

DEPARTMENT OF ENVIRONMENTAL PROTECTION

FEDERAL REQUIREMENTS

If this Agreement is funded in whole or in part with funds from the Federal Government, or by non-Federal funds used to match a Federal grant, the following provisions apply:

1. All work under this Agreement shall be performed in accordance with applicable statutes, rules and regulations of the Federal Government. All applicable Federal statutes and provisions of the Code of Federal Regulations (CFR) in effect on the date of execution of this Agreement are an integral part of this Agreement.
2. All applicable contract provisions specified by the Federal Government are an integral part of this Agreement.
3. If this Agreement is funded in whole or in part by a grant from the United States Environmental Protection Agency (EPA), all applicable provisions of 40 CFR Parts 31, 33, and 35 (Subpart O), in effect on the date of the Assistance Award for this project, are an integral part of this Agreement. Further, Contractor shall comply with the provisions pertaining to conflict of interest set forth at 40 CFR §35.6550(b)(2)(ii) and the MBE/WBE reporting requirements detailed more thoroughly in Section 6 of these terms.
4. Rights to Inventions Made Under a Contract or Agreement – Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 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 Federal Grantor Agency. Further this Agreement is subject to Federal Grantor Agency requirements and regulations pertaining to reporting and patent rights if the Agreement involves research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under this Agreement, as well as Federal Grantor Agency requirements and regulations pertaining to copyrights and rights in data.
5. Equal Employment Opportunity – All contracts shall contain a provision requiring compliance with Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
6. Audit and Other Reporting/Compliance Requirements

A. Audit Requirements

The Contractor must comply with all Federal and State audit requirements including: the Single Audit Act Amendments of 1996; Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (“Uniform Guidance at 2 CFR Part 200”); and any other applicable law or regulation and any amendment to such other applicable law or regulation which may be enacted or promulgated by the Federal government.

If the Contractor is a local government or non-profit organization and expends total Federal awards of \$1,000,000 or more during its fiscal year, received either directly from the Federal Government or indirectly from a recipient of Federal funds, the Contractor is required to have an audit made in accordance with the provisions of Uniform Guidance at 2 CFR Part 200.

If the Contractor expends total Federal awards of less than \$1,000,000 during its fiscal year, it is exempt from these audit requirements, but is required to maintain auditable records of Federal awards and any State funds which supplement such awards, and to provide access to such records by Federal and State agencies or their designees.

Submission of Audit Information to the Commonwealth

The Contractor shall submit copies of the audit report package to the Commonwealth, which shall include:

1. Data Collection Form.
2. Financial statements and schedule of expenditures of Federal awards.
3. Auditor’s reports on the financial statements and schedule of expenditures of Federal awards, internal control, and compliance as well as a schedule of findings and questioned costs.
4. Summary schedule of prior audit findings.
5. Corrective action plan.
6. Management letter comments.

The Contractor shall submit, electronically, audit information to the Pennsylvania Office of the Budget, Bureau of Accounting and Financial Management as described on the Office of the Budget’s webpage for Single Audit Submissions: <https://www.budget.pa.gov/Services/ForGranteesAndSubrecipients/Pages/SingleAuditSubmissions.aspx>.

In instances where a Federal program-specific audit guide is applicable, the audit report package for a program-specific audit may be different and should be prepared in accordance with the audit guide and Uniform Guidance at 2 CFR Part 200.

B. General Audit Provisions

The Contractor is responsible for obtaining the necessary audit and securing the services of a certified public accountant or other independent governmental auditor. Federal regulations preclude public accountants licensed in the Commonwealth of Pennsylvania from performing audits of Federal awards.

The Commonwealth reserves the right for Federal and State agencies or their authorized representatives to perform additional audits of a financial or performance nature, if deemed necessary by Commonwealth or Federal agencies. Any such additional audit work will rely on work already performed by the Contractor's auditor, and the costs for any additional work performed by the Federal or State agencies will be borne by those agencies at no additional expense to the Contractor.

Audit documentation and audit reports must be retained by the Contractor's auditor for a minimum of five (5) years from the date of issuance of the audit report, unless the Contractor's auditor is notified in writing by the Commonwealth or the cognizant or oversight Federal agency to extend the retention period. Audit documentation will be made available upon request to authorized representatives of the Commonwealth, the cognizant or oversight agency, the Federal funding agency, or the Government Accountability Office.

C. MBE/WBE Utilization and Reporting

The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Contractor shall carry out applicable requirements of [40 CFR part 33](#) in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

The Contractor must provide the Commonwealth with documentation of all procurements awarded in relation to the scope of work provided in this Agreement, regardless of the awarded amount. If such procurement involved a certified MBE/WBE entity, then that information must also be included. Procurement activity must be reported to the Commonwealth by all recipients, within 15 days of the close of each calendar quarter (January 15, April 15, July 15, and October 15, each a "Reporting Period"). A procurement is defined as any expenditure through contract, order, purchase, lease or barter of supplies, equipment, construction, or services needed to complete the work. All procurements *awarded* during the Reporting Period must be reported, even if it did not involve a certified MBE/WBE contractor. Contractor must submit procurement information for the Reporting Period even if no procurement occurred during the Reporting Period. Procurement documentation must be provided via email at RA-EPMBEWBE@pa.gov and meet the following requirements:

1. Subject line must contain: **MBE/WBE Reporting for Report Period [INSERT APPLICABLE REPORTING PERIOD DATE] – NAME OF REPORTING ORGANIZATION, DEP DOCUMENT/CONTRACT NUMBER**

- a. DEP Document Numbers usually begin with a C9, 40, 41, or 43.

2. Body of the email must contain the following information:

- a. Point of Contact Information: Name, Telephone Number, Email Address, Reporting Period
 - b. If the entered report is a Final Report, please indicate as much. A Final Reporting period is the last quarter of a contract term.
 - c. If no procurements were awarded, then indicate as such.
 - d. Total Procurements & MBE/WBE awarded during the Reporting Period (in dollars) in the following format:

	<u>Construction</u>	<u>Non- Construction</u>	<u>Total</u>
Total Procurement	\$ _____	\$ _____	\$ _____
MBE/WBE Combined	\$ _____	\$ _____	\$ _____

- e. Good Faith Efforts: If procurements were made during the Reporting Period, indicate whether or not your organization has followed the six Good Faith Efforts found in 40 CRF Part 33, Subchapter C, 40 CRF 33.501, and 2 CFR 200.321.
 - f. If procurements were made but no MBE/WBE procurements are being reported, indicate the reason as one of the following:
 - i. No MBE/WBE applied
 - ii. No MBE/WBE was qualified

3. An itemization of all procurements should be attached to the email. A template Excel spreadsheet can be provided upon request. An example of the desired information is as follows:

Federal CFDA#	Construction (Yes or No)	Commitment item/Expenditure Classification		Payment Type	Vendor Name	Actual Expends	No MBE/ WBE(s) applied	No MBE /WBE(s) qualified	Other (Please explain)
66.805	No	6331100	Telecomm-Rec	check	CDW GOVT	\$ 19.52			

7. Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) - Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the Regional Office of the EPA.

8. Contractor shall comply with mandatory standards and policies relating to energy efficiency in compliance with the U.S. Energy Policy and Conservation Act (Pub. L. 94-163).
9. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) – Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 102 of the Act, each contractor shall 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 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall 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.
10. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c) – All contracts and subgrants in excess of \$100,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), 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 shall 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 is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal Grantor Agency.
11. Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) – When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics not less than the prevailing wage rates and fringe benefits, as determined by the Secretary of Labor, for corresponding classes of laborers and mechanics employed on similar projects in the area.. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal Grantor Agency.

12. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Contractors who apply or bid for an award of more than \$100,000 shall 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 shall 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 recipient.

13. Build America, Buy America Act (23 U.S.C. 313; 23 CFR 635.410)

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

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

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

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to a project site and removed at or before the completion of the

infrastructure project. Nor does a BABA preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

14. Debarment and Suspension (Executive Orders 12549 and 12689) - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.
15. This commitment is contingent upon funds being appropriated by the legislature for each succeeding fiscal year and Federal funds being provided to the Commonwealth for the contract purpose.
16. Federal Funding Accountability and Transparency Act (FFATA or Transparency Act)

For all federally funded grants that DEP issues (except ARRA grants).

17. Registration and Identification Information

Grantee must maintain current registration in the System for Award Management (www.sam.gov) at all times during which it has active federal awards funded pursuant to this agreement. A Unique Entity Identifier (UEI) number is one of the requirements for registration in the System for Award Management.

Grantee must provide its assigned UEI number to the Commonwealth along with Grantee's return of the signed grant agreement. The Commonwealth will not process this grant until such time that Grantee provides this information.

18. Primary Location

Grantee must provide to the Commonwealth the primary location of performance under the award, including the city, State, and zip+4. If performance is to occur in multiple locations, then Grantee must list the location where the largest amount of the grant award is to be expended pursuant to this grant agreement.

Grantee must provide this information to the Commonwealth along with Grantee's return of the signed grant agreement. The Commonwealth will not process this grant until such time that Grantee provides this information.

19. Compensation of Officers

Grantee must provide to the Commonwealth the names and total compensation of

the five most highly compensated officers of the entity **if**—

- (i) the entity in the preceding fiscal year received—
 - (I) 80 percent or more of its annual gross revenues in Federal procurement contracts (and subcontracts) and Federal awards (and subawards); and
 - (II) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards; and
- (ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

If the Grantee does not meet the conditions listed above, then it must specifically affirm to the Commonwealth that the requirements of this clause are inapplicable to the Grantee.

Grantee must provide information responding to this question along with Grantee's return of the signed grant agreement. The Commonwealth will not process this grant until such time that Grantee provides the information responding to this question.