
State of Wyoming



Wyoming Energy Conservation Improvement Program

For State Agencies, County & Municipal Governments,
Higher Education Facilities, Public School Districts,
Hospitals, and other Public Entities

PROGRAM MANUAL Appendix 1E

WYECIP CONTRACT ATTACHMENT A GENERAL CONDITIONS

APPENDIX 1E – WYECIP CONTRACT ATTACHMENT A

Attachment A WYECIP Contract General Conditions

The following General Conditions apply to this Contract:

- A. Applicable Law/Venue.** The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties.
- B. Assignment/Contract Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Facility Owner.
- C. Assumption of Risk.** The Contractor shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Contractor's failure to comply with state or federal requirements. The Facility Owner shall notify the Contractor of any state or federal determination of noncompliance.
- D. Audit/Access to Records.** The Facility Owner and any of its representatives shall have access to any books, documents, papers, and records of the Contractor that are pertinent to this Contract. Where an independent audit is required, The Contractor shall, immediately upon receiving written instruction from the Facility Owner, provide to any independent auditor, accountant, or accounting firm, all books, documents, papers and records of the Contractor that are pertinent to this Contract. The Contractor shall cooperate fully with any such independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by the Facility Owner.
- E. Availability of Funds.** Each payment obligation of the Facility Owner is conditioned upon the availability of government funds that are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Contractor, the Contract may be terminated by the Facility Owner at the end of the period for which the funds are available. The Facility Owner shall notify the Contractor at the earliest possible time of the services that will or may be affected by a shortage of funds. No penalty shall accrue to the Facility Owner in the event this provision is exercised, and the Facility Owner shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Facility Owner to terminate this Contract to acquire similar services from another party.
- F. Award of Related Contracts.** The Facility Owner may undertake or award supplemental or successor contracts for work related to this Contract. The Contractor shall cooperate fully with other contractors and the Facility Owner in all such cases.
- G. Compliance with Laws.** The Contractor shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract.
- H. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Contractor in the performance of

this Contract shall be kept confidential by the Contractor unless written permission is granted by the Facility Owner for its release.

- I. Conflicts of Interest.** Contractor shall not engage in providing consultation or representation of clients, agencies or firms that may constitute a conflict of interest that results in a disadvantage to the Facility Owner or a disclosure which would adversely affect the interests of the Facility Owner. Contractor shall notify the Facility Owner of any potential or actual conflicts of interest arising during the course of the Contractor's performance under this Contract. This Contract may be terminated in the event a conflict of interest arises. Termination of the Contract will be subject to a mutual settlement of accounts. In the event the Contract is terminated under this provision, the Contractor shall take steps to insure that the file, evidence, evaluation and date are provided to the Facility Owner or its designee. This does not prohibit or affect the Contractor's ability to engage in consultations, evaluations or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.
- J. Ethics.** Contractor shall comply with any and all ethical standards governing Contractor's profession, and any applicable statutes, rules, regulations or standards governing contracting with a state agency.
- K. Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by the Facility Owner, and shall be effective only after it is reduced to writing and executed by all parties to this Contract. Any agreement to extend the term of this Contract shall include, but not necessarily be limited to: an unambiguous identification of the Contract being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and, if the duties of either party will be different during the extension than they were under the original Contract, a detailed description of those duties.
- L. Federal Requirements and Reports.** Contractor agrees to comply with all applicable federal requirements governing payments made from a federal grant, including, but not limited to, 24 C.F.R. 85 Office of Management and Budget (OMB) Circular A-87 cost Principles for State and Local Governments (or other applicable OMB cost circulars), OMB Circular A-133 Audits of State and Local Governments, and 31 U.S.C. 7501-7 Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996. Contractor further agrees to provide Facility Owner with a copy of its annual audit report in accordance with the provisions of the Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996, and OMB Circular A-133.
- M. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the non-performing party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the non-performing party.
- N. Indemnification.** The Contractor shall indemnify, defend and hold harmless the Facility Owner, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Contractor's failure to perform any of Contractor's duties and

obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Contractor's malpractice.

- O. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract, and shall not be considered an employee of the State of Wyoming nor of the Facility Owner for any purpose. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents and/or employees to act as an agent or representative for or on behalf of the Facility Owner, or to incur any obligation of any kind on the behalf of the Facility Owner. The Contractor agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to Facility Owner employees will inure to the benefit of the Contractor or the Contractor's agents and/or employees as a result of this Contract.
- P. Kickbacks.** The Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Contractor breaches or violates this warranty, the Council may, at its discretion, terminate this Contract without liability to the Council, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.
- Q. Monitor Activities.** The Facility Owner shall have the right to monitor all Contract related activities of the Contractor and all subcontractors. This shall include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress, and to observe all Contractor personnel in every phase of performance of Contract related work.
- R. No Finder's Fees.** No finder's fee, employment agency fee, or other such fee related to the procurement of this Contract shall be paid by either party.
- S. Nondiscrimination.** The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 et seq.), the Americans With Disabilities Act (ADA), 42 U.S.C. 12101, et seq., and the Age Discrimination Act of 1975. The Contractor shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin or disability in connection with the performance of this Contract. The Contractor shall include the provisions of this section in every subcontract awarded over Ten Thousand Dollars (\$10,000.00) so that such provisions are binding on each subcontractor.
- T. Notice and Approval of Proposed Sale or Transfer of the Contractor.** The Contractor shall provide the Facility Owner with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notice provision of this Contract.
- U. Ownership of Documents/Work Product/Materials.** All documents, reports, records, field notes, data, samples, specimens, and materials of any kind resulting from performance of this Contract are at all times the property of the Facility Owner.
- V. Patent or Copyright Protection.** The Contractor recognizes that certain proprietary matters or techniques maybe subject to patent, trademark, copyright, license or other similar restrictions, and warrants that not work performed by the Contractor or its subcontractors will violate any such

restriction. The Contractor shall defend and indemnify the Facility Owner for any violation or alleged violation of such patent, trademark, copyright, license or other restrictions.

- W. Publicity.** Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, shall identify the Council as the sponsoring agency and shall not be released without prior written approval from the Facility Owner.
- X. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- Y. Suspension and Debarment, Voluntary Exclusion.** By signing this Contract, Contractor certifies that it is not suspended, debarred, or voluntarily excluded from Federal financial or nonfinancial assistance, nor are any of the participants involved in the execution of this Contract suspended, debarred, or voluntarily excluded. Further, Contractor agrees to notify Facility Owner by certified mail should Contractor or any of its agents become debarred, suspended, or voluntarily excluded during the term of this Contract.
- Z. Taxes.** The Contractor shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.
- AA. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.
- BB. Time is of the Essence.** Time is of the essence in all provisions of this Contract.
- CC. Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not be used to construe the language in this Contract.
- DD. Waiver.** No term or condition of this Contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties.