Professional Services Agreement
For
Jackson County
CDBG-I Blue Ridge School Water and Sewer System Improvements
Engineering Services
Jackson County, North Carolina

PROJECT DESCRIPTION

Blue Ridge Public School is located in the Glenville Community of Jackson County, North Carolina and is listed with Jackson County as PIN #7562-87-2237. The school has a well supplied water system which currently includes a 10,000 gallon pedestal gravity storage tank, elevated 56 vertical feet above grade. The school sanitary sewer system includes gravity sewers, conveying raw sewage to an existing, discharge type, aerobic treatment plant. The existing wastewater treatment facility is a "package" type 10,000 gallon per day extended aeration process plant. The existing 10,000 gallon per day sewer plant discharges treated effluent to Hurricane Creek under NPDES Permit NC0066958

The water and sewer improvements to be implemented under this project are to be CDBG funded through the NC Division of Water Infrastructure. The extent of proposed water and sewer improvements are summarized as follows:

Proposed water improvements will include the replacement of existing elevated storage with ground level storage and booster pumping. Following the successful installation and start up of the new ground level and booster pumping, the elevated pedestal tank will be dismantled and removed.

Proposed sewer improvements will include replacement and/or repair of existing exterior gravity sewers, on an as-needed basis, and will also include the replacement of the existing wastewater treatment plant with a new parallel treatment facility. Following the successful installation and start up of the new wastewater plant, the existing wastewater treatment plant will be dismantled and removed.

The services to be provided by the consultant are outlined under the following proposed scope of services.

Scope of Services

The consultant proposes to provide the following scope of services for the fees listed under Compensation:

Task 1: Design Surveys

The consultant will perform field surveys of both the water and sewer improvement areas, determining the locations and relative spot elevations of the existing grades and other physical features in the vicinity of proposed water storage and booster pumping improvements and in the vicinity of proposed sanitary sewer improvements as the consultant deems necessary for designing and preparing construction plans for the water and sewer system improvements as described. The survey vertical control will be based on an assumed datum. This survey is intended for engineering design purposes only and is not intended as a property survey or for use in the sale or conveyance of land, easements or rights of way.

Task 2: Engineering Report, Environmental Document, Final Design

A. The consultant will prepare a water & sewer engineering report based on CDBG guidelines and submit to the NC Division of Water Infrastructure CDBG representative for review.

B. The consultant will prepare a water & sewer environmental document based on CDBG guidelines and submit to the NC Division of Water Infrastructure CDBG representative for review.

C. Using the design surveys developed under Task 1 and the engineering report, the consultant will perform calculations and evaluations as necessary to complete the final design of water & sewer improvements.

D. Finalization of the design will include plans and details, as the consultant deems necessary, to define the scope of work for construction. The consultant will develop final plans (30" x 42" at appropriate scales) including construction stake-out data, details of water system storage, booster pumping, details of sanitary sewer line repairs/replacement, details of the new sewage treatment facility, site grading, erosion control and related improvements as required to describe construction. Final plans will include proposed grading, drainage and erosion control devices related to the construction of the proposed water and sewer improvements.

E. Final plans will include detail sheets (30" x 42") providing selected details of construction on individual water system components and other related components as may be deemed necessary by the consultant.

F. Technical specifications on materials and workmanship pertinent to the project will be developed in the consultant's standard modified CSI format. Technical specifications will include performance specifications on elevated tank and sewage plant demolition and will require the contractor to obtain site specific permits related to building permits related to construction and demolition.

G. The consultant will assemble applications for a Jackson County Land Development permit, erosion control permit (as applicable), a NC Public Water Supply (NCPWS) permit and a NC Division of Environmental Quality (NCDEQ) Sewage Plant Authorization to Construct permit for the client's review and signatures. The consultant will assemble these permit application packages, including supporting documentation (ie: plans, specifications, calculations) and submit the application packages to Jackson County, NCPWS and the NCDEQ on the client's behalf. Permit fees are not included in the consultant's fees and will be paid for separately by the client.

H. The consultant will furnish the client with a pdf copy and one (1) hardcopy of final plans and technical specifications.

Task 3 – Formal Bidding and Construction Contract Administration:

A. The consultant will prepare bid documents including general conditions, bid forms, technical specifications, methods of measurement, etc. for use in advertising and bidding the project. Bid documents will be based on the consultant's standard documents based on NSPE/ASCE/ACEC Joint Committee documents. Bid, Performance and Payment Bond requirements will be described in the bid documents. Federal labor provisions, prevailing wage determinations and DBE goals are to be based on information provided by the NC Division of Water Infrastructure CDBG representative and will be incorporated into the bid documents by the consultant.

B. The consultant will prepare the advertisement for bids for the client's review and assist the client in advertising the project. The costs of advertising (newspaper ads, etc.) are not included in the consultant's fees and will be paid for separately by the client.

C. The consultant will distribute bid documents (plans and specifications) to qualified bidders on an as requested basis. Bid document printing and distribution costs will be paid for by the prospective bidders as a non-refundable bid document cost. The client will be provided with one set of "Bid Document" plans and specifications for their review and reference. The NC CDBG project representatives will be emailed pdf copies of bid documents for review and comment prior to release of bid packages to prospective bidders.

D. The consultant will assist the client and the NC CDBG project representative in conducting a pre-bid conference at the client's local office at a specified time and date to review the project with prospective bidders.

E. The consultant will answer contractor's questions and issue clarifications on an as-needed basis.

F. The consultant will assist the client in conducting a bid opening at the client's local office at a specified time and date.

G. The consultant will review all qualified bids received, forward copies of bids and related documentation received to the NC CDBG representative for review and make a recommendation to the client on award of the project.

H. The consultant will prepare contract documents for review by the client, the client's attorney and NC CDBG representative and assist the client in executing the documents.

I. The consultant will review the contractor's monthly payment requests and make payment recommendations to the client. The fee listed is based on the condition that all work and pay requests are completed within 180 consecutive calendar days following construction commencement.

J. The consultant will conduct a final site visit prior to the contractor's final payment request and make a recommendation on final payment to the contractor.

Task 4 - Periodic Construction Observation:

Periodic construction observation services will be performed by the consultant consisting of periodic visits to the project site at stages of construction specified by the consultant to the contractor. The construction contract documents for the project will require the client's contractor to coordinate these visits with the consultant. Periodic observation services will require that the contractor leave excavations open and accessible until the consultant completes their site visit. Site security and safety will be the contractor's sole responsibility. The fee listed is based on the condition that all work is completed within 180 consecutive calendar days following construction commencement. Upon satisfactory completion of the project, the consultant will issue the engineer's certifications for completed water and sewer improvements. The consultant will attempt to perform bi-monthly Davis Bacon employee interviews while making periodic construction observation site visits if workers are on site and work is ongoing throughout the construction process. The client agrees to assist the consultant with performing Davis Bacon employee interviews on an as-needed basis.

Conditions of Agreement

- Prior to commencement of the consultant's work, the client agrees to provide the consultant with all available data on the existing water and sewer systems, available existing site information any ideas on the proposed water and sewer improvements as may be relevant to the project. The client agrees to provide the consultant access to any locked water and sewer system components.

- The client agrees to engage the services of a qualified NC Professional Geotechnical Engineer to provide geotechnical soils evaluations needed for design and periodic construction testing.

- The client understands that the services to be provided under this agreement do not include any of the following: permit application fees, fees imposed by utility companies (ie: tap or impact fees), property boundary or easement surveys, land title or right-of-way research, testing services,

architectural services, soil testing or subgrade evaluations , wetlands delineation, flood studies, fire protection systems (including sprinklers), planting plans, landscape irrigation system design, easement obtainment assistance or other services not specifically noted. The consultant can provide additional services if requested and approved by the client for a mutually agreed upon fee.

- It is assumed that the property is properly zoned and permitted for the client's intended use. The client's attorney will be responsible for providing the consultant with a description of any special restrictions, regulations, easements or other encumbrances and conditions that may impact or affect the project design and development.

- The consultant's services do not include grant administration services other than those specifically listed in this agreement. All other grant administration related tasks will be performed by the client.

- The consultant's services and associated fees are based on the assumption that water and sewer improvements will be incorporated into a single set of engineering reports, environmental documents, plans, specifications and bid documents and will be bid, administered and constructed as a single project.

- Fees listed in this agreement do not include previously performed preliminary engineering services.

- The environmental document described in this agreement and associated fees are based on the condition that the environmental document can be prepared and approved without the need for biological surveys or the use of specialty sub-consultants.

Compensation

The client agrees to compensate the consultant the following fees for the services described under *Scope of Services*:

Task 1: Design Surveys: $1,750.00 (Water) + $1,600.00 (Sewer) =	$ 3,350.00 (fixed fee)
Task 2: Engineering Report, Environmental Document, Final Design $13,500.00 (Water) + $40,400.00 (Sewer) =	$ 53,900.00 (fixed fee)
Task 3: Formal Bidding and Construction Contract Administration* $9,000.00 (Water) + $12,000 (Sewer) =	$ 21,000.00 (fixed fee)
Task 4: Periodic On-site Construction Observation* $11,000.00 (Water) + $18,000 (Sewer) =	$ 29,000.00 (fixed fee)
Total Water & Sewer:	$107,250.00 (fixed fee)

All fees shown include expenses. A portion of fixed fees will be billed monthly based on the consultant's estimated percentage complete. *Fees for Task 3 and Task 4 services are based on the condition that all construction work will be completed within a 180 consecutive calendar day period.

AGREEMENT FOR PROFESSIONAL SERVICES

Engineering Services for Jackson County CDBG-I Blue Ridge School Water and Sewer System Improvements

This is an agreement effective as of September 6, 2018 between JACKSON COUNTY ("client") and LOFQUIST & ASSOCIATES, INC. ("consultant"). The consultant agrees to provide, or cause to be provided, the services set forth in this agreement and described under "scope of services" to the client. The client agrees to make payment for these services in accordance with this agreement. Consultant and client further agree as follows:

1.01 General Considerations

The standard of care for all professional engineering and related services performed or furnished by the consultant under this agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this agreement or otherwise, in connection with consultant's services. Consultant and its sub-consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

Consultant shall not at any time supervise, direct, or have control over any contractor's work, nor shall consultant have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work. Consultant neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between client and such contractor. Consultant shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons at the project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by client without consultation and advice of consultant.

All design documents prepared or furnished by consultant are instruments of service, and consultant retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the project is completed. Client agrees not to use design documents or any portion thereof for any other purpose or other project. Digital files of standard specifications and standard details are not available to the client in cad or word processing formats.

To the fullest extent permitted by law, client and consultant (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the project, and (2) agree that consultant's total liability to client under this agreement shall be limited to $50,000 or the total amount of compensation received by consultant, whichever is greater.

The parties acknowledge that consultant's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If consultant or any other party encounters a Hazardous Environmental Condition, consultant may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the project affected thereby until client: (i) retains appropriate specialists or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

The client understands that any cost estimates to be provided under this agreement are the consultant's opinion of anticipated costs for the type of work proposed. The consultant will base the cost opinion on experience and their knowledge of construction industry trends. The consultant can not guarantee the accuracy of cost estimates. Cost estimates are therefore not intended for firm budgeting or negotiations. The client understands that the actual costs of work are affected by many factors beyond the consultant's control.

The client agrees to furnish the consultant with valid documents, materials and information as necessary for the consultant to complete their work. The client agrees to provide the consultant with access to the project site as needed to perform their services. The Client understands that permitting fees, the cost of advertisements, utility related fees and any other fees not specifically noted to be included in the consultant's fees are to be paid directly by the client and are not included in the consultant's fees.

2.01 Payment Procedures

Where payment is not made in advance by the client in the form of a retainer, the consultant will prepare a monthly invoice in accordance with consultant's standard invoicing practices and submit the invoice to client. The client understands that invoices are due and payable within 30 days of receipt. If client fails to make any payment due consultant for services and expenses within 30 days after receipt of consultant's invoice, the amounts due consultant will be increased at the rate of 1.0% per month from said payment due date. In addition, consultant may, without liability, after giving notice to client, suspend services under this agreement until consultant has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

If authorized by client and agreed to by consultant, consultant shall furnish services in addition to those set forth under the scope of services. Client shall pay consultant for such additional services in accordance with consultant's current rate schedule or a mutually agreed upon fixed fee.

4.01 Termination

The obligation to provide further services under this agreement may be terminated by either the client or consultant. In the event of termination, the consultant agrees to furnish the client with printed copies of any pertinent project documents and incomplete, preliminary designs. Client agrees to pay consultant for all work, time and expenses incurred to date on the project. Client acknowledges that incomplete documents and plans can not be used for construction or other purposes. The consultant shall have no liability to client on account of such termination. If mutually agreed upon by both the client and the consultant, the effective date of termination may be set at a time up to 30 days later than otherwise provided to allow consultant to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble project materials in orderly files. The consultant shall reimburse the client any unspent portion of retainers paid by the client in the event of termination.

5.01 Successors, Assigns, and Beneficiaries

Client and consultant each is hereby bound and the partners, successors, executors, administrators, and legal representatives of client and are hereby bound to the other party to this agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this agreement. Neither consultant nor client may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this agreement.

6.01 Controlling Law

This agreement is to be governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated above.

Client:	JACKSON COUNTY	Consultant:	LOFQUIST & ASSOCIATES, INC.
By:		By:	Victor W. Lofquist Victor W. Lofquist, P.E.
Title:		Title:	President

Required Contract Provisions

Contracts shall contain at a minimum the following provisions, as applicable.

Conflict of Interest (2 CFR Part §200.318 General procurement standards)

Interest of Members, Officers, or Employees of the Recipient, Members of Local Governing Body, or Other Public Officials. No member, officer, or employee of the recipient, or its agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. The recipient shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.

Nondiscrimination Clause - Section 109, Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under this title.

Age Discrimination Act of 1975, as amended - Nondiscrimination on the Basis of Age

No qualified person shall on the basis of age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

Section 504 of the Rehabilitation Act of 1973, as amended - Nondiscrimination on the Basis of Disability

No qualified disabled person shall on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.

Access to Records and Record Retainage Clause

In general, all official project records and documents must be maintained during the operation of this project and for a period of three years following closeout in compliance with 24 CFR §570.490.

The North Carolina Department of the Treasurer, U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and the NC Department of Environmental Quality, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Administering Agency which are pertinent to the execution of this agreement, for the purpose of making audits, examinations, excerpts and transcriptions in compliance with the above Rule.

Lobbying Clauses

Required by Section 1352, Title 31, U.S. Code

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 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.

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.

   This 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 failure.

Legal Remedies Provision and Termination Provision *[don't just copy and paste the below items, read and do what they say]*

1) Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts under Federal Awards Contracts. *other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.*

2) Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts under Federal Awards. *All contracts in excess of $10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.*

Section 3 Clause

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

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 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 §200.322 Procurement of recovered materials.

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