



REQUEST FOR QUALIFICATIONS #03-23-30018

Port Orchard Soil Remediation –EPA Multipurpose Workplan QEP

Qualifications Due November 29, 2023 at 3:00 PM

INDEX

- I. NOTICE**
- II. SCOPE**
- III. EXHIBITS**
 - a. Location Map**
 - b. Sample Professional Services Contract**
 - c. Federal Provisions & Forms**

I. NOTICE
PORT OF BREMERTON
REQUEST FOR QUALIFICATIONS #03-23-30018
Port Orchard Soil Remediation –EPA Multipurpose Workplan QEP

NOTICE IS HEREBY GIVEN that the Port of Bremerton is seeking statements of qualifications for Consultants or Engineering professional services for soil remediation activities for properties located in the City of Port Orchard.

BACKGROUND: The Port of Bremerton (Port) is a junior taxing district in the state of Washington, organized in 1913 under provisions of the laws of the State, codified at RCW 53.04.010 et seq. It is governed by a three-person elected Board of Commissioners. The Board of Commissioners appoints the Chief Executive Officer who is responsible for the Port's day-to-day operations.

The Port owns two marina waterfront properties with existing commercial structures, located at 521 and 525 Bay Street, Port Orchard, Washington. The Port is interested in receiving proposals for conducting hazardous substance and/or petroleum mitigation and soils remediation at these two properties.

REQUEST FOR QUALIFICATIONS (RFQ): A Request for Qualifications is the method of procurement used when elements such as experience, past performance, resources, method of approach, and other criteria are considered in addition to cost. The Port will review submitted proposals in accordance with the evaluation criteria set forth herein. After receiving proposals but prior to award of contract, the Port may engage in discussions with responsible submitters and allow or negotiate proposal revisions. Contents of proposals are not publicly disclosed until after contract award.

The Port hereby solicits interest from firms with expertise in consulting as a Qualified Environmental Professional (QEP) for an EPA Multipurpose workplan related to hazardous substance and/or petroleum mitigation and remediation consulting. Qualified Environmental Professional services shall include, but not limited to: Washington State Department of Ecology Voluntary Cleanup Program remediations and clean-ups management and consultation pursuant to the Model Toxics Control Act (MTCA) guidelines and US EPA multipurpose grant regulations and requirements. The Port reserves the right to amend terms of this Request for Qualifications (RFQ) to circulate various addenda, or to withdraw the RFQ at any time, regardless of how much time and effort consultants have spent on their responses. Services are to be consistent with EPA Multipurpose Grant award requirements and regulations.

RFQ REQUIREMENTS: Submittal information to include:

1. Statement of Interest- limited to one page
2. Organization chart and resumes for each team member outlined within the chart and their area of responsibility
3. Subconsultants organization chart and resumes for each subconsultant project team member and their area of responsibility
4. Team experience working with other public agencies performing soils remediation.
5. Team experience working on soils remediation projects with Washington State Department of Ecology, State of Washington Ecology Voluntary Cleanup Program remediations and clean-ups pursuant to the Model Toxics Control Act (MTCA) experience on similar scaled projects.
6. Specific experience of individuals relative to the proposed project

7. Specific experience related to US EPA Multipurpose Workplans.
8. A minimum of two references with specific interest in public and private referrals

SCHEDULE

Legal Ad Published	November 15 th , 2023
Deadline for Questions	November 20, 2023 at 4:30 PM
Answers to Questions Published	November 22, 2023 at 4:30 PM
Qualifications Due	November 29, 2023, at 3:00 PM
Commission Selection	December 12, 2023

Questions received after the question deadline may not be answered. If warranted, the Port will publish responses to questions online <https://www.portofbremerton.org/bids-contracts> no later than the deadline stated above. It is the proposer’s responsibility to check the online webpage for any addenda.

RFQ SUBMISSION REQUIREMENTS: Submit qualifications via email to the Port’s Contract Administrator, Ellen Ataie at ellena@portofbremerton.org. Place in the subject “Port of Bremerton- Port Orchard Soil Remediation-EPA MP Grant”. Paper submittals may be delivered to: Port of Bremerton, Attn: Ellen Ataie, 8850 SW State Hwy 3, Bremerton, WA 98312. The Port is not responsible for courier delay. Proposals are due by 3:00 PM, Wednesday, November 29, 2023.

<p>Port point of contact for the RFQ project is:</p> <p>James Weaver Director of Marine Facilities, jweaver@portofbremerton.org (primary) or 360-813-0829 (secondary).</p>	<p>Port point of contact for this RFQ submission is:</p> <p>Ellen Ataie Contract Administrator, ellena@portofbremerton.org (primary) or 360-813-0816 (secondary).</p>
---	---

CONTRACT ISSUES: The successful contractor will be required to execute an A&E Professional Services contract agreement with the Port (Exhibit B). Among other requirements, professional services contracts are subject to the following:

1. Errors and Omissions Indemnification
2. Negotiation lump sum fixed price.
3. Specific timetable leading to project completion.
4. Equal Employment Opportunity compliance
5. Non-Discrimination and Civil Rights Act compliance

Any contracts awarded under this request for qualifications are expected to be funded in part by United States Federal and Washington State agency or department funds. The proposed contract will be under and subject to Executive Order 11246 of 24 September 1965, as amended (Affirmative Action to Ensure Equal Opportunity). Qualifications received from a proposer who debarred from doing business with Washington State or the Federal government will be deemed non-responsive. Federal provisions are included in the appendix. In the event of conflicting requirements between the Port, State, and Federal agencies, the more restrictive requirement, or higher prevailing wage rate will prevail, where applicable.

This RFQ is subject to 2 CFR 200 for Federal Awards and Part 1500, Chapter XV, Subtitle B of Title 2-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

SELECTION PROCESS AND TIMELINE: Professional services will be procured using the Qualifications-Based-Selection (QBS) process as outlined in RCW 39.80. QBS is a competitive procurement process in which consulting firms submit qualifications and/or a non-cost proposal to the Port based on the criteria listed. Price is not used in the selection criteria. Qualifications submitted which contain price offer will be disqualified. The Port assesses the expertise of competing firms and selects the most highly qualified firm to negotiate the project scope and associated fee.

Following this RFQ process, the Port will select the two or three most highly qualified candidates for an interview. The Port will select the most highly qualified firm based on selection criteria and interviews. Once selected, a Professional Services contract scope and fair and reasonable fee will be negotiated. If the Port is unable to negotiate a satisfactory contract with the selected firm within thirty days, negotiations with that firm may terminate at the Port's discretion and the Port may select another firm.

SELECTION CRITERIA: Proposals will be evaluated by a Port evaluation committee, which shall have sole power and discretion to determine the qualifications, responsibility, and capabilities of the submitters in relation to the project. The Port will award a contract to the most highly qualified consultant using the following criteria:

- The qualifications, ability, capacity, and expertise of the proposer or team and project manager to perform the contract and/or provide the service required.
- The character, integrity, reputation, judgment, experience, and efficiency of the proposer.
- References to the quality of performance of previous contracts performing similar development and design services.
- Past Performance/References The previous and existing experience as it relates to this project.
- Familiarity with Agency (DOE, WDFW, USACE, NMF, USCG, Tribal and City) Requirements
- Ability to meet proposed schedule.
- The convenience and availability of service.
- Personal interviews and/or telephone interviews may be held at the discretion of the Port of Bremerton.

The evaluations will be scored at a possible 85 points, with the top three firms being selected for an interview. Following the interview, the final 15 points of those firms will be calculated for the interviewed firms. The scores will be calculated as follows:

Criteria	Possible Points
Qualifications of the proposed team and project manager.	20
Firm's experience with projects of a similar scope.	25
Availability and ability to meet the schedule	15
Firm's experience with Federally grant-funded projects and 3 rd party agency requirements.	15
Interview (if selected)	15
Total possible points	100

TERMS AND CONDITIONS:

1. The Port reserves the right to reject any and all RFQ's and choose not to award, and to waive minor irregularities in any RFQ.
2. The Port reserves the right to request clarification of information submitted, and to request additional information from any team.
3. The Port reserves the right to award any contract to the next most qualified team if the originally awarded team and the Port do not reach an agreement within thirty days.
4. The contract resulting from acceptance of an RFQ by the Port shall be in a form supplied or approved by the Port and shall reflect the specifications in this Request. The Port reserves the right to reject any proposed agreement or contract that does not conform to the specifications contained in this Request and which is not approved by the Port's attorney.
5. The Port shall not be responsible for any costs incurred by the firm in preparing, submitting or presenting its response to the Request.
6. This RFQ represents the current status of the project; details may change as the conceptual planning continues; updates can be found on the Port's website at www.portofbremerton.org.

PUBLIC RECORDS ACT: Under Washington State Law (reference RCW Chapter 42.56, the "Public Records Act") all materials received or created by the Port of Bremerton are considered public records. These records include but are not limited to the proposal submittals, agreement documents, contract work product, or other proposal materials.

Under the Public Records Act, the Port is required to promptly make public records available upon request. However, under Washington State Law some records or portions of records are considered legally exempt from disclosure. A list and description of records identified as exempt by the Public Records Act can be found in RCW 42.56 and RCW 19.108.

If the proposer believes any of the records being submitted to the Port as part of the proposal are exempt from disclosure, the proposer may request that the Port notify the proposer before releasing the records. To do so, in the proposal submittal, proposers must very clearly and specifically identify each record for which a proposer claims exemption and the exemption(s) that may apply.

If the Port receives a public disclosure request for any records the proposer has properly and specifically identified, the Port will notify the proposer in writing of the request and will postpone disclosure for a period of time to allow the proposer to respond.

While it is not a legal obligation, the Port, as a courtesy, will allow proposers up to ten business days to file a court injunction to prevent the Port from releasing the records (reference RCW 42.56.540). If the proposer fails to obtain a Court order within ten days, the Port may release the documents. The Port will NOT assert an exemption on the proposer's behalf.

Please note the Port cannot accept generic marking of materials such as marking everything with a document header or footer, page stamp, or a generic statement that a document is non-disclosable, exempt, confidential, proprietary, or protected. Proposers may not exempt an entire page unless each sentence is entitled to an exemption; instead, identify paragraphs or sentences that meet the RCW exemption criteria the proposer is relying upon.

The Port will try to redact anything that seems obvious in the Port's opinion for redaction as exempt. For example, the Port will black out (redact) Social Security numbers, federal tax identifiers, and financial account numbers before records are made viewable by the public. However, this does not replace the proposer's obligation to identify any materials the proposer wishes to have redacted or protected and that the proposer thinks are protected under the Public Records Act.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

The Fair Share Objectives or goals for the utilization of disadvantaged businesses negotiated with EPA by the WA Office of Minority Women Business are stated below.

Construction	10% MBE	6% WBE
Supplies	8% MBE	4% WBE
Equipment	8% MBE	4% WBE
Purchased Services	10% MBE	4% WBE

II. SCOPE

For the purposes of this RFQ the Scope of Work includes, but is not limited to:

A. Basic Requirements

1. Personnel must have satisfactorily completed 40-hour HAZWOPER safety training and maintain a current OSHA field certification for working on hazardous substance and petroleum remediation sites. Documentation of such will need to be submitted within your RFP submittal. Project-specific requirements will be specified in mini-bids.
2. Level of Experience – The Project Manager shall have demonstrated experience with similar type of remediation cleanup projects. The consultant shall use professional judgment to ensure the proposed remediation action plan will be prepared based on the consultant's experience with regulatory agencies on similar projects.
3. The Consultant must be able to demonstrate direct experience conducting hazardous substance and/or petroleum mitigation and remediation including, but not limited to:
 - a. Washington State Department of Ecology Voluntary Cleanup Program remediations and clean-ups pursuant to the Model Toxics Control Act (MTCA) guidelines.
 - b. RCRA Corrective Action
 - c. Other hydrogeology and remediation planning and implementation.

The projects must include experience following the Washington State Department of Ecology's policies, procedures and guidelines including, but not limited to:

- a. Guidance for Remediation of Petroleum Contaminated Sites in Washington State
- b. Guidelines for Property Cleanups under the Voluntary Cleanup Program
- c. Submit data through the DOE Environmental Information Management (EIM) system.

Together the 5 projects must demonstrate the Consultant's capacity to cost-effectively:

- a. Determine the fate and transport of hazardous substances and oil in various media.
 - b. Determine the risk those contaminants pose to public health and the environment.
 - c. Develop remedial alternatives.
 - d. Implement selected remedies.
 - e. Effectively communicate orally and in writing the Consultant's finds, conclusions, and actions, to a wide variety of audiences; and
 - f. Use appropriate methods and tools to undertake the work.
4. Familiarity with the Environmental Protection Agency Multipurpose Grant process, documentation, regulations, and requirements.
 5. Secure all necessary permits with local, State, and Federal agencies.

B. Tasks

Services and Deliverables. Work tasks as the Qualified Environmental Professional resulting from this RFP include, but are not limited to the following:

1. Implementation of Remedial Solutions

Serve as the Qualified Environmental Professional in the implementation of Port-approved remedial activities. The Consultant is responsible for ensuring that the activities are completed as described in the work plan. The Port must approve any significant variation from the work plan. A written summary of remedial activities will be presented to the Port at the conclusion of the project.

- a. Construction Oversight and Material Testing - Provide inspections and oversight, and quality assurance/ quality control of work performed:
- b. Provide on-site monitoring/sampling services during hazardous materials work as required by the regulatory agency. This activity may also include taking any necessary post-abatement samples for work clearance, close-out, and providing the Port with appropriate records; and
- c. Provide risk assessments, best management practices and other environmental-related services as requested by the regulatory agency.
- d. Other Environmental Services - Provide other environmental services related to the remediation clean-up and that may be required.
- e. If the Consultant is relying on subcontractors to perform any of the services included in the Consultant's proposal, the Consultant must submit a listing of those subcontractors and a description of the services that the subcontractor will be providing.

2. Project Management

Oversee all environmental/remediation clean-up site responsibilities as well as Project Coordination and Management for hazardous waste site remediation. The Qualified Environmental Professional consultant will coordinate and manage activities with the contractor, City, State, and regulatory agencies regulating the environmental cleanup. This includes coordination preparation and submittal of any permits required, project management activities, preparation of technical specifications for remediation clean-up, and managing contractor's procurement and clean-up process.

- a. Coordinate, manage, and oversee compliance of all regulatory agencies requirements including preparation of written comments and revising the Remediation Action Plan (RAP), or similar document, to the satisfaction of any

- relevant regulatory agency and post-remediation requirements and receiving approvals/certifications of the cleanup.
- b. Oversee and manage clean-up work done by an approved and licensed contractor.
 - c. Coordinate and conduct periodic site inspections.
 - d. Coordinate bi-monthly progress meetings with the Port of Bremerton and/or others involved with the project.
 - e. Oversee investigation and remediation of the sites.
 - f. Review technical documents, as needed.
 - g. Advise and update Port personnel on investigation and cleanup activities.
 - h. Review environmental site assessment reports.
 - i. Assist preparation of Port of Bremerton Commission staff reports and conduct presentations, as needed.
 - j. Advise the Port of all risks, liability and future costs associated with cleanup sites.
 - k. Manage necessary permits with City of Port Orchard, State of Washington, and if needed any Federal agencies for implementation and ensure remedial solution activities meet permit conditions for approval.
 - l. Preparation of reports as requested; and
 - m. Secure necessary inspections with local, State, and any necessary federal agencies.
 - n. Project coordination and administration.

3 Operation and Maintenance of Remediation Systems

The selected Qualified Environmental Professional consultant may be asked to oversee the operation and maintenance of ongoing remediation systems. This will include routine monitoring, maintenance, and reporting as necessary, to ensure the continued effectiveness of the system.

- a. Geotechnical Investigation/Testing - Conduct a Geotechnical Investigation and/or Testing, as required by the regulatory agency, if necessary.
- b. Remedial Action Completion Report (RACR) - Prepare a Remedial Action Completion Report (RACR) to the satisfaction of the regulatory agency, as necessary.

C. Additional Responsibilities

The selected Qualified Environmental Professional consultant may also be responsible for the following, as necessary:

- a. Secure site access.
- b. Make all notifications to appropriate agencies and entities before, during and after initiating site work (City, State and Federal Agencies, etc.).
- c. Obtain all required licenses, permits and permissions requisite for remedial actions and disposal of hazardous and non-hazardous wastes.
- d. Ensure that site workers are trained and qualified to work at hazardous substance sites in accordance with OSHA standards (i.e., 29 CFR 1910.120, 29 CFR 1910.146, etc.).
- e. Oversee hired sub-contractors and ensure that site work is conducted in accordance with applicable State and Federal laws and regulations.
- f. Follow Best Management Practices for controlling soil and erosion.
- g. Conduct surveying
- h. Assist the Department in public presentation of investigation findings and remediation plans.
- i. Attend and assist Department staff at meetings with the public, responsible parties, government officials and other interested parties.

D. Program Specific Requirements

Consultants submitting proposals may be willing to comply with program requirements. Some examples of program specific requirements are:

Environmental Protection Agency Multipurpose Grant

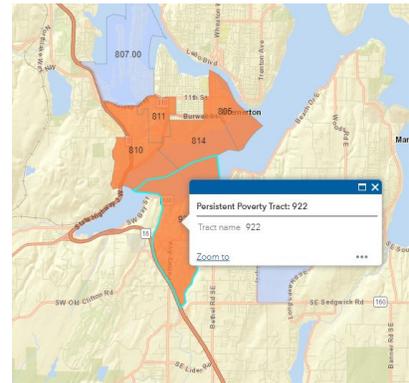
The Port of Bremerton has been awarded a multipurpose clean up grant from the Environmental Protection Agency. The Qualified Environmental Professional consultant must be familiar with the EPA Multipurpose grant requirements, regulations, documentation, and reporting. The work must be completed in accordance with the USEPA Analysis of Brownfields Cleanup Alternatives (ABCA). The selected Consultant may also be asked to complete reporting requirements for USEPA (MBE/WBE, ACRES, etc.).



PROJECT LOCATION

This project site is located within the city of Port Orchard, Kitsap County, Washington, 98366. The project site is located approximately 20 miles southwest of Seattle.

Located within Congressional District #6, the project is within Federal Qualified Opportunity Zone Tract Number # 53035092200. and serving the central Puget Sound region in Washington state. The project is located in Census Tract #922



CENSUS Tract 922

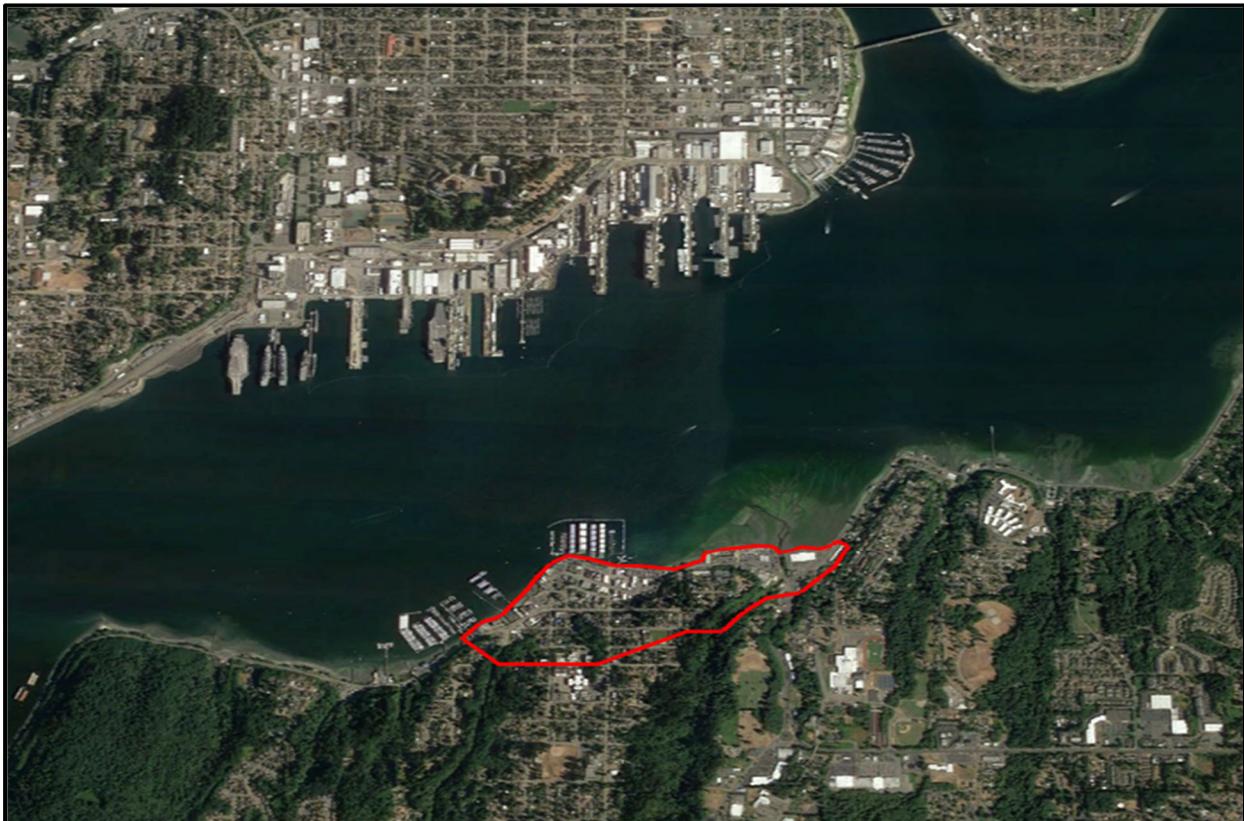
Section 26E	Latitude.: 47° 38' 32.14" N, (47.642261)
Township 24N	Longitude: 122° 35' 12.56" W, (-122.586823)
Range 1E	

Priority Sites:

Former Gas Station (525 Bay Street – owned by Port of Bremerton)

Former Kitsap Bank Site (619 Bay Street)

Former Dry Cleaner (1610 Bay Street)



**PORT OF BREMERTON
AGREEMENT FOR PROFESSIONAL SERVICES
(CHAPTER 39.80 RCW)**

This **AGREEMENT FOR PROFESSIONAL SERVICES** ("Agreement") is made and entered into as of the later of the two signature dates below, by and between:

PORT OF BREMERTON
Attn: Jim Rothlin
8850 SW State Highway 3
Bremerton, WA 98312

(the "Port")

AND

Attn:

("Consultant")

Term of Contract: xx/xx/20xx – xx/xx/20xx

- **SCOPE OF WORK:** See attached Exhibit "A".
- **COMPENSATION:** The Consultant shall be compensated on the basis of hours worked and expenses incurred by its employees at the rates shown herein: See attached Exhibit "B".
- **GENERAL PROVISIONS:** Services covered by this Agreement shall be performed in accordance with the General Provisions (which are attached hereto and form a part of this Agreement) and any attachments or schedules.
- **ENTIRE AGREEMENT:** This Agreement supersedes all prior agreements and understandings and may only be changed by written amendment executed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the later of the dates indicated below. By signing below, each signatory represents that he or she has authority on behalf of his or her respective party to enter into this agreement, which shall be binding upon the parties according to its terms.

CONSULTANT NAME

PORT OF BREMERTON

Signature: _____

Signature: _____

Name/Title: _____

Name/Title: _____

Date: _____

Date: _____

GENERAL PROVISIONS

In consideration of the mutual covenants and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Scope of Work. The objective of this Agreement is the timely preparation, completion and/or delivery of the scope of work and/or deliverables (the "Services" or "Work") described in Exhibit A issued pursuant to and governed by the terms of this Agreement. Additional work and/or amendments to Exhibit "A" shall be attached hereto as Amendments and shall be made part of this Agreement upon approval as required herein. Any Amendments issued by the Port prior to the termination date of this Agreement shall be governed by the terms of this Agreement until completed even if the Amendment work extends beyond the termination date of this Agreement.

1.1 Services covered by this Agreement shall be performed in accordance with the provisions and any attachments or schedules. Except as may be otherwise provided for herein, this Agreement may only be amended by the mutual consent of both parties hereto, in writing and signed by duly authorized representatives of both parties.

2. Term of Agreement. The Consultant shall not begin Work under the Agreement or any Amendment until the Port has specifically authorized the Consultant to do so in writing. The time required for completion of all Work under Exhibit "A" or an Amendment and, if appropriate under a schedule for completion of phases of the Work, shall be specified in Exhibit "A" and any Amendment. The completion dates for phases of Work under Exhibit "A" or an Amendment may be modified only upon written agreement of the parties hereto. The completion dates for Exhibit "A", or for phases of Work under an Amendment may be, but are not required to be, extended in the event of a delay caused by Extra Work requested by the Port, or if the Consultant's Work is delayed by unavoidable circumstances beyond the control of the Consultant and which the Consultant could not reasonably have anticipated. This Agreement may be extended for multiple terms at the sole discretion of the Port and subject to budget appropriations and Commission approval when required; if so extended, all of the terms and conditions herein shall apply to such extension.

3. Compensation and Payment. The Consultant shall be compensated on the basis of hours worked and expenses incurred by its employees at the rates shown in the attached Consultant's Fee Schedule, Exhibit "B." The Consultant shall receive no other payment for materials or disbursements unless expressly allowed by the Scope of Work or Amendment(s). The Consultant shall not adjust the wage rates in Exhibit "B" without written authorization from the Port.

3.1 Consultant shall supply Port with a monthly invoice and written documentation, satisfactory to Port, for all amounts due under this Agreement, including but not limited to project budget status and a narrative progress description of Services rendered that is acceptable in form to the Port. All invoices submitted by Consultant to Port shall reference any applicable billing codes provided by Port to Consultant. Any applicable taxes shall be listed as separate line items on each Consultant invoice. All invoices and documentation may be reviewed and audited by Port and payment may be subject to review or audit. Subject to the preceding, payments shall be net thirty (30) days of receipt of such invoice by Port. In no event shall the Port be charged interest on payments due under this Agreement. If required by Port, Consultant shall provide periodic forecasts of its total fees and costs incurred to date. With regard to time and materials, only the reimbursable expenses specifically listed in the attached Exhibit "B" will be payable expenses under this Agreement.

3.2 If Exhibit "A" specifies that the Work is to be performed on a fixed fee basis, the Consultant shall be paid the amount of the fixed fee as consideration for full and satisfactory performance of the Work regardless of the Consultant's cost to perform the Work. The Port shall have sole authority for determining when all Work has been satisfactorily performed by the Consultant. The Consultant's payment for the Work shall not exceed the specific amount unless authorized in writing by the Port, as provided herein. The fixed fee amount comprises all of the Consultant's payment for the Work and includes without limitation all costs of salaries, overhead, non-salary expenses (including, but not limited to,

travel, reproductions, telephone, supplies, and fees of outside consultants), as well as the Consultant's profits. The Consultant's payment for the Work shall not exceed the specified amount unless first authorized by the Port.

3.3 The Consultant shall obtain the prior written approval of the Port for any charges for additional services by the Consultant, the additional services of others retained by Consultant, or the furnishing of additional supplies, materials or equipment. The Consultant shall not be entitled to compensation for any such additional charges incurred in violation of this paragraph.

4. **Payment of Subconsultants.** At the time of project completion, the Consultant agrees to certify to the Port that all employees (including without limitation any union fees and any benefit plans), and subconsultants have been paid in full. Final payment shall be preconditioned upon receipt of such certification by the Port; the Port may, in its sole discretion, withhold final payment until receipt of such certification. The Consultant shall be solely responsible for the performance and payment of any and all subconsultants. All such sub-consultants shall possess all licenses and insurance as required by the laws of the State of Washington.

5. **Termination.** This Agreement may be terminated by either party upon seven (7) days' written notice should one party fail to perform in accordance with its terms through no fault of the other. In the event the party that fails to perform is the Consultant, the determination of "fail to perform in accordance with its terms" shall be in the sole judgment of the Port. In the event of termination, the Consultant shall be compensated for satisfactory Services performed to the termination date by reimbursement of the Consultant's actual costs directly related to the project plus normal overhead and reasonable profit. The Port shall have sole authority for determining when all Work has been satisfactorily performed by the Consultant. In no case, however, shall such reimbursement exceed the agreed upon fee as approved and amended by the Port. Any work product generated by the Consultant prior to such termination shall be the sole property of the Port, and the Consultant agrees to provide the Port with all such materials. If the accumulated payment made to the Consultant prior to notice of intent to terminate exceeds the total amount that

would be due as set forth herein above, then no final payment shall be due and the Consultant shall promptly reimburse the Port for the excess paid.

5.1 Further, this Agreement may be terminated by the Port at any time for any reason whatsoever, at the sole discretion of the Port, with seven (7) days' written notice. If the Port terminates for convenience, the Port will pay according to the payment terms as provided in Paragraph 5, above. If, after termination for failure of the Consultant to fulfill contractual obligations, it is determined that the Consultant has not so failed, the termination shall be deemed to have been effected for the convenience of the Port.

5.2 In addition to the above, the Port reserves the right to suspend all or any portion of the Work and Services for Consultant's default or Port's convenience. If the Consultant's Work is delayed for more than thirty (30) calendar days due to circumstances for which the Consultant is responsible, the Port may find the Consultant in default and terminate this Agreement.

6. **Deviations from Scope of Work.** The Port may at any time issue written directions within the general scope of this Agreement. If any such direction causes an increase or decrease in the cost of this Agreement or otherwise affects any other provision of this Agreement, the Consultant shall immediately notify the Port and take no further action concerning those written directions until such time as the parties have executed a written change order. No additional work shall be performed or charges incurred unless and until the Port approves in writing the change order and the increased cost thereof. Any work done in violation of this paragraph shall be at the sole expense of the Consultant. Additionally, the Port reserves the right to modify the amount spent for identified project tasks within the scope of work, provided that the Contract Amount, as may be modified under Paragraph 3.3, is not exceeded.

6.1 The Consultant shall make all revisions and changes in the completed Work under this Agreement as are necessary to correct the Consultant's, and its subconsultants' errors or omissions, without additional compensation from Port.

7. **Insurance.** Consultant, concurrently with the execution of this Agreement, shall provide the Port with evidence that Consultant has obtained and is maintaining the insurance listed as follows:

7.1 **Workers' Compensation Insurance** as required by law.

7.2 **Employers' Liability Insurance** (bodily injuries) with a limit of One Hundred Thousand Dollars (\$100,000) per occurrence with an insurance company authorized to write such insurance in all states where the Consultant will have employees located in the performance of its work covering its common law liability to such employees.

7.3 **Commercial General Liability Insurance** with limits of Two Million Dollar (\$2,000,000) per occurrence and Two Million Dollar (\$2,000,000) aggregate and **Automobile Liability Insurance** covering all owned and non-owned automobiles or vehicles used by or on behalf of Consultant with a One Million Dollar (\$1,000,000) combined single limit for bodily injury and/or property damage per occurrence.

7.4 **Professional Liability Insurance** covering Errors and Omissions of the Consultant in the amount of not less than One Million Dollars (\$1,000,000) per claim.

7.5 Except with regard to the Professional Liability Insurance and Worker's Compensation Insurance, each of the policies required herein **shall endorse the Port as an additional insured.** Furthermore, each policy of insurance required herein shall (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to the Port except upon thirty (30) days' prior written notice from the insurance company to the Port; (iii) contain an express waiver of any right of subrogation by the insurance company against the Port and its elected officials, employees, or agents; (iv) expressly provide that the defense and indemnification of the Port as an "additional insured" will not be effected by any act or omission by Consultant which might otherwise result in a forfeiture of said insurance; (v) contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit; (vi) not contain a cross-

claim, cross-suit, or other exclusion that eliminates coverage by one insured against another; and (vii) provide for coverage for damage to the Port's property caused by the Consultant.

7.6 With regard to the Professional Liability Insurance, the Consultant shall maintain the same in full force and effect during the term of this Agreement and for a period of one year thereafter.

7.7 The Consultant shall furnish the Port with copies of Certificates of Insurance evidencing policies of insurance required herein. The Consultant shall maintain these policies as identified above for itself and its sub-consultants for the term of this Agreement and for a period of one year thereafter. The Port's failure to request such certificates shall not relieve the Consultant of the obligation to provide them.

7.8 The Consultant shall maintain the insurance in effect at all times that it is performing Work under this Agreement. Failure to obtain and/or maintain such insurance shall be grounds for the Port to find the Consultant in default and terminate the Agreement accordingly. Alternatively, the Port may at its option purchase such insurance and deduct the reasonable expense therefore from payments made to or owing to the Consultant.

8. **Consultant Not an Agent or Employee of the Port.** In performing Work and Services hereunder, the Consultant and Consultant's employees, agents, and representatives shall be acting as independent Consultants and shall not be deemed or construed to be partners, employees or agents of the Port in any manner whatsoever. No employee of the Consultant shall be considered an employee of the Port even while performing Work required under this Agreement. Furthermore, the Consultant shall not hold itself out as, nor claim to be, an officer or employee of the Port by reason hereof and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Port.

9. **Conflict of Interest.** Consultant covenants that it presently has no interest and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Agreement. Consultant further covenants that in the performance of this

Agreement, no person having such interest shall be employed by it or any of its Subconsultants.

10. **Compliance With Applicable Law.** The Consultant shall comply with all the Port's resolutions and all federal, state, and local laws, regulations and ordinances that are applicable to the Work performed pursuant to this Agreement. Both parties mutually agree to re-negotiate scope, budget, and schedule should a change in any of the applicable Port's resolutions, federal, state or local laws, regulations or ordinances during the performance of the Work affect the cost of performing the Work. The Consultant shall register (and shall require the same of all subconsultants), as required by RCW 23B.15.010, to do business in the State of Washington and provide proof of the same to the Port. By executing this Agreement, Consultant further certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. It further agrees by acceptance of this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, agreements, contracts, and subcontracts. Where the offeror/consultant or any lower tier participant is unable to certify to this statement it shall attach an explanation to this Agreement. The Port reserves the right to require Consultant to replace a sub-consultant or lower tier participant who cannot meet the foregoing certification requirement.

11. **Indemnification.** The Consultant shall defend (with legal counsel satisfactory to the Port), indemnify and hold the Port, its elected officials, agents and employees (collectively "Port") harmless from and against all liabilities, obligations, fines, claims, damages, penalties, lawsuits, governmental proceedings, judgments, costs and expenses (including, without limitation, all attorneys' fees, costs and expenses of litigation):

- Arising out of any negligent act or omission of Consultant, its directors, officers, subconsultants, agents and/or employees (collectively "Consultant") in connection with the Services provided pursuant to this Agreement; provided, however, that in the event of concurrent negligence of the Consultant and the Port, then this defense and

indemnification shall apply only to the extent of the Consultant's negligence; and/or

- Arising from a breach of this Agreement by Consultant; and/or
- Arising out of or due to any failure on the part of Consultant to perform or comply with any rule, ordinance or law to be kept and performed.

The Port will inform Consultant of any such claim or demand that alleges liability based in whole or in part on any act or omission of Consultant, its directors, officers, agents, or employees. Thereafter the Consultant shall (i) reasonably cooperate in the defense of such claim and (ii) pay its defense of such claim as incurred, whether or not such claim is ultimately successful. In this regard, the Port will reasonably cooperate with Consultant in allowing Consultant to jointly select, with the Port, attorneys to defend the Port and Consultant provided that Consultant confirms its obligation to pay the Port's defense costs.

11.1 In the event of concurrent negligence by the Port and Consultant, then at the conclusion of the action (e.g., judgment, arbitration award or settlement), the attorneys' fees and costs incurred in defending the Port shall be apportioned to the parties based on their respective fault as provided by RCW 4.24.115.

11.2 The foregoing indemnification obligation shall include, but is not limited to, all claims against the Port by an employee or former employee of the Consultant or any subconsultant or service provider. For this purpose, the Consultant expressly waives, as respects the Port only, all immunity and limitation on liability under any industrial insurance Act, including Title 51 RCW, or other workers compensation act, disability act, or other employees benefits of any act of any jurisdiction which would otherwise be applicable in the case of such a claim. **BY INITIALING BELOW THE PORT AND CONSULTANT CERTIFY THE WAIVER OF IMMUNITY SPECIFIED BY THIS PROVISION WAS MUTUALLY NEGOTIATED.**

Consultant

Port

12. **Work Product Confidentiality.** Any reports, documents, questionnaires, records, information or data given to or prepared or assembled under this Agreement which the Port requests to be kept confidential shall not be made available by the Consultant to any individual or organization without prior written approval of the Port except as may be ordered by a court of competent jurisdiction. The provisions of this section shall survive the expiration or earlier termination of this Agreement. No reports, records, questionnaires, or software programs provided by the Port or other documents produced in whole or in part by the Consultant under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

13. **Public Disclosure Request.**

Correspondence, reports, and other written work product will be generated during the course of the relationship created by this Agreement, and third parties may request such information pursuant to the Washington State Public Disclosure Act (RCW 42.17.250 *et. seq.*). The parties agree that in the event that such a request is filed, the party with whom the request is filed will promptly notify all other parties to this Agreement. The parties further agree that they will not disclose any such requested material until at least ten (10) business days after providing notification to all other parties to this Agreement. The intent of this clause is to provide all parties the opportunity to seek injunctive relief pursuant to RCW 42.17.330 so as to protect the vital functions of those entities. This clause shall survive the termination or expiration of this Agreement.

14. **Plans, etc. Property of Port.** All Work performed under this Agreement is work for hire. All deliverables, including but not limited to original plans, drawings and specifications, prepared by the Consultant and any and all sub-consultants for the Port and funded by the Port are and shall remain the property of the Port whether or not the Project for which they are made is executed. This shall not apply to proprietary software or documentation that may be provided to the Port and that was developed independent of funding by the Port. The Consultant assumes no liability for any use of the Drawings and Specifications other than that originally intended for this Project. Originals, including electronic forms of the data prepared by the Consultant and funded by the Port, shall become the property of the Port. No

reports, records, questionnaires, software programs provided by Port or other documents produced in whole or in part by the Consultant under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant. The Consultant's Work shall not infringe on any copyright, patent, trade secret, or other proprietary rights held by any third party.

15. **Electronic File Compatibility.** All electronically- transmitted output must be compatible with existing Port software and shall be provided to the Port in a CAD or other appropriate electronic format. All CAD deliverables shall be consistent with the Port's standard CAD layering system, as provided by the Port to the Consultant. Consultants shall check with the Port for software application, system compatibility and preferred file type.

16. **Non-Discrimination.** In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, or being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran or a member of any other protected class. The Consultant shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status, or being a handicapped or disadvantaged person or a disabled or Vietnam-era veteran or a member of any other protected class.

17. **Federal Restrictions on Lobbying.** Consultant certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 *et seq.*, no Federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, 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 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 modification of any Federal contract, grant, loan, or cooperative agreement.

18. **Federal Debarment and Suspension.** The Consultant certifies, that neither it nor its "principals" (as defined in 49 CFR.29.105 (p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

19. **Subletting or Assigning of Agreement.** The Consultant shall not sublet or assign any of the Work covered by this Agreement without the express written consent of the Port.

20. **Notices.** All notices and payments hereunder may be delivered or mailed to the addresses listed above. If delivered by messenger, courier (including overnight air courier) or facsimile transmittal, they shall be deemed delivered when received at the street address or facsimile numbers listed above. All notices and payments mailed, whether sent by regular post or by certified or registered mail, shall be deemed to have been given on the second business day following the date of mailing, if properly mailed to the mailing addresses provided above, and shall be conclusive evidence of the date of mailing. The parties may designate new or additional addresses for mail or delivery by providing notice to the other party as provided in this section. The address for delivery of notices and payments are as set forth in the introductory paragraph of this Agreement.

21. **Review of Title Documents.** Prior to the execution or recordation of any documents effecting title to any property, said document shall be reviewed by the Port. Consultant shall not execute or record (or make to be executed or recorded) any such document prior to the Port's review and approval.

22. **Jurisdiction.** This Agreement is made and delivered in the State of Washington and shall be construed and enforced in accordance with the laws thereof. Jurisdiction and venue of any dispute hereunder shall be solely in the Superior Court of the State of Washington in and for Kitsap County. In the event of a dispute arising out of or under this Agreement, the substantially prevailing party shall be entitled to its reasonable attorney's fees

and costs. The parties irrevocably waive any right to federal court jurisdiction for disputes arising hereunder.

23. **Pollution.** Port acknowledges that the Consultant is not responsible for the creation or presence of contamination or pollution, if any, at the property except to the extent that such a discharge, release or escape is caused by the negligent act or failure to act of the Consultant. For the purpose of this clause, contamination conditions shall mean the actual or alleged existence, discharge, release or escape of any irritant, pollutant, contaminant, or hazardous substance into or upon the atmosphere, land, groundwater, or surface water of or near the property. The Consultant will promptly notify the Port of contamination conditions, if identified. Notwithstanding the foregoing, the Port does not herein waive any cause of action for damages resulting from the Port's reliance on any misrepresentation (made either knowingly or negligently) by the Contractor with regard to the presence of any contamination or pollution.

24. **Standard of Performance:** Consultant represents that the Services will be performed within the limits prescribed by the Port and that its findings, recommendations, specifications and/or professional advice provided hereunder will be prepared and presented in a manner consistent with, or exceeding, the standard of care and skill ordinarily exercised by other professionals in the State of Washington under similar circumstances at the time the Services are performed.

25. **Entire Agreement.** This is the entire agreement between the parties. There is no other oral or written understanding between the parties concerning this matter. The Consultant specifically understands that no Port employees other than the project manager or his/her supervisor are authorized to direct the work of the Consultant.

26. **Signing Authority.** Anyone signing this Agreement by said signature certifies that he/she has the authority to execute said document on behalf of the Consultant and that his/her signature is binding upon the firm or corporation.

EXHIBIT A
SCOPE OF WORK

SAMPLE

EXHIBIT B

CONSULTANT'S FEE SCHEDULE

[Exhibit B should set forth the agreed upon schedule of hourly rates and other charges and disbursements the Port is agreeing to pay the consultant. This should identify all job classifications, reimbursable expenses, and sub-consultant mark-ups.]

SAMPLE

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

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]



Displaying title 2, up to date as of 9/27/2023. Title 2 was last amended 8/23/2023.



New Agency Features: It is now possible to filter **search results** and **recent changes** by agency or agencies. It is also possible to subscribe to the eCFR changes from single or multiple agencies. Consult the **reader aid pages** to learn more.

Title 2 – Grants and Agreements

Subtitle B – Federal Agency Regulations for Grants and Agreements

Chapter XV – Environmental Protection Agency

ENHANCED CONTENT - TABLE OF CONTENTS

Part 1500 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards	1500.1 – 1500.17
Subpart A Acronyms and Definitions	1500.1
§ 1500.1 Definitions.	
Subpart B General Provisions	1500.2 – 1500.5
§ 1500.2 Adoption of 2 CFR Part 200.	
§ 1500.3 Applicability.	
§ 1500.4 Exceptions.	
§ 1500.5 Supersession.	
Subpart C Pre-Federal Award Requirements and Contents of Federal Awards	1500.6
§ 1500.6 Fixed Amount Awards.	
Subpart D Post Federal Award Requirements.	1500.7 – 1500.12
Standards for Financial and Program Management	1500.7 – 1500.9
§ 1500.7 Retention requirements for records.	
§ 1500.8 Program income.	
§ 1500.9 Revision of budget and program plans.	
Procurement Standards	1500.10 – 1500.11
§ 1500.10 General procurement standards.	
§ 1500.11 Use of the same architect or engineer during construction.	
Performance and Financial Monitoring and Reporting	1500.12
§ 1500.12 Quality Assurance.	
Subpart E Disputes	1500.13 – 1500.17
§ 1500.13 Purpose and scope of this subpart.	
§ 1500.14 Definitions.	
§ 1500.15 Submission of Dispute.	
§ 1500.16 Notice of receipt of Dispute to Affected Entity.	
§ 1500.17 Determination of Dispute.	

⦿ PART 1500—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 5 U.S.C. 301, 7 U.S.C. 136 *et seq.*, 15 U.S.C. 2601 *et seq.*, 20 U.S.C. 4011 *et seq.*, 33 U.S.C. 1251 *et seq.*, and 1401 *et seq.*, 42 U.S.C. 241, 242b, 243, 246, 300f *et seq.*, 1857 *et seq.*, 6901 *et seq.*, 7401 *et seq.*, and 9601 *et seq.*; 2 CFR part 200.

Source: 79 FR 76050, Dec. 19, 2014, unless otherwise noted.

◉ Subpart A—Acronyms and Definitions

Source: 85 FR 61573, Sept. 30, 2020, unless otherwise noted.

◉ § 1500.1 Definitions.

- (a) **Participant support costs.** The Environmental Protection Agency (EPA) has supplemented 2 CFR 200.1, *Participant support costs*, to provide that allowable participant support costs under EPA assistance agreements include:
 - (1) Rebates or other subsidies provided to program participants for purchases and installations of commercially available, standard (“off the shelf”) pollution control equipment or low emission vehicles under the Diesel Emission Reduction Act program or programs authorized by EPA appropriation acts and permitted by terms specified in EPA assistance agreements or guidance, when the program participant rather than the recipient owns the equipment.
 - (2) Subsidies, rebates, and other payments provided to program beneficiaries to encourage participation in statutorily authorized programs to encourage environmental stewardship and enable the public to participate in EPA funded research, pollution abatement, and other projects or programs to the extent permitted by statutes and terms specified in EPA assistance agreements or guidance.
- (b) [Reserved]

◉ Subpart B—General Provisions

◉ § 1500.2 Adoption of 2 CFR Part 200.

Under the authority listed above the Environmental Protection Agency adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR part 200), as supplemented by this part, as the Environmental Protection Agency (EPA) policies and procedures for financial assistance administration. This part satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by this part. EPA also has programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020]

◉ § 1500.3 Applicability.

- (a) Uniform administrative requirements and cost principles (subparts A through E of 2 CFR part 200 as supplemented by this part) apply to foreign public entities or foreign organizations, except where EPA determines that the application of this part would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government.
- (b) Requirements for subrecipient monitoring and management at 2 CFR 200.331 through 200.333 do not apply to loan, loan guarantees, interest subsidies and principal forgiveness, purchases of insurance or local government debt or similar transactions with borrowers by recipients of Clean Water State Revolving Fund (CWSRF) capitalization grants and Drinking Water State Revolving Fund (DWSRF) capitalization grants. Requirements in 2 CFR part 25, Universal Identifier and System for Award Management, 2 CFR part 170, Reporting subaward and executive compensation and internal controls described at 2 CFR 200.303 continue to apply to CWSRF and DWSRF grant recipients and borrowers.

[85 FR 61573, Sept. 30, 2020, as amended at 87 FR 30397, May 19, 2022]

◉ § 1500.4 Exceptions.

Consistent with 2 CFR 200.102(b):

- (a) In the EPA, the Director, Office of Grants and Debarment or designee, is authorized to grant exceptions on a case-by-case basis for non-Federal entities.
- (b) The EPA Director or designee is also authorized to approve exceptions, on a class or an individual case basis, to EPA program specific assistance regulations other than those which implement statutory and executive order requirements.

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020]

⦿ **§ 1500.5 Supersession.**

Effective December 26, 2014, this part supersedes the following regulations under Title 40 of the Code of Federal Regulations:

- (a) 40 CFR part 30, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations."
- (b) 40 CFR part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020]

⦿ **Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards**

⦿ **§ 1500.6 Fixed Amount Awards.**

In the EPA, programs awarding fixed amount awards will do so in accordance with guidance issued from the Office of Grants and Debarment. (See 2 CFR 200.201(b)).

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020]

⦿ **Subpart D—Post Federal Award Requirements.**

⦿ **STANDARDS FOR FINANCIAL AND PROGRAM MANAGEMENT**

⦿ **§ 1500.7 Retention requirements for records.**

- (a) In the EPA, some programs require longer retention requirements for records by statute.
- (b) When there is a difference between the retention requirements for records of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200.334) and the applicable statute, the non-federal entity will follow to the retention requirements for records in the statute.

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020, as amended at 87 FR 30397, May 19, 2022]

⦿ **§ 1500.8 Program income.**

- (a) **Governmental revenues.** Permit fees are governmental revenue and not program income. (See 2 CFR 200.307(c)).
- (b) **Use of program income.** The default use of program income for EPA awards is addition even if the amount of program income the non-Federal entity generates exceeds the anticipated amount at time of the award of the assistance agreement. Unless the terms of the agreement provide otherwise, recipients may deduct costs incidental to the generation of program income from gross income to determine program income, provided these costs have not been charged to any Federal award. (See 2 CFR 200.307(b)). The program income shall be used for the purposes and under the conditions of the assistance agreement. (See 2 CFR 200.307(e)(2)).
- (c) **Brownfields Revolving Loan.** To continue the mission of the Brownfields Revolving Loan fund, recipients may use EPA grant funding prior to using program income funds generated by the revolving loan fund. Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other brownfield purpose as outlined in their respective closeout agreements.
- (d) **Other revolving loan programs.** Recipients of EPA funding for other revolving loan fund programs may use EPA grant funding prior to using program income funds generated by the revolving loan fund. Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other authorized purpose as outlined in their closeout agreement. This paragraph (d) does not apply to EPA's Clean Water State Revolving Fund and Drinking Water State Revolving Fund programs which are subject to their own regulations.

[85 FR 61574, Sept. 30, 2020]

§ 1500.9 Revision of budget and program plans.

- **Pre-award Costs.** EPA award recipients may incur allowable project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of EPA. All costs incurred before EPA makes the award are at the recipient's risk. EPA is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs.

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020]

- ---

PROCUREMENT STANDARDS

- **§ 1500.10 General procurement standards.**

- (a) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients, and their contractors or subcontractors to the maximum daily rate for level 4 of the Executive Schedule unless a greater amount is authorized by law. (These non-Federal entities may, however, pay consultants more than this amount with non-EPA funds.) The limitation in this paragraph (a) applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; recipients will pay these in accordance with their normal travel reimbursement practices.
- (b) All contracts between recipients and subrecipients and individual consultants are subject to the procurement standards in subpart D of 2 CFR part 200. Contracts or subcontracts with multi-employee firms for consulting services are not affected by the limitation in paragraph (a) of this section provided the contractor or subcontractor rather than the recipient or subrecipient selects, directs and controls individual employees providing consulting services.
- (c) Borrowers under EPA revolving loan fund capitalization grant programs are not subject to paragraphs (a) and (b) of this section.

[85 FR 61574, Sept. 30, 2020]

- **§ 1500.11 Use of the same architect or engineer during construction.**

- (a) If the recipient is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:
 - (1) The recipient received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or
 - (2) The award official approves noncompetitive procurement under 2 CFR 200.320(c)(4) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or
 - (3) The recipient attests that:
 - (i) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a contract for services during construction; and
 - (ii) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.
 - (iii) No employee, officer or agent of the recipient, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and
 - (iv) None of the recipient's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to contracts.
- (b) However, if the recipient uses the procedures in paragraph (a) of this section to retain an architect or engineer, any Step 3 contracts between the architect or engineer and the grantee must meet all other procurement provisions in 2 CFR 200.317 through 200.327.

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020, as amended at 87 FR 30397, May 19, 2022]

⊙ **§ 1500.12 Quality Assurance.**

- (a) Quality assurance applies to all assistance agreements that involve environmentally related data operations, including environmental data collection, production or use.
- (b) Recipients shall develop a written quality assurance system commensurate with the degree of confidence needed for the environmentally related data operations.
- (c) If the recipient complies with EPA's quality policy, the system will be presumed to be in compliance with the quality assurance system requirement. The recipient may also comply with the quality assurance system requirement by complying with American National Standard ASQ/ANSI E4:2014: Quality management systems for environmental information and technology programs.
- (d) The recipient shall submit the written quality assurance system for EPA review. Upon EPA's written approval, the recipient shall implement the EPA-approved quality assurance system.
- (e) EPA Quality Policy is available at: <https://www.epa.gov/quality>.
- (f) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51.

The material is available for inspection at the Environmental Protection Agency's Headquarters Library, Room 3340, EPA West Building, 1301 Constitution Avenue NW., Washington, DC 20004, (202) 566-0556. A copy is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

- (1) American Society for Quality, 600 North Plankinton Avenue, Milwaukee, WI 53201, 1-800-248-1946, <http://asq.org>.
 - (i) American National Standard ASQ/ANSI E4:2014: Quality management systems for environmental information and technology programs—Requirements with guidance for use, approved February 4, 2014.
 - (ii) [Reserved]
- (2) [Reserved]

[79 FR 76050, Dec. 19, 2014, as amended at 80 FR 61088, Oct. 9, 2015. Redesignated at 85 FR 61573, Sept. 30, 2020, as amended at 87 FR 30397, May 19, 2022]

⊙ **Subpart E—Disputes**

⊙ **§ 1500.13 Purpose and scope of this subpart.**

- (a) This section provides the process for the resolution of pre-award and post-award assistance agreement disputes as described in § 1500.14, except for:
 - (1) Assistance agreement competition-related disputes which are covered by EPA's Grant Competition Dispute Resolution Procedures; and,
 - (2) Any appeal process relating to an award official's determination that an entity is not qualified for award that may be developed pursuant to guidance implementing Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417, as amended).
- (b) Pre-award and post-award disagreements between affected entities and EPA related to an assistance agreement should be resolved at the lowest level possible. If an agreement cannot be reached, absent any other applicable statutory or regulatory dispute provisions, affected entities must follow the dispute procedures outlined in this subpart.
- (c) Determinations affecting assistance agreements made under certain Agency decision-making processes are not subject to review under the procedures in this subpart or the Agency's procedures for resolving assistance agreement competition-related disputes. These determinations include, but are not limited to:
 - (1) Decisions on requests for exceptions under § 1500.4;
 - (2) Bid protest decisions under 2 CFR 200.318(k);
 - (3) National Environmental Policy Act decisions under 40 CFR part 6;

- (4) Policy decisions of the EPA Internal Audit Dispute Resolution Process (formerly known as Audit Resolution Board);
- (5) Suspension and Debarment Decisions under 2 CFR parts 180 and 1532;
- (6) Decisions to decline to fund non-competitive applications or not to award incremental or supplemental funding based on the availability of funds or agency priorities;
- (7) Decisions on requests for reconsideration of specific award conditions under 2 CFR 200.208;
- (8) Decisions to deny requests for no-cost extensions under 2 CFR 200.308(e)(2), 40 CFR 35.114(b), and 40 CFR 35.514(b); and
- (9) Denials of requests for EPA approval of procurement through noncompetitive proposals under 2 CFR 200.320(c)(4).

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020; 85 FR 61574, Sept. 30, 2020]

§ 1500.14 Definitions.

As used in this subpart:

- (a) **Action Official (AO)** is the EPA official who authors the Agency Decision to the Affected Entity regarding a pre-award or post-award matter.
- (b) **Affected Entity** is an entity that applies for and/or receives Federal financial assistance from EPA including but not limited to: State and local governments, Indian Tribes, Intertribal Consortia, Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and Individuals.
- (c) **Agency Decision** is the agency's initial pre-award or post-award assistance agreement determination that may be disputed in accordance with this subpart. The Agency Decision is sent by the Action Official (AO) to the Affected Entity electronically and informs them of their dispute rights and identifies the Dispute Decision Official (DDO). An Agency Decision based on audit findings serves as EPA's *Management decision* as defined in 2 CFR part 200.1.
- (d) **Dispute** is a disagreement by an Affected Entity with a specific Agency Decision submitted to the DDO in accordance with this subpart.
- (e) **Dispute Decision Official (DDO)** is the designated agency official responsible for issuing a decision resolving a Dispute.
 - (1) The DDO for a Headquarters Dispute is the Director of the Grants and Interagency Agreement Management Division in the Office of Grants and Debarment or designee. To provide for a fair and impartial review, the AO for the challenged Agency Decision may not serve as the Headquarters DDO.
 - (2) The DDO for a Regional Assistance Agreement Dispute is the Regional Administrator or the official designated by the Regional Administrator to issue the written decision resolving the Dispute. To provide for a fair and impartial review, the AO for the challenged Agency Decision may not serve as the Regional DDO.

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020; 85 FR 61574, Sept. 30, 2020, as amended at 87 FR 30397, May 19, 2022]

§ 1500.15 Submission of Dispute.

An Affected Entity or its authorized representative may dispute an Agency Decision by electronically submitting a Dispute to the DDO identified in the Agency Decision. In order for the DDO to consider the Dispute, it must satisfy the following requirements:

- (a) **Timeliness.** The DDO must receive the Dispute no later than 30 calendar days from the date the Agency Decision is electronically sent to the Affected Entity. The DDO will dismiss any Dispute received after the 30-day period unless the DDO grants an extension of time to submit the Dispute. The Affected Entity must submit a written request for extension to the DDO before the expiration of the 30-day period. The DDO may grant a one-time extension of up to 30 calendar days when justified by the situation, which may include the unusual complexity of the Dispute or because of exigent circumstances.

- (b) **Method of submission.** The Affected Entity must submit the Dispute electronically via email to the DDO, with a copy to the AO, using the email addresses specified in the Agency Decision within the 30-day period stated in paragraph (a) of this section.
- (c) **Contents of Dispute.** The Dispute submitted to the DDO must include:
 - (1) A copy of the disputed Agency Decision;
 - (2) A detailed statement of the specific legal and factual grounds for the Dispute, including copies of any supporting documents;
 - (3) The specific remedy or relief the Affected Entity seeks under the Dispute; and
 - (4) The name and contact information, including email address, of the Affected Entity's designated point of contact for the Dispute.

[85 FR 61575, Sept. 30, 2020]

§ 1500.16 Notice of receipt of Dispute to Affected Entity.

Within 15 calendar days of receiving the Dispute, the DDO will provide the Affected Entity a written notice, sent electronically, acknowledging receipt of the Dispute.

- (a) **Timely Disputes.** If the Dispute was timely submitted, the notice of acknowledgement may identify any additional information or documentation that is required for a thorough consideration of the Dispute. The notice should provide no more than 30 calendar days for the Affected Entity to provide the requested information. If it is not feasible to identify such information or documentation in the notice the DDO may request it at a later point in time prior to issuance of the Dispute decision.
- (b) **Untimely Disputes.** If the DDO did not receive the Dispute within the required 30-day period, or any extension of it, the DDO will notify the Affected Entity that the Dispute is being dismissed as untimely and the Agency Decision of the AO becomes final. The dismissal of an untimely Dispute constitutes the final agency action. In appropriate circumstances, the DDO may, as a matter of discretion, consider an untimely Dispute if doing so would be in the interests of fairness and equity.

[85 FR 61575, Sept. 30, 2020]

§ 1500.17 Determination of Dispute.

- (a) In determining the merits of the Dispute, the DDO will consider the record related to the Agency Decision, any documentation that the Affected Entity submits with its Dispute, any additional documentation submitted by the Affected Entity in response to the DDO's request under § 1500.16(a), and any other information the DDO determines is relevant to the Dispute provided the DDO gives notice of that information to the Affected Entity. The Affected Entity may not on its own initiative submit any additional documents except in the support of a request for reconsideration under paragraph (c) of this section.
- (b) The DDO will issue the Dispute decision within 180 calendar days from the date the Dispute is received by the DDO unless a longer period is necessary based on the complexity of the legal, technical, and factual issues presented. The DDO will notify the Affected Entity if the expected decision will not be issued within the 180-day period and if feasible will indicate when the decision is expected to be issued. The DDO will issue the Dispute decision electronically and advise the Affected Entity of procedures for requesting reconsideration. The DDO's decision will constitute the final agency action unless the Affected Entity electronically petitions the DDO for reconsideration within 15 calendar days of issuance of the DDO Decision. The Affected Entity must include a detailed statement of the factual and legal grounds warranting reversal or modification of the DDO decision. In addition, the Affected Entity may submit additional documents that were not previously provided to the DDO.
- (c) If a petition for reconsideration is submitted, the DDO's will advise the Affected Entity within 15 calendar days of receipt of the petition whether the DDO Decision will be reconsidered. The DDO will issue this determination electronically. DDO's will only grant a reconsideration petition if the Affected Entity provides relevant and material evidence that was not available to the Affected Entity at the time the Dispute was submitted or to correct a clear and prejudicial error of fact or law. Denial of a petition for reconsideration constitutes final agency action and the DDO will advise the Affected Entity of the reasons for denying the reconsideration in writing.

- (d) If the DDO grants a reconsideration petition, the DDO will issue a revised DDO Decision within 30 calendar days of acceptance of the reconsideration petition unless a longer period is necessary based on the complexity of the legal, technical, and factual issues presented. The DDO will issue the revised DDO Decision electronically. The revised DDO Decision and any new material considered by the DDO in making the revised DDO Decision will become part of the record of the Dispute. The revised DDO Decision will constitute final agency action.
- (e) The DDO may consider untimely filed reconsideration petitions only if necessary, to correct a DDO Decision that is manifestly unfair and inequitable in light of relevant and material evidence that the Affected Entity could not have discovered during the 15-calendar day period for petitioning for reconsideration. This evidence must be submitted within six months of the date of the DDO Decision. The DDO will advise the Affected Entity within 30 days of receipt of an untimely filed reconsideration petition whether the DDO will accept the petition. Denial of an untimely filed reconsideration petition constitutes final agency action.

[85 FR 61575, Sept. 30, 2020, as amended at 87 FR 30397, May 19, 2022]

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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.

(3) The undersigned 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 and disclose 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.

Printed Name: _____

Title: _____

Signature: _____

Date: _____

Company Name: _____

Address: _____

Phone: _____

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, or proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
 4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
5. B. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Printed Name: _____

Title: _____

Signature: _____

Date: _____

Company Name: _____

Address: _____

Phone: _____