

# U.S. Department of the Interior

## Orphaned Well Program

### *Compiled Questions & Answers*

*Initial State Grant Training Sessions Held April 22 and 27, 2022*

- 1. Who is the Agreement Officer(s) and how do I contact them?**
  - The Agreement Officer oversees the terms and award of the grant through GrantSolutions and related government systems. This individual is assigned by the Interior Business Center (IBC) and works closely with the Office of Environmental Policy and Compliance (OEPC).
  - Matt Reichert is the Primary Agreement Officer; King Nwoha is the Backup Agreement Officer.
- 2. What charges may be reimbursed that occurred prior to the effective date of award?**
  - The same eligible use of funds applies to pre-award activities as to post-award activities, as does the 10% limit on administrative costs for the Large-Scale Initial Grant. Expenses incurred between the award date and the effective date of the grant may subsequently be reimbursed.
- 3. Can the \$5M Initial grants be obligated over a longer time period than 12 months?**
  - No. The 12-month period of performance applies to the Small-Scale Initial Grant, as well. All funds must be obligated within 12 months of the date of receipt of funds.
- 4. If I sell scrap material, such as used metal, what do I do with the proceeds?**
  - Proceeds from such sales may be retained and used as permitted by State law, 2 CFR 200.307, and the terms and conditions of the grant agreement.
- 5. If I somehow make use of relic material at the job site, e.g., steel pipe, but do not “buy” that material with BIL funding, do I have to make a BABA determination?**
  - A BABA determination is not required for the reuse of materials recovered from the plugging, remediation, and reclamation of an orphaned well site.
- 6. Where can I find your methane measurement guidance?**
  - The Methane Measurement Guidance consists of two documents, a narrative description (click the hyperlink at the end of the second paragraph) and a data reporting spreadsheet (see the third link under State Orphaned Well Grants/Initial Grants). These are available on the program website at: Legacy Pollution Remediation & Reclamation
- 7. What if I want to use an area university to measure methane on our behalf, via either grant or contract? Is that an allowable expense?**
  - Yes, as long as the university follows all of the requirements specified in the grant, including Davis-Bacon Act and Buy American provisions (see related discussions and links below), as those apply to the specific activities.

- 8. Can an expenditure occur 12 months or more past the effective date of the grant? If so, will the grant’s period of performance need to be extended by the Agreement Officer?**
- An expenditure can occur after the 12-month obligation window has closed. The Period of Performance (POP) for the grant is not the same as the POP for an individual contract or agreement entered by the State with another party. The grant POP is limited by statute to 12 months, beginning on the Effective Date, and all Initial State Grant funds must be obligated within that period. Spend down on contracts and agreements, however, may continue beyond the end of the grant’s POP as work is performed and invoiced over the life of the contract’s POP. The BIL limits the time period for obligation of grant funds, not for the execution of work and payment of invoices.
- 9. Can an SF-425 distinguish between an obligation and an expenditure?**
- Yes, the SF-425 makes this distinction (see fields 10d through 10h). Additionally, obligations and contracting efforts will be part of the quarterly performance reports.
- 10. Will there be separate training for the Small-Scale Initial Grant?**
- No. Many of the requirements for the Large-Scale Initial Grant also apply to the Small-Scale Initial Grant if funds will be used for plugging and abandonment (plugging, remediation, or restoration). Two notable differences between the Small-Scale and Large-Scale grants are that the Small-Scale Grant has no statutory deadline for application submittal and has different language in its certification.
- 11. What is the maximum amount of time a State can request an extension on the receipt of funding?**
- The maximum time period between the award date and the effective date is 90 days. That is considered a reasonable timeframe for the State to begin obligating funds, starting the drawdown of the grants, and beginning the grant period of performance.
- 12. Regarding the Small-Scale Grant, would hiring personnel to stand up and implement a well plugging program for the duration of the program (i.e., outside of the 12-month timeframe constitute “obligation” of the funds?**
- The Initial State Grant guidance defines “Unobligated amounts” as “any funding that is not subject to a definite commitment that creates a legal liability of the State for an immediate or future payment for goods or services ordered or received, including by contract or sub-contract award.” In most cases, however, personnel costs will be expended pay period by pay period and will not constitute an obligation beyond the 12-month obligation window of the Initial State Grant.
- 13. 2CFR200.308(e) says you must have prior approval from Federal awarding agency for expenses incurred pre-award. Who is the contact person for this request?**
- The point-of-contact for pre-award approvals will be the Agreement Officer.

**14. In the Initial Guidance under C. Recommended Elements, items (page 9), is the indirect cost rate statement to be made regarding just the State's use of administration costs? Or does this apply to any hired contractors as well?**

- The Agreement Officer will review the administrative costs and indirect costs in the budget proposal. States will need to declare if they are using their Negotiated Indirect Cost Rate Agreement or the De Minimis Rate as allowed by the Statute, if applicable. This is the rate that you will apply to the correct base in your budget proposal and reviewed under 2 CFR § 200.414. Indirect rates that are contained within contracts are evaluated separately.

**15. When using money from a large initial grant, how does a state acknowledge an amendment to an existing contract when using federal funds to fund a State's existing contract?**

- Your State's acquisition group would provide an amendment to the existing contract for the Federally funded work or show that the work the Federal funding will cover. The State will have to discuss this with your contracting officers and submit it in the proposal for review, as long as you can keep the funding in compliance with the 2 CFR 200.

**16. What does it mean to obligate the funds? Is it when the contracts are awarded or when the invoices are generated? Are grant funds obligated at the time of well plugging contract creation or encumbrance of estimated cost?**

- The obligation of funds is a definite commitment that creates a legal liability for the State for an immediate or future payment for goods or services. For contracting, the obligation is effective on the date both parties have accepted the terms, normally by dated signature. An encumbrance of estimated costs is a term of art that may or may not meet this definition and would need to be further evaluated.

**17. Some tubulars and equipment are used by contractors that is not new, rather reconditioned and I assume that would not necessarily be subject to buy American, since it is locally sourced, reconditioned equipment, and intended to be cost savings?**

- Re-used material that the State did not "buy" with BIL funding is not subject to "Buy American" requirements. Additional Buy American guidance is available here: Build America, Buy America Act.

**18. If you have to turn in the 90-day certification with the application, but things fall through and you can't get contacts signed in 90-days, what happens?**

- The Department of the Interior would request a corrective action plan from the State before terminating the grant, but grant termination is a possible outcome of this process.

**19. Is a conflict-of-interest disclosure to be submitted with the application? Is the requirement just for the applicants or is it required of contractors?**

Attachment C applies to the grant recipient. However, certain provisions, such as Conflict of Interest, may apply to contractors and subcontractors as well (note Conflict-of-Interest Disclosures, "...including subrecipient and contractor personnel...")

Per the Financial Assistance Interior Regulation (FAIR), 2 CFR §1402.112, applicants must state in their application if any actual or potential conflict of interest exists at the time of submission.

Applicability.

- i. This regulation intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
- ii. In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict-of-interest provisions in 2 CFR 200.318 apply.

Notification.

- i. Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112.
- ii. Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.

Restrictions on lobbying.

Non-Federal entities are strictly prohibited from using funds under a grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR part 18 and 31 U.S.C. 1352.

Review procedures.

The Financial Assistance Officer will examine each conflict-of-interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.

Enforcement.

Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the award.

**20. What administrative expenditures prior to the award date are eligible for reimbursement?**

- None. Cost reimbursement may be approved for costs incurred between the award date and the effective date, but not prior to the award date.

**21. Are we held to the budget submitted with applications? Can we deviate afterwards? What is the process?**

- If the budget needs to be revised, it will follow the 2 CFR 200.308 Revision of Budget and Program Plans.
- 22. Is there a template for the work schedule that is included in the recommended items in the application?**
- No, a template has not been provided for the work schedule.
- 23. Davis-Bacon Act says it is for the purpose of construction, what activities are considered construction under the Davis-Bacon Act?**
- The Davis-Bacon Act does apply to many of the activities involved with the plugging of orphaned wells, and the remediation and reclamation of well sites. These include such activities as well drilling (other than exploratory drilling for planning purposes), the dismantling of above-ground equipment, substantial earth moving, and the rearrangement of terrain. See the Department of Labor Field Operations Handbook, Chapter 15, Section 15d05, at: Davis Bacon Act Information.
- 24. With a small initial grant, if we hire a team member to work on implementation for the next four years, will the personnel cost for that four-year period be considered to have been obligated at the 12-month mark?**
- No. Payroll obligations beyond 12 months with an Initial grant would not be allowable. Expenditures, rather than obligations, against a professional services contract beyond 12 months would be allowable. A scenario may be possible where State employees incur payroll obligations against Initial grants of up to 12 months, and then incur payroll obligations of up to five years against a Formula grant. But in that scenario, the employee's fund source would have to change before the 12-month mark.
- 25. What is the process for committing federal funds to an existing contract?**
- Contact the Contracting Officer that executed the contract for the State and your Financial Management staff.
- 26. DOI has said NEPA does not apply to work on state and private lands, still true?**
- NEPA does not apply to the Initial State Grants because of the time limitations imposed the statute, and because they are non-discretionary approvals of a program of work, rather than site-specific project approvals.
- 27. Will DOI seek to recover costs for plugging orphan wells from responsible parties?**
- Cost recovery is to be sought by the entity with authority over the well (State for State and private wells; Federal for Federal wells; Tribal for Tribal wells).
- 28. Would field inspector time and time managing the program be considered the administrative costs?**
- Please see "Administrative costs" definition in Initial State Grant guidance section II.
- 29. What's the difference between the 90-day deadline to enter into contracts/grants funds and one year deadline to obligate funds?**
- The Statute establishes a deadline for "using" 90% of funds within 90 days of the Effective Date. "Using" is understood to mean that an obligation has been incurred. A separate deadline is established by the BIL stating that funds that are

not obligated within 12 months from the Effective Date (date of receipt of funds), must be returned to the Department.

**30. When is staff time programmatic and when is it administrative?**

- Please see “Administrative costs” definition in Initial State Grant guidance section II.

**31. How are we to report obligations since the FRR form only reports expenditures?**

- Report all cash disbursements, expenditures, and unliquidated obligations on the SF-425 for the project. All definite obligations and contracts/agreements entered into should be reported on the technical report once they are executed.

**32. Who do I contact with questions about ASAP and SAM?**

- Contact the Orphan Wells Program shared mailbox during the application period and once you are assigned an Agreement Specialist or Officer for Agreement execution you can contact them.

**33. We award contract and control agency reviews it. Do you consider the contract issued when we award the contract or when the secondary agency approves it?**

- This question appears to be very specific to a particular internal process. When does the State consider the funding to be legally committed? That would constitute an obligation for purposes of the grant.

**34. If a State provides grants to universities/other agencies to research orphan wells, monitor methane emissions, or conduct reclamation, would that be considered “obligated funds” for purposes of the initial grant?**

- Yes. An awarded grant is a definite legal commitment and, therefore, is an obligation.

**35. The grant’s period of performance start date is the effective date. What is the POP end date for the grant?**

- The BIL establishes a number of deadlines, such as the 90-day timeframe to obligate 90% of funds, the return of funds that remain unobligated 12 months after the effective date, and the 15-month report, among others. However, BIL does not limit the use of the Initial State Grant funds once obligated, other than the expiration of funds on 9/30/2030. Therefore, the end date for the grant POP will be determined by the Agreement Officer based on the proposed schedule submitted by the State, such that the end date of the grant POP will align with the end date of anticipated contract POPs.

**36. Is the 15-month report required by the BIL necessarily a final report for the Initial State Grant?**

- No. The 15-month report must describe the means by which the State used the funds in accordance with its certification. Given that contract expenditures and invoicing may still be ongoing, it is not necessarily a final report for the grant.

**37. Can the Initial State Grant period of performance overlap with the Formula Grant?**

- Yes, the grants can overlap. This may be helpful for maintaining personnel salaries over multiple years.