that receives Reclamation funds, but does not have authority to acquire the real property by eminent domain, to be exempt from the requirements of 49 CFR Part 24 the Recipient must:

(i) provide written notification to the owner that it will not acquire the property in the event negotiations fail to result in an amicable agreement, and;

(ii) inform the owner in writing of what it believes to be the market value of the property

(d) Review of Land Acquisition Appraisals. Reclamation reserves the right to review any land appraisal whether or not such review is required under the URA or 49 CFR 24.104. Such reviews may be conducted by the Department of the Interior's Appraisal Services Directorate or a Reclamation authorized designee. When Reclamation determines that a review of the original appraisal is necessary, Reclamation will notify the Recipient and provide an estimated completion date of the initial appraisal review.

17. SYSTEM FOR AWARD MANAGEMENT and Universal Identifier Requirements (2 CFR 25, Appendix A)

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.

C. Definitions

For purposes of this award term:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at http://www.sam.gov).
2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
    a. A Governmental organization, which is a State, local government, or Indian Tribe;
    b. A foreign public entity;
    c. A domestic or foreign nonprofit organization;
    d. A domestic or foreign for-profit organization; and
    e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
4. Subaward has the meaning given in 2 CFR 200.1.
5. Subrecipient has the meaning given in 2 CFR 200.1.

18. PROHIBITION ON TEXT MESSAGING AND USING ELECTRONIC EQUIPMENT SUPPLIED BY THE GOVERNMENT WHILE DRIVING

Executive Order 13513, *Federal Leadership On Reducing Text Messaging While Driving*, was signed by President Barack Obama on October 1, 2009 (ref: http://edocket.access.gpo.gov/2009/pdf/E9-24203.pdf). This Executive Order introduces a

Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or rented vehicles, government-owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.

19. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (2 CFR 170 APPENDIX A)

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds $30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).
2. Where and when to report.
   i. The non-Federal entity or Federal agency must report each obligating action described in paragraph a.1. of this award term to http://www.fsrs.gov.
   ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. You must report the information about each obligating action that the submission instructions posted at http://www.fsrs.gov specify.

b. Reporting total compensation of recipient executives for non-Federal entities.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
   i. The total Federal funding authorized to date under this Federal award equals or exceeds $30,000 as defined in 2 CFR 170.320;
   ii. in the preceding fiscal year, you received—
      (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and
      (B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,
   iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the

Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:
   i. As part of your registration profile at https://www.sam.gov.
   ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
   i. in the subrecipient's preceding fiscal year, the subrecipient received—
      (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards) and,
      (B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
   ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)
2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
   i. To the recipient.
   ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. Subawards, and
ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:
1. Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).
2. Non-Federal entity means all of the following, as defined in 2 CFR part 25:
   i. A Governmental organization, which is a State, local government, or Indian tribe;
   ii. A foreign public entity;
   iii. A domestic or foreign nonprofit organization; and,
   iv. A domestic or foreign for-profit organization
3. Executive means officers, managing partners, or any other employees in management positions.
4. Subaward:
   i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
   ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).
   iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
5. Subrecipient means a non-Federal entity or Federal agency that:
   i. Receives a subaward from you (the recipient) under this award; and
   ii. Is accountable to you for the use of the Federal funds provided by the subaward.
6. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)).

[85 FR 49526, Aug. 13, 2020]

20. RECIPIENT EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

(a) This award and employees working on this financial assistance agreement will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub.L. 112-239).

(b) The Award Recipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C 4712.

(c) The Award Recipient shall insert the substance of this clause, including this paragraph (c), in all subawards or subcontracts over the simplified acquisition threshold. 48 CFR 52.203-17 (as referenced in 48 CFR 3.908-9).

21. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE (APPENDIX XII to 2 CFR Part 200)

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent five-year period; and

c. Is one of the following:

   (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

   (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

   (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

   (4) Any other criminal, civil, or administrative proceeding if:

      (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

(1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

[80 FR 43310, July 22, 2015, as amended at 85 FR 49582, Aug. 13, 2020]

22. CONFLICTS OF INTEREST

(a) Applicability.

(1) This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.

(2) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.

(b) Requirements.

(1) Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.

(2) In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.

(3) No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.

(c) Notification.

(1) Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of Interest.

(2) 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 Financial Assistance 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.

(d) Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 4 3 CFR Part 18 and 31 USC 13 52.

(e) Review Procedures. The Financial Assistance 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 significant potential conflict exists and, if it does, develop an appropriate means for resolving it.

(f) 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).

23. DATA AVAILABILITY

(a) Applicability. The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.

(b) Use of Data. The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(c) Availability of Data. The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third party evaluation and reproduction of the following:

(i) The scientific data relied upon;

(ii) The analysis relied upon; and

(iii) The methodology, including models, used to gather and analyze data.

24. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY

(a) The recipient must—

(1) 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 2 CFR 180.300 prior to issuing a subaward or contract and;

(2) 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 subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.

(b) The recipient may include the substance of this clause, including paragraph (a) 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.

(c) 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 paragraph (a) of 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.

25. ADDITIONAL ACCESS TO RECIPIENT RECORDS

(a) In addition to any other existing examination-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 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.

(b) The substance of this clause, including this paragraph (b), 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.

26. 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.

III. DEPARTMENT OF THE INTERIOR STANDARD AWARD TERMS AND CONDITIONS

The Department of the Interior (DOI) Standard Award Terms and Conditions found at https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf are hereby incorporated by reference as though set forth in full text. 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 this Agreement. Recipient acceptance of this Agreement carries with it the responsibility to be aware of and comply with all DOI terms and conditions applicable to this Agreement. The Recipient is responsible for ensuring their subrecipients and contractors are aware of and comply with applicable statutes, regulations, and agency requirements.

Recipient and subrecipient failure to comply with the general terms and conditions outlined below and those directly reflected in this Agreement can result in the DOI taking one or more of remedies described in 2 Code of Federal Regulations parts 200.339 and 200.340. 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, DOI will inform the Recipient of revised terms and conditions in the action of an Agreement amendment adding additional Federal funds. Reclamation 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 funds or activities the Recipient carries out before the effective date of the revised DOI terms and conditions.

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

Source: 85 FR 49543, Aug. 13, 2020, unless otherwise noted.
Source: 85 FR 49539, Aug. 13, 2020, unless otherwise noted.
Authority: 31 U.S.C. 503
Source: 78 FR 78608, Dec. 26, 2013, unless otherwise noted.

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part

3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]