

## CITY OF SANTA FE

## PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **Wood Environment & Infrastructure Solutions, Inc.**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

## IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

The Contractor shall perform the following work:

A. The purpose of this contract is to outline the agreement to write the City of Santa Fe Hazard Mitigation Plan. The anticipated outcome of this process is not to do minor revisions but to completely overhaul this document in order to have it reflect the current state of the City and its citizens.

**Task 1: Mitigation Planning Team Formation and Plan Review**

1. Contractor will support the City of Santa Fe in the formation and organization of the Hazard Mitigation Planning Team (HMPT).
2. Contractor will review current plans, including but not limited to the existing City of Santa Fe Hazard Mitigation Plan, Santa Fe County Hazard Mitigation Plan, and State of New Mexico Hazard Mitigation Plan.
3. Contractor will provide Planning Team Meeting Files (presentation, sign-in sheets, agendas, etc.) to city staff.
4. Contractor will coordinate, facilitate, and conduct follow-ups for three meetings with the HMPT and two public meetings.

**Task 2: Risk Assessment and Vulnerabilities**

1. Contractor will work with the HMPT to assess new hazards and vulnerabilities to add to the plan.
2. Contractor will conduct data mine and update of critical facilities data and risk modeling (Hazus and other relevant software) by combining pertinent information regarding structure type, valuation, new construction, and any other information that may assist with modeling. Contractor will also identify additional data that will be utilized for hazards and vulnerabilities where risk modeling is unavailable.
3. Contractor will develop maps that clearly define the extent and location of the identified hazards and vulnerabilities by the risk assessment.
4. Contractor will develop risk models for the entire planning area using the most appropriate modeling software.

**Task 3: Public Involvement Strategy**

1. Contractor will facilitate the identification of the public involvement strategy to be deployed throughout this Plan update process.
2. Contractor will deploy the public involvement strategy approved by the HMPT, including public meetings.

**Task 4: Update Goals, Objectives, and Actions**

1. Contractor will facilitate the development of a guiding principles, goals, objectives, and actions within the HMP. Mitigation actions will be prioritized based, in part, on meeting multiple objectives.
2. Contractor will develop a hazard mitigation action catalog that will represent the comprehensive range of mitigation alternatives considered by the City as required under section 201.6 44CFR.
3. Contractor will work with HMPT to perform a comprehensive review of the action plan from the existing Hazard Mitigation Plan for the City. This task will re-categorize all prior actions, as applicable.

**Task 5: Assemble the Updated Plan**

1. Contractor will author the updated plan text. Under this task, the draft updated Plan will be authored and assembled by the Contractor. Coordinating with the HMPT, the Contractor will format the Plan layout to meet the objectives established for the update process.
2. After the initial draft has been developed, the draft Plan will be submitted to the City of Santa Fe Office of Emergency Management for a technical/format edit to prepare the draft Plan that will be presented to the public for final review and comment.
3. Contractor will prepare a "summary document" that can be utilized as a public outreach tool. This document will provide key information from the Plan in a reader friendly format that clearly identifies hazard/risk variables by planning area.
4. Once the final draft Plan has been prepared, and all public and HMPT comments have been incorporated into the final draft, Contractor will complete a FEMA Plan Review Tool to illustrate the Plan's compliance with 44 CFR Section 201.6.
5. The contractor will coordinate with the state and FEMA through any revisions necessary for state and FEMA approvals.
6. Contractor will submit the final plan, pending state and FEMA approval, to the City of Santa Fe Office of Emergency Management.

**Task 6: Complete Plan Review and Adoption**

1. Contractor will support the City of Santa Fe in submission of pre-adoption review drafts of the Plan and the completed Plan Review Tool to NM DHSEM with a formal request for pre-adoption review and approval. It is understood that upon approval, NM DHSEM will forward the draft Plan to FEMA Region VI for their concurrence review. FEMA will issue their "Approval Pending Adoption" once they concur with the state's review. Contractor will provide Technical Edit assistance during this process, and will engage the HMPT, as appropriate, with any corrections that need to be made.

2. Contractor will present planning process, findings, and planning results to senior and elected officials.

B. Upon receipt of an "Approval Pending Adoption" from FEMA Region VI, the City can initiate the adoption phase of this Plan update process through approval by the City of Santa Fe Governing body. Contractor will prepare a PowerPoint presentation that can be utilized by the HMPT in their presentations to the Governing Body for adoption.

<b>Task #</b>	<b>Deliverables</b>	<b>Total Cost (Inclusive of GRT)</b>	<b>Timeline</b>
1	<ul style="list-style-type: none"> <li>A. Initial project coordination call</li> <li>B. Planning Team Roster and Participation Invitation Emails</li> <li>C. Summary of current programs and plans (including the 2014 City of Santa Fe Hazard Mitigation Plan) and incorporation strategy for plan update process</li> <li>D. Planning Team Meeting Files (presentation, sign-in sheets, agendas, etc.)</li> <li>E. Meeting #1 Kick-off meeting with sign-in, agenda, minutes, and presentation</li> <li>F. Data collection guides</li> <li>G. Monthly conference calls</li> </ul>	\$7,029	2 months
2	<ul style="list-style-type: none"> <li>A. Maps of hazard areas and community assets based on best available data</li> <li>B. All data mine results will be delivered to the Office of Emergency Management</li> <li>C. All risk modeling (Hazus and other relevant software) runs and any other hazard related risk assessments that support the plan update process</li> <li>D. Draft risk assessment section</li> <li>E. Draft vulnerabilities section</li> <li>F. Meeting sign-in, agenda, minutes, and presentation</li> </ul>	\$17,034	3 months
3	<ul style="list-style-type: none"> <li>A. Public Involvement Strategy timeline, outreach materials, and meeting documents</li> <li>B. Drafting proposed text for public notices, press releases, and website postings</li> <li>C. Receipts for public meeting advertisements</li> <li>D. Online public survey</li> </ul>	\$7,124	9 months

	<ul style="list-style-type: none"> <li>E. ArcGIS Online risk assessment Story Map, public involvement App, and Mitigation Action Plan App</li> <li>F. Facilitation of two public meetings</li> <li>G. Public involvement outcome summary</li> <li>H. Draft public involvement sub-section of HMP</li> <li>I. Meeting sign-in, agenda, minutes, and presentation</li> </ul>		
4	<ul style="list-style-type: none"> <li>A. Review and revise mitigation actions from the 2014 Hazard Mitigation Plan</li> <li>B. Develop additional mitigation actions, prioritized based on the HMPT, derived from both new and existing identified hazard</li> <li>C. Hazard mitigation action catalog of considered actions</li> <li>D. Draft mitigation actions section</li> <li>E. Meeting sign-in, agenda, minutes, and presentation</li> </ul>	\$6,289	3 months
5	<ul style="list-style-type: none"> <li>A. HMPT Review Draft</li> <li>B. Public Review Draft</li> <li>C. HMP Summary Document</li> <li>D. Final Draft of Plan (pending State and FEMA approval) and Plan Review Tool submitted to Santa Fe Office of Emergency Management</li> <li>E. Complete FEMA Plan Review Tool</li> <li>F. Meeting sign-in, agenda, minutes, and presentation</li> </ul>	\$11,484	4 months
6	<ul style="list-style-type: none"> <li>A. Revised Plan Review Tools (if applicable)</li> <li>B. Revised Drafts of Plan (if applicable)</li> <li>C. Approval Pending Adoption version of HMP in Microsoft Word and PDF formats</li> <li>D. Ten (10) printed and bound color copies of the plan and appendices</li> <li>E. Power Point and Materials for Governing Body Adoption</li> </ul>	\$1040	5 months
Total (Inclusive of GRT):		\$50,000	15 months

**2. Compensation.**

A. The City shall pay to the Contractor in full payment for services satisfactorily performed based upon deliverables, such compensation not to exceed fifty thousand dollars (\$50,000), including gross receipts tax. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed fifty thousand dollars (\$50,000). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices **MUST BE** received by the City no later than thirty (30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID.**

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

**3. Term.**

**THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY.** This Agreement shall terminate on **December 21, 2020** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

**4. Termination.**

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable

work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE City's OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

**B** Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

**5. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, this Agreement shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. 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. The Contractor agrees not to

purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7. Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

**8. Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the City, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

**11. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**12. Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this

Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

**13. Amendment.**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

**14. Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**15. Penalties for violation of law.**

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, 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 Agreement. If Contractor is found not to be in compliance with these requirements during



the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

**19. Professional Liability Insurance.** Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

**20. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

**21. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City.

**22. Invalid Term or Condition.**

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

**23. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall 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 Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**24. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City:

David Silver  
200 Lincoln Avenue  
Santa Fe, NM 87501

To the Contractor:

Jeff Brislawn, Sr Associate  
1942 Broadway, Ste. 314  
Boulder, CO 80302

**25. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**26. CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS**

See attached Exhibit A.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

  
ERIK LITZENBERG  
CITY MANAGER

DATE:  \_\_\_\_\_

CONTRACTOR:

Wood Environment & Infrastructure  
Solutions, Inc,

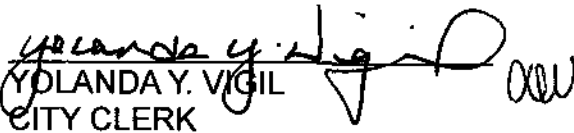
See Attached  
JEFF BRISLAWN  
SR ASSOCIATE

DATE: \_\_\_\_\_

CRS# 01130072008

Registration # 19-00069996

ATTEST:

  
YOLANDA Y. VIGIL  
CITY CLERK

APPROVED AS TO FORM:

 3/25  
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:

  
MARY MCCOY, FINANCE DIRECTOR

Business Unit/Line Item: 22853 . 510300

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

\_\_\_\_\_  
ERIK LITZENBERG  
CITY MANAGER

DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL  
CITY CLERK

APPROVED AS TO FORM:

 3/25  
\_\_\_\_\_  
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:

\_\_\_\_\_  
MARY MCCOY, FINANCE DIRECTOR

Business Unit/Line Item: 22853

CONTRACTOR:  
Wood Environment & Infrastructure  
Solutions, Inc,

  
\_\_\_\_\_  
JEFF BRISLAWN  
SR ASSOCIATE

DATE: 3-26-19

CRS# 01130072008

Registration # 19-00069996

## **Exhibit A.**

### **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 currently set at \$150,000, 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 sub recipient 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 sub grants 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 government wide 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 §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]