

**Notice of Funding Opportunity 04SF300030  
Freemont Cottonwood Genetics Study**

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## **Overview Information**

Federal Agency Name: Department of Interior, Bureau of Reclamation, Lower Colorado Region

Funding Opportunity Title: Freemont Cottonwood Genetics Study

Announcement Type: Initial Announcement

Funding Opportunity Number: 04SF300030

Catalog of Federal Domestic Assistance (CFDA) Number: 15.BCD

Dates: Applications are due by June 30, 2004

## **I. Funding Opportunity Description**

The object of this funding opportunity is to provide information on the role of genetics as it applies to restoration ecology. The results of this research will guide genetic management of cottonwood restoration projects in two ways: (1) by identifying genetic stocks of Freemont cottonwood trees that possess traits that may include superior growth, reproduction, and survival in a typical restoration site; and (2) by identifying genetic stocks of Freemont cottonwood trees that support diverse biological communities, including communities that sustain target wildlife species.

The type of project that will be funded under this announcement would be for work that will include: (1) preparation of a sound study design, including adequately replicated treatments, genetic prescreening of cottonwood trees, and a long-term monitoring plan; (2) acquisition, rearing, transportation, and planting of cottonwood trees at a study site to be proposed by the applicant (depending on the extent to which the applicant may need federal technical assistance in this area, the extent of such assistance will be negotiated prior to agreement award); (3) study site maintenance; (4) long-term monitoring of tree growth and ecological community parameters providing evidence for genetic fitness of trees and the influence of genetic diversity on community diversity, respectively; (5) preparation of quarterly progress reports and yearly reports including management recommendations. We anticipate that the bulk of the research and research funding will be undertaken by the recipient.

## **II. Award Information**

Reclamation will award one cooperative agreement (term of up to 5 years) providing matching funds up to \$50,000.00 to assist in start-up activities including, but not limited to, genetic prescreening of cottonwoods, specimen acquisition, and propagation. In addition, Reclamation will set aside at the time of award up to \$15,000.00 in matching funds per year for site maintenance-related costs and preparation of annual reports. These costs may include, but are not limited to, purchase of maintenance equipment, travel costs, and/or personnel salary. Reclamation can work with the applicant, if necessary, to

obtain access to a study site, including leveled acreage, irrigation infrastructure, and water. Reclamation can also provide technical assistance, such as personnel to identify collection sites, assist in permit acquisition and collection site access, assist in transportation of cottonwood trees to the study site, and tree planting at the study site.

### **III. Eligibility Information**

#### **1. Eligible Applicants**

Eligible applicants must be affiliated with a state or local government, university, or private museum within the states of California, Nevada, Utah, or Arizona.

#### **2. Cost Sharing or Matching**

Reclamation will award one cooperative agreement (term of up to 5 years) providing up to \$50,000.00 to assist in start-up activities. In addition, Reclamation will set aside at the time of award up to \$15,000.00 in matching funds per year for site maintenance-related costs and preparation of annual reports. The applicant must provide all other funding necessary to execute the project.

### **IV. Application and Submission Information**

#### **1. Address to Request Application Package**

Applicants may request an application package from Ms. Marcy Fridmann by (1) telephone at 702-293-8534; (2) e-mail to MFRIDMANN@LC.USBR.GOV; (3) fax request to Ms. Fridmann, Attn: LC-2710, 702-293-8637; or (4) in writing addressed to Ms. Marcy Fridmann, Attn: LC-2710, Bureau of Reclamation, P.O. Box 61470, Boulder City, NV 89006-1470.

#### **2. Content and Form of Application Submission**

The application package will consist of the standard forms shown in the table in Section IV.3 below. Each application shall contain a **Narrative** that (1) describes the proposed project in sufficient detail to permit meaningful evaluation in accordance with the criteria listed in Section V.1, and (2) describes how each budget item relates to the project and provides a rationale and breakdown for the amount of each budget item.

In order to assist Reclamation, applicants will submit:

- i. a research proposal including a study design and long-term monitoring plan
- ii. A publication record demonstrating skill in long-term (>10 - year) studies of cottonwoods and their interactions with other species.
- iii. A publication record with specific emphasis of plant genetic variation and its effect on community structure which may include: microbes, arthropods, birds and mammals.
- iv. A publication record demonstrating skill in statistically analyzing observational

data from ecological studies with emphasis on statistical analysis of communities.

v. Demonstrated skill in the propagation and long term survival of cottonwoods at restoration sites.

### 3. Submission Dates and Times

What to submit	Required content	Required form or format	When to submit it
Application:			By June 30, 2004
Cover sheet	(per required form)	Form SF-424, available on the internet at <a href="http://www.whitehouse.gov/omb/grants_forms.html">http://www.whitehouse.gov/omb/grants_forms.html</a> .	
Budget information	(per required form)	Form SF-424a, available on the internet at <a href="http://www.whitehouse.gov/omb/grants_forms.html">http://www.whitehouse.gov/omb/grants_forms.html</a> .	
Narrative	As described in IV.2 above	Applicant's discretion	
Assurance	(per required form)	Form SF-424b, available on the internet at <a href="http://www.whitehouse.gov/omb/grants_forms.html">http://www.whitehouse.gov/omb/grants_forms.html</a> .	

## V. Application Review Information

### 1. Criteria

Applications will be evaluated based on the following criteria:

1. Technical Approach as detailed in the research proposal.
2. Publication record demonstrating skill in long-term (>10 - year) studies of cottonwoods and their interactions with other species.
3. Publication record with specific emphasis of plant genetic variation and its effect on community structure which may include: microbes, arthropods, birds and mammals.
4. Publication record demonstrating skill in statistically analyzing observational data from ecological studies with emphasis on statistical analysis of communities.
5. Applicant's previous experience with projects demonstrating skill in the propagation and long term survival of cottonwoods at restoration sites.

### 2. Review and Selection Process

Proposals will be evaluated and the recipient selected by Reclamation program office staff in the Lower Colorado Resources Management Office.

### 3. Anticipated Announcement and Award Dates

Proposals will be accepted for review from the posting date of this announcement until June 30, 2004, and funding will be awarded by September 30, 2004.

## **VI. Award Administration Information**

### **1. Award Notices**

The successful applicants will receive a Notice of Award, including a completed original of the attached Reclamation Assistance Agreement Form for signature. Unsuccessful applicants will be notified by letter.

### **2. Administrative and National Policy Requirements**

See General and Special Provisions in the attached Reclamation Assistance Agreement Form.

### **3. Reporting**

See reporting requirements, Special Provision 3, in the attached Reclamation Assistance Agreement Form.

## **VII. Agency Contact(s)**

All questions concerning the administrative or technical aspects of this announcement should be directed through Ms. Marcy Fridmann by (1) telephone at 702-293-8534; (2) e-mail to MFRIDMANN@LC.USBR.GOV; (3) fax to Ms. Fridmann, Attn: LC-2710, 702-293-8637; or (4) in writing addressed to Ms. Marcy Fridmann, Attn: LC-2710, Bureau of Reclamation, P.O. Box 61470, Boulder City, NV 89006-1470.

## **VIII. Other Information**

New Program     One-time initiative

The Reclamation Assistance Agreement Form attached at the end of this announcement is for the applicant's information only, and is not intended to be completed at this time. Reclamation will complete an Assistance Agreement Form for the specific project selected for award under this announcement.



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# I. Schedule

## 1. Statement of Joint Objectives Article

505 DM 2.10.B(1) Identify the purpose and objectives of the agreement as well as the benefits to be derived by the recipients from the contemplated relationship established pursuant to the agreement. The statement must be in sufficient detail to demonstrate:

B(1)(a) the agreement is in fact an undertaking of a clearly defined objective.

B(1)(b) the basis for the endeavor is founded on support or stimulation of a public purpose authorized by Federal statute.

B(1)(c) the activity to be undertaken is in furtherance of the bureau or office mission.

B(1)(d) the benefits to be derived from performance of the project.

## 2. Project Management Plan Article

505 DM 2.10.B(2)(a) Identify the respective roles, responsibilities, obligations and accountability which each participant to the agreement will assume in its effort to achieve the stated joint objective(s).

B(2)(b) for cooperative agreements, an explicit statement of the nature, character, and extent of anticipated Reclamation involvement. This statement must be developed with care to avoid unnecessarily increasing the Government's liability under the cooperative agreement.

B(2)(c) a statement of how the project and performance will be measured to evaluate the meeting, and/or achievement of, specific milestones or agreed objectives.

B(2)(d) the details of the resources, such as services, facilities, equipment, materials, supplies, personnel, that the Government and the recipients will provide, and a schedule indicating when they will be provided.

[Note: Dependent upon the complexities of the project, the management plan may be a simple narrative included in the schedule of the agreement or it may be a detailed management plan that may be incorporated as an appendix to the agreement and referenced in the agreement schedule]

## 3. Financial Support Article

505 DM 2.10.B(3)(a) Financial support arrangements for the project. Reclamation's and the participant's share contribution to the project will be specified in the article. Such financial support will identify the dollar costs assigned to each participant, acceptable in-kind contributions (other than funds), and will specify when these contributions will be committed or delivered to support the proposed project. The details of the planned financial support of the project must be clearly defined with regard to financial support ceilings, minimum contributions, and percentage ratios, and whether the funds are to be committed, obligated at award, or incrementally obligated at specified time/performance intervals.

505 DM 2.10.B(3)(b) Details concerning alternative approaches and responsibilities as agreed to by Reclamation and the recipient(s) in the event that changes in the scope of activity, or changes in the period of performance occur, which may impact the estimated cost. This article will also provide for steps to be taken with respect to each recipient's financial obligations in the event of termination of the agreement.

505 DM 2.10.B(3)(c) Coverage on any revenue derived as a result of the agreement. For recipients subject to OMB Circulars A-102 and A-110, 43 CFR 12.65 and 12.924 respectively, will normally apply. Also, the agreement shall specify whether any revenue from funded activities shall accrue to the Government after the conclusion of the agreement.

505 DM 2.10.B(3)(d) Guidelines governing allowability of costs. The Federal cost principles listed below will be used as guidelines to determine allowability of costs in performance of the project:

(i) OMB Circular A-87 for State, local and Indian Tribal recipients covered by OMB Circular A-102.

(ii) OMB Circular A-21 for Institutions of Higher Education recipients and OMB Circular A-122 for nonprofit organizations covered by OMB Circular A-110.

#### **4. Payment Article**

505 DM 2.10.B(4)(a) For recipients covered by OMB Circulars A-102 and A-110, 43 CFR 12.61 and 43 CFR 12.922, respectively will normally be used.

505 DM 2.10.B(4)(b) Financial support of the project will be arranged so that each participant to the agreement will provide its prorata share in a timely manner so as not to cause undue hardship to the other participant(s) and to avoid placing performance in jeopardy.

#### **5. Term of the Agreement Article**

505 DM 2.10.B(5) Establish the effective date of the Agreement and the date the agreement will end. Where appropriate, provisions with resultant conditions and/or restrictions which might occur and which may be used to extend or otherwise change the completion date of the agreement may be included pursuant to this article.

#### **6. Project Information System Article**

505 DM 2.10.B(6) Specify the pertinent technical data requirements, administrative information, and/or reports to be generated in performance of the project, the manner and times in which this information will be submitted, the responsibilities of the recipient in acting upon information generated, and the mutual support to be provided to the respective recipient's management information system. Appropriate standards for reports to be generated and submitted to Reclamation will be specified in this article.

#### **7. Property Management and Disposition Article**

505 DM 2.10.B(7) Include the applicable Property Management Standards in the agreement (43 CFR 12.71, 12.72, and 12.73 for recipients covered by OMB Circulars A-102; 43 CFR 12.930 - 12.937 for recipients covered by OMB Circular A-110)

## **II. Special Provisions (November 2003)**

### **1. Grants And Cooperative Agreements Officer's Representative (GCAOR)**

The GCAOR for this agreement will be:

Name, Office Code  
Bureau of Reclamation  
P.O. Box 61470  
Boulder City, NV 89006  
Phone: 123-123-1234, E-mail: username@lc.usbr.gov

The GCAOR is authorized to act only on technical matters during the term of this Agreement. The GCAOR and the Recipient's Project Manager shall work closely to insure that all requirements of the Agreement are being met. The GCAOR's responsibilities include, but are not limited to, the following:

- (a) Assist the Recipient concerning the accomplishment of the tasks described in the Agreement;
- (b) Provide information to the Recipient which assists in the interpretation of the tasks; and
- (c) Review, and where required, approve reports and information to be delivered to the Government.

Technical assistance must be within the general scope of the Agreement. The GCAOR does not have the authority to, and may not, issue any technical assistance which:

- (a) Constitutes an assignment of additional work outside the general scope of the Agreement;
- (b) In any manner causes an increase or decrease in the total estimated cost or the time required for performance; or
- (c) Changes any of the expressed terms, conditions, or specifications.

### **2. Modifications**

Any changes to this agreement shall be made by means of a written modification. Reclamation may make changes to the agreement by means of a unilateral modification to deal with administrative matters, such as changes in address, no-cost time extensions, the addition of previously agreed upon funding, or deobligation of excess funds at the end of the agreement. Additionally, a unilateral modification may be utilized by Reclamation if it should become necessary to suspend or terminate the agreement in accordance with 43 CFR 12.83 or 43 CFR 12.961, as applicable.

All other changes shall be made by means of a bilateral modification to the agreement. No oral statement made by any person, or written statement by any person other than the GCAO, shall be allowed in any manner or degree to modify or otherwise effect the terms of the Agreement.

All requests for modification of the Agreement shall be made in writing, provide a full description of the reason for the request, and be sent to the attention of the GCAO. Any request for project extension shall be made at least 45 days prior to the expiration date of the agreement or the expiration date of any extension period that may have been previously granted. Any determination to extend the period of performance or to provide follow-on funding for continuation of a project is solely at the discretion of Reclamation.

### 3. Reporting Requirements And Distribution

Failure to comply with the reporting requirements contained in this agreement may be considered a material non-compliance with the terms and conditions of the award. Non-compliance may result in withholding of payments pending receipt of required reports, denying both the use of funds and matching credit for all or part of the cost of the activity or action not in compliance, whole or partial suspension or termination of the agreement, recovery of funds paid under the agreement, withholding of future awards, or other legal remedies.

#### (1) Financial Reports.

All financial reports shall be signed by an Authorized Certifying Official for the recipient's organization. The following forms are available at [http://www.whitehouse.gov/omb/grants/grants\\_forms.html](http://www.whitehouse.gov/omb/grants/grants_forms.html).

(a) SF-269 or SF-269a, Financial Status Report. This form is utilized to report total expenditures for the reporting period. The SF-269 must be used if the recipient is accountable for the use of program income; otherwise, the SF-269a may be used.

An original and two copies of this form shall be submitted [quarterly, semi-annually, or annually] within 30 days following the end of the reporting period.

A final SF-269 or SF-269a shall be submitted within 90 days following completion of the agreement.

(b) SF-272, Report of Federal Cash Transactions. This report shall be submitted by recipients that draw down cash advances by means of electronic funds transfer or Treasury check. Recipients shall identify in the "Remarks" section the amount of cash advances received in excess of 3 days prior to disbursement and explain actions taken to reduce excess balances.

An original and two copies of this form shall be submitted on a [quarterly or (if advances > \$1M) monthly] basis within 15 days following the end of the reporting period.

#### (2) Program Performance Reports.

(a) Interim Reports. Recipients shall submit an original and two copies of program performance reports on a [quarterly or semi-annually] basis within 30 days following the end of the reporting period. Program performance reports shall contain the following:

(i) A comparison of actual accomplishments with the goals and objectives established for the reporting period;

(ii) Where project output can be quantified, a computation of the cost per unit of output;

(iii) When appropriate, reasons why goals and objectives were not met; and

(iv) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(b) Annual Reports. An original and two copies of an annual program performance report shall be submitted within 90 days following the end of each year of the agreement. Copies of this report may be required to be included with any application for continuing support of the agreement.

(c) Final Report. An original and two copies of the final program performance report shall be submitted no later than 90 days following the expiration or termination of the agreement.

#### (3) Significant Developments.

During the term of the agreement, the recipient must immediately notify the GCAO if any of the following conditions become known:

(a) Problems, delays or adverse conditions which will materially impair their ability to meet the objectives of the agreement;

(b) Favorable developments which enable the recipient to meet time schedules and objectives sooner than or at less cost than projected or to produce more beneficial results than originally planned.

This notification is to include information on the actions taken or contemplated to resolve problems, delays, or adverse conditions, and any assistance needed from Reclamation to help resolve the problem.

(4) Report Distribution. Copies of reports shall be distributed as follows:

	To the GCAO at the address in Block 6, Page 1	To the GCAOR at the address in Block 8, Page 1
Financial Reports	2	1
Performance Reports	1	2
Significant Developments	2	1

#### 4. Key Personnel

The Recipient's key personnel for this agreement are identified as follows:

[To be completed at time of award]

In accordance with 43 CFR 12.70(d)(3) or 43 CFR 12.925, as applicable, the Recipient shall request prior approval from Reclamation before making any changes in the key personnel identified above.

#### 5. Payment Policy

Acceptance of a financial assistance agreement from Reclamation creates a legal responsibility on the part of the recipient organization to use the funds and property provided in accordance with the terms and conditions of the agreement. Reclamation has a reversionary interest in the unused balance of funding and in any funds improperly applied.

Payments to recipients are made in accordance with the basic standards and methods stated in the payment regulations at 43 CFR 12.61 or 43 CFR 12.922, as applicable to this agreement. These requirements are intended to minimize the time elapsing between the transfer of funds from the Federal government and the disbursement of these funds by the recipient.

Payment will be made in advance or by reimbursement as follows:

(1) Advance Payment. Recipients shall be paid in advance provided (i) they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of funds and their disbursement by the recipient, (ii) they comply with reporting requirements for timely submission of financial status reports, and (iii) they impose these same standards on subrecipients.

Advances to recipients shall be limited to the minimum amounts needed and shall be timed to be in accordance with the actual, immediate cash requirements of the recipient in carrying out the purpose of the agreement. The timing and amount of cash advances shall be as close as administratively feasible (generally no more than 3 days) to actual disbursements for direct program costs and the proportionate share of allowable indirect costs.

(2) Reimbursement. Reimbursement shall be the preferred method of payment when a recipient (i) does not meet the requirements for advance payment stated above; (ii) does not have financial management systems that meet the standards in 43 CFR 12.60 or 43 CFR 12.921, as applicable; or (iii) has been converted to payment restrictions for non-compliance with the terms and conditions of the agreement. Reimbursement is also the preferred method of payment for agreements involving construction.

## 6. Payment Method

Electronic Funds Transfer. Payments under this agreement will be made to recipients by electronic funds transfer (EFT) unless the recipient qualifies for exemption from this payment method. Reclamation utilizes the Automated Clearinghouse (ACH) Vendor Express payment system for EFT. Whether funds are paid in advance or as a reimbursement, the actual payment will be made through Vendor Express. Vendor Express allows the Government to transfer funds to a recipient's financial institution along with explanatory information regarding the payment.

Enrollment. Upon award, recipients will receive a copy of the SF-3881, ACH Vendor/Miscellaneous Payment Enrollment Form. This form is required to implement the Vendor Express system and to notify Reclamation of any change or corrections to financial institution information.

Requesting Payments. Requests for advance or reimbursement may be made by the following methods:

(1) SF-270, Request for Advance or Reimbursement. On a monthly basis, recipients may submit an original and two copies of a properly certified SF-270 form to the address identified in [Block #], page 1] of this [agreement/modification]. For advance payments, this form may be submitted on a monthly basis, at least two weeks prior to the date on which funds are required, and on the basis of expected disbursements for the succeeding month and the amount of Federal funds already on hand. Requests for reimbursement may be submitted on a monthly basis, or more frequently if authorized by the GCAO. Requested funds are delivered to the recipient via ACH Vendor Express. This form is available on the Internet at [http://www.whitehouse.gov/omb/grants/grants\\_forms.html](http://www.whitehouse.gov/omb/grants/grants_forms.html).

(2) SF-271, Outlay Report and Request for Reimbursement for Construction Programs. The SF-271 shall be used for construction agreements paid by the reimbursement method, letter of credit, electronic funds transfer, or Treasury check advance, except where the advance is based on periodic requests from the recipient, in which case the SF-270 shall be used. This request may be submitted on a quarterly basis, but no less frequently than on an annual basis. Recipients may submit an original and two copies of a properly certified SF-271 form to the address identified in [Block #], page 1] of this [agreement/modification]. This form is available on the Internet at [http://www.whitehouse.gov/omb/grants/grants\\_forms.html](http://www.whitehouse.gov/omb/grants/grants_forms.html).

(3) Automated Standard Application for Payments (ASAP). Recipients may utilize the Department of Treasury ASAP payment system to request advances or reimbursements. ASAP is a recipient-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds. Once a request is made through ASAP, funds are provided to the recipient either through ACH or Fedwire. Further information regarding ASAP may be obtained from the ASAP website at <http://www.fms.treas.gov/asap>. Upon award, you will be provided with information regarding enrollment in the ASAP system.

## 7. Funds Available for Payment

The Government's obligation under this Agreement is contingent upon the availability of appropriated funds from which payment for Agreement purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the GCAO for this Agreement, and until the Recipient receives notice of such availability, to be confirmed in writing to the Recipient by the GCAO.

Pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all commonly known as Reclamation Law, funds for payment under the first year of this agreement are included in the fiscal year 2004 Energy and Water Development Appropriations Act, Public Law 108-137. Funding for any optional year of the agreement is contingent upon subsequent Congressional funding.

## **8. Budget Revisions**

The Recipient shall follow the requirements at 43 CFR 12.70(c) or 43 CFR 12.925, as applicable, when making revisions to budget and program plans. Additionally, approval shall be requested for transfers of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa.

## **9. Reimbursable Costs and Limitations**

(1) The Recipient shall provide all personnel, services, facilities, equipment, materials and supplies, and perform all travel which may be necessary and appropriate for the proper performance of this Agreement. Costs so incurred will be paid for as provided herein. Reclamation's obligation to provide funding to the Recipient for costs incurred in these connections shall be limited to the Recipient's direct and indirect costs associated with this Agreement. All such direct and indirect costs must be determined to be allowable under the regulations contained in 48 CFR Subpart 31.2 or an OMB Cost Principle Circular, as applicable, which are incorporated herein through the General Provisions of this agreement.

(2) The recipient shall not incur costs or obligate funds for any purpose pertaining to operation of the program or activities beyond the expiration date stated in the agreement. The only costs which are authorized for a period of up to 90 days following the award expiration date are those strictly associated with closeout activities for preparation of the final report.

(3) Reclamation shall not be obligated to provide funding to the Recipient and the Recipient shall not be obligated to continue performance under the Agreement or to incur costs in excess of the costs set forth in the annual project budget unless the GCAO has furnished the Recipient a modification to increase the available funding for the Agreement.

## **10. Procurement Standards**

When utilizing Federal funds for the procurement of supplies and other expendable property, equipment, real property, and other services under this agreement, the Recipient shall utilize the Procurement Standards set forth at 43 CFR 12.76 or 43 CFR 12.940 -12.948, as applicable. The Recipient may be required to submit evidence that its procurement procedures are in compliance with the standards stated therein. Additional guidance for contracting with small and minority firms, and women's business enterprises is included in the General Provisions section of this agreement.

## **11. Property Standards**

All property, equipment and supplies acquired by the Recipient with Federal funds shall be subject to usage, management, and disposal in accordance with the Property Standards at 43 CFR 12.72 - 12.73, or 43 CFR 12.930 - 12.937, as applicable.

## **12. Property Standards (Real Property)**

In accordance with 43 CFR 12.71 or 43 CFR 12.932, as applicable, if real property is acquired in whole or in part under this agreement, it shall be subject to the following regulations:

(1) Title. Title to real property acquired under this agreement shall vest upon acquisition in the Recipient or Subrecipient, shall be used for the originally authorized purpose of the project as long as it is needed, and shall not be disposed of or encumbered without Reclamation approval.

(2) Disposition. When the real property is no longer needed for the originally authorized purpose, the Recipient or Subrecipient shall request disposition instructions from Reclamation. The instructions shall provide for one of the following alternatives:

(2.1) Transfer. The Recipient may be permitted to transfer the property to another Federally-sponsored project if the Recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects or programs shall be limited to those with have purposes consistent with those authorized for support by the Department of the Interior.

(2.2) Retention of Title. The Recipient may be allowed to retain the title after compensating Reclamation for that percentage of the current fair market value of the property attributable to the Federal government's financial participation in the project.

(2.3) Sale of Property. The Recipient may be directed to sell the property under guidelines provided by Reclamation, and to compensate Reclamation in an amount calculated by applying Reclamation's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fix-up expenses. When the Recipient is directed to sell the property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(2.4) Transfer of Title. The Recipient may be directed to transfer title to Reclamation or to an eligible third-party. The Recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

### **13. Inspection**

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

### **14. Audit**

Recipients are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." Audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits. Additional audit requirements applicable to this agreement are found at 43 CFR 12.66 or 43 CFR 12.926, as applicable. General guidance on the single audit process is included in a pamphlet titled, "Highlights of the Single Audit Process" which is available on the internet at <http://www.dot.gov/ost/m60/grant/sincontact.htm>. Additional information on single audits is available from the Federal Audit Clearinghouse at <http://harvester.census.gov/sac/>.

### **15. Enforcement**

In accordance with 43 CFR 12.83 or 43 CFR 12.962, as applicable, if the recipient materially fails to comply with any term of this agreement, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, Reclamation may take one or more of the following actions as appropriate:

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or subrecipient or more severe enforcement action by the awarding agency;

- (2) Disallow (deny both use of funds and any matching credit for) all or part of the cost of the activity or action not in compliance;
- (3) Wholly or partly suspend or terminate the current award for the recipient's or subrecipient's program;
- (4) Withhold further awards for the program; or
- (5) Take other remedies that may be legally available.

## **16. Termination**

In accordance with 43 CFR 12.84 or 43 CFR 12.961, as applicable, and except as provided for in the provision entitled, "Enforcement," this agreement may be terminated in whole or part only as follows:

- (1) By the awarding agency with the consent of the recipient or subrecipient in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
- (2) By the recipient or subrecipient upon written notification to Reclamation, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either the Provision entitled "Enforcement" or paragraph (1) of this Provision.

## **17. Preaward Incurrence of Costs**

The Recipient shall be entitled to have incurred costs for this agreement, in a total amount not to exceed \$0.00, for allowable costs incurred on or after [insert date], which if had been incurred after execution of this [agreement OR modification], would have been allowable under the provisions of the agreement.

## **18. Preaward Incurrence of Costs - Cost Sharing or Matching Agreements**

The Recipient shall be entitled to have incurred costs for this agreement, in a total amount not to exceed \$0.00, for allowable costs incurred on or after [insert date], which if had been incurred after execution of this [agreement OR modification], would have been allowable under the provisions of the agreement.

In accordance with the cost sharing or matching requirements of this agreement, the recipient is eligible to receive reimbursement for a portion of these total allowable costs in an amount not to exceed \$0.00.

Reimbursement of these costs shall subject to the funding limitations stated in the Provision entitled "Reimbursable Costs and Limitations."

## **19. Patents and Inventions**

The administrative standards set forth in OMB Circular A-102 and OMB Circular A-110, as implemented by 43 CFR 12.936(b), require recipients of agreements which support experimental, developmental, or research work to be subject to applicable regulations governing patents and inventions, including the government-wide regulations issued by the Department of Commerce at 37 CFR 401, "Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements." These regulations do not apply to any agreement made primarily for educational purposes.

In accordance with 37 CFR 401.3(a), the provision at 37 CFR 401.14(a), with authorized modifications for the Bureau of Reclamation, is hereby included in this agreement:

## Patent Rights

### (a) Definitions

- (1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
- (2) "Subject invention" means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of agreement performance.
- (3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
- (4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- (5) "Small Business Firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this provision, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
- (6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

### (b) Allocation of Principal Rights

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to this provision and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

### (c) Invention Disclosure, Election of Title and Filing of Patent Application by Recipient

- (1) The Recipient will disclose each subject invention to the Bureau of Reclamation within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the Bureau of Reclamation shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Bureau of Reclamation, the Recipient will promptly notify the Bureau of Reclamation of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.
- (2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying the Bureau of Reclamation within two years of disclosure to the Bureau of Reclamation. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Bureau of Reclamation to a date that is no more than 60 days prior to the end of the statutory period.
- (3) The Recipient will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding

initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the Bureau of Reclamation, be granted.

(d) Conditions When the Government May Obtain Title

The Recipient will convey to the Bureau of Reclamation, upon written request, title to any subject invention—

(1) If the Recipient fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the Bureau of Reclamation may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.

(2) In those countries in which the Recipient fails to file patent applications within the times specified in (c) above; provided, however, that if the Recipient has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the Bureau of Reclamation, the Recipient shall continue to retain title in that country.

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Recipient and Protection of the Recipient Right to File

(1) The Recipient will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in (c), above. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of the Bureau of Reclamation except when transferred to the successor of that party of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by the Bureau of Reclamation to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and Bureau of Reclamation licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Bureau of Reclamation to the extent the Recipient, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Bureau of Reclamation will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed thirty days (or such other time as may be authorized by the Bureau of Reclamation for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and Bureau of Reclamation regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Recipient Action to Protect the Government's Interest

(1) The Recipient agrees to execute or to have executed and promptly deliver to the Bureau of Reclamation all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Recipient elects to retain title, and (ii) convey title to the Bureau of Reclamation when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under agreement in order that the Recipient can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The Recipient shall

instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify the Bureau of Reclamation of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the agreement) awarded by (identify the Federal agency). The government has certain rights in the invention."

(g) Subcontracts

The Recipient will include this provision, suitably modified to identify the parties, in all subagreements or subcontracts, regardless of tier, for experimental, developmental or research work. The subrecipient or subcontractor will retain all rights provided for the Recipient in this provision, and the Recipient will not, as part of the consideration for awarding the subagreement or subcontract, obtain rights in the subrecipient's or subcontractor's subject inventions.

(h) Reporting on Utilization of Subject Inventions

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as the Bureau of Reclamation may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the Bureau of Reclamation in connection with any march-in proceeding undertaken by the Bureau of Reclamation in accordance with paragraph (j) of this provision. As required by 35 U.S.C. 202(c)(5), the Bureau of Reclamation agrees it will not disclose such information to persons outside the government without permission of the Recipient.

(i) Preference for United States Industry

Notwithstanding any other part of this provision, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Bureau of Reclamation upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

The Recipient agrees that with respect to any subject invention in which it has acquired title, the Bureau of Reclamation has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the Bureau of Reclamation to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Recipient, assignee, or exclusive licensee refuses such a request the Bureau of Reclamation has the right to grant such a license itself if the Bureau of Reclamation determines that:

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee or their licensees;

- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for Agreements with Nonprofit Organizations

If the Recipient is a nonprofit organization, it agrees that:

- (1) Rights to a subject invention in the United States may not be assigned without the approval of the Bureau of Reclamation, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;
- (2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the Bureau of Reclamation deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
- (3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
- (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Bureau of Reclamation may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures, or practices with the Bureau of Reclamation when this review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communication

Communications regarding matters relating to this provision shall be directed to the Deputy Associate Solicitor, Branch of Procurements and Patents, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240.

## 20. Copyrights

(1) For recipients subject to the administrative standards set forth in OMB Circular A-110, the following copyright provision, as implemented by 43 CFR 12.936(a), shall apply:

“The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.”

(2) For recipients subject to the administrative standards set forth in OMB Circular A-102 and the Grants Management Common Rule, the following copyright provision, as implemented by 43 CFR 12.74, shall apply:

“The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

- (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
- (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.”

## **21. Rights to Data**

For recipients subject to the administrative standards set forth in OMB Circular A-110, the following provision, as implemented by 43 CFR 12.936(c), shall apply:

“The Federal Government has the right to:

- (1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and
- (2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.”

### **III. General Provisions (December 2003)**

#### **1. Regulations and Guidance**

The regulations at 43 CFR, Part 12, Subparts A, C, E, and F, are hereby incorporated by reference as though set forth in full text. The following Office of Management and Budget (OMB) Circulars, as applicable, and as implemented by 43 CFR Part 12, are also incorporated by reference and made a part of this agreement. Failure of a recipient to comply with any provision may be the basis for withholding payments for proper charges made by the recipient and for termination of support. Copies of OMB Circulars are available on the Internet at [http://www.whitehouse.gov/omb/grants/grants\\_circulars.html](http://www.whitehouse.gov/omb/grants/grants_circulars.html). The implementation of the circulars at 43 CFR Part 12 is available at [http://www.access.gpo.gov/nara/cfr/cfr\\_table\\_search.html#page1](http://www.access.gpo.gov/nara/cfr/cfr_table_search.html#page1).

a. Agreements with colleges and universities shall be in accordance with the following circulars:

Circular A-21, revised August 8, 2000, "Cost Principles for Educational Institutions"

Circular A-110, as amended September 30, 1999, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"

Circular A-133, revised June 27, 2003, "Audits of States, Local Governments, and Non-Profit Organizations"

b. Agreements with State and local governments shall be in accordance with the provisions of the following circulars:

Circular A-87, as amended August 29, 1997, "Cost Principles for State, Local, and Indian Tribal Governments"

Circular A-102, as amended August 29, 1997, "Grants and Cooperative Agreements with State and Local Governments" (Grants Management Common Rule, Codification by Department of Interior, 43 CFR 12)

Circular A-133, revised June 27, 2003, "Audits of States, Local Governments, and Non-Profit Organizations"

c. Agreements made with nonprofit organizations shall be in accordance with the following circulars and provisions:

Circular A-110, as amended September 30, 1999, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"

Circular A-122, revised May 19, 1998, "Cost Principles for Non-Profit Organizations"

Circular A-133, revised June 27, 2003, "Audits of States, Local Governments, and Non-Profit Organizations"

d. All agreements with organizations other than those indicated above shall be in accordance with the basic principles of OMB Circular A-110, and cost principles shall be in accordance with 48 CFR Subpart 31.2 titled "Contracts with Commercial Organizations" which is available on the Internet at [http://www.access.gpo.gov/nara/cfr/cfr\\_table\\_search.html#page1](http://www.access.gpo.gov/nara/cfr/cfr_table_search.html#page1).

#### **2. Debarment and Suspension**

The Department of the Interior regulations at 43 CFR 42—Governmentwide Debarment and Suspension (Nonprocurement), which adopt the common rule for the governmentwide system of debarment and suspension for nonprocurement activities, are hereby incorporated by reference and made a part of this agreement. By entering into this grant or cooperative agreement with the Bureau of Reclamation, the recipient agrees to comply with 43 CFR 42,

Subpart C, and agrees to include a similar term or condition in all lower-tier covered transactions. These regulations are available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_43/43cfr42\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_43/43cfr42_00.html) .

### **3. Drug-Free Workplace**

The Department of the Interior regulations at 43 CFR 43—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), which adopt the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq, as amended) applicable to grants and cooperative agreements, are hereby incorporated by reference and made a part of this agreement. By entering into this grant or cooperative agreement with the Bureau of Reclamation, the recipient agrees to comply with 43 CFR 43, Subpart B, if the recipient is not an individual, or with 43 CFR 43, Subpart C, if the recipient is an individual. These regulations are available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_43/43cfr43\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_43/43cfr43_00.html) .

### **4. Assurances Incorporated by Reference**

a. The provisions of the Assurances, SF 424B or SF 424D as applicable, executed by the Recipient in connection with this agreement shall apply with full force and effect to this agreement as if fully set forth in these General Provisions. Such Assurances include, but are not limited to, the promise to comply with all applicable Federal statutes and orders relating to nondiscrimination in employment, assistance, and housing; the Hatch Act; Federal wage and hour laws and regulations and work place safety standards; Federal environmental laws and regulations and the Endangered Species Act; and Federal protection of rivers and waterways and historic and archeological preservation.

b. When required by 43 CFR 18—New Restrictions on Lobbying, recipients shall complete a Certification Regarding Lobbying form. This certification is incorporated by reference and made a part of this agreement. These regulations are available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_43/43cfr18\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_43/43cfr18_00.html) .

### **5. Covenant Against Contingent Fees**

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

### **6. Contracting with Small and Minority Firms, and Women's Business Enterprises**

It is a national policy to award a fair share of contracts to small and minority business firms. The Department of the Interior is strongly committed to the objectives of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness.

a. The grantee and subgrantee shall take all necessary affirmative steps to assure that minority firms, and women's business enterprises are used when possible.

b. Affirmative steps shall include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- (5) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce as appropriate, and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in b.(1) through (5) above.

## **7. Notice Regarding Buy American Act**

In accordance with the annual Energy and Water Development Appropriations Act, please be advised that it is and has been the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made. This provision shall remain in effect unless revoked by a future specific act of Congress.

## **8. Resolving Disagreements**

When entering into a cooperative agreement with a recipient, Reclamation commits itself to working with the recipient in a harmonious manner to achieve the objectives of the project successfully. When disagreements arise between the parties, they must be resolved according to the procedures discussed below:

- a. Reclamation shall attempt first to resolve disagreements with the recipient through informal discussion among the Grants or Contract Specialist, the Program Officer, and the recipient's Project Director.
- b. If the disagreement cannot be resolved through informal discussion between these parties, the Grants Specialist and the Program Officer shall document the nature of the disagreement and bring it to the attention of the Grants Officer.
- c. After reviewing the facts of the disagreement, as presented by the Grants and Program Offices, the Grants Officer will arrange a formal meeting. If agreement still cannot be reached, the parties will collectively decide on any varied approaches which might be used to resolve the disagreement. The parties shall be responsible for their individual expenses related to any approach utilized to resolve the disagreement. If attempts at resolving the disagreement fail, the Chief, Acquisition and Assistance Management Services, or the Regional Director, whichever is applicable, shall make a decision which shall be final and conclusive.
- d. Nothing herein shall be construed to delay or limit Reclamation's right to take immediate and appropriate action, as set forth at 43 CFR Subpart 12.83 or 12.962, as applicable, in the event of material noncompliance by the recipient, and no attempts at informal resolution shall be necessary.

Any post award issue will be open for resolution in accordance with the above procedures, with the exception of disagreements regarding continuation of the agreement (termination must be in accordance with 43 CFR 12), or other matters specifically addressed by the agreement itself.

## **9. Lobbying Restrictions**

In accordance with the annual Energy and Water Development Appropriations Act, please be advised that it is and has been the sense of Congress that none of the funds appropriated by this Act may be used in any way, directly or indirectly, to influence Congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This provision shall remain in effect unless revoked by a future specific act of Congress.

## **10. Electronic Funds Transfer (EFT)**

In accordance with the Debt Collection Improvement Act of 1996, 31 CFR 208, effective January 2, 1999, all Federal payments to recipients must be made by EFT unless a waiver has been granted in accordance with 31 CFR 208.4. Upon award of a financial assistance agreement, Reclamation will provide the recipient with further instructions for implementation of EFT payments or a certification form to request exemption from EFT.

## **11. Endorsement of Commercial Products and Services**

In accordance with 43 CFR 12.2(d), this provision applies to grants and cooperative agreements whose principal purpose is a partnership where the recipient contributes resources to promote agency programs, publicize agency activities, assists in fund-raising, or provides assistance to the agency. If the agreement is awarded to a recipient, other than a State government, a local government, or a federally-recognized Indian tribal government, and the agreement authorizes joint dissemination of information and promotion of activities being supported, the following provision shall be made a term and condition of the award:

Recipient shall not publicize or otherwise circulate, promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts or other publications) which states or implies governmental, Departmental, bureau, or government employee endorsement of a product, service or position which the recipient represents. No release of information relating to this award may state or imply that the Government approves of the recipient's work products, or considers the recipient's work product to be superior to other products or services.

All information submitted for publication or other public releases of information regarding this project shall carry the following disclaimer:

“The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government.”

Recipient must obtain prior Government approval for any public information releases concerning this award which refer to the Department of the Interior or any bureau or employee (by name or title). The specific text, layout photographs, etc. of the proposed release must be submitted with the request for approval.

A recipient further agrees to include this provision in a subaward to any subrecipient, except for a subaward to a State government, a local government, or to a federally-recognized Indian tribal government.