

**COMMONWEALTH OF VIRGINIA  
VIRGINIA DEPARTMENT OF ENERGY  
ABANDONED MINE LAND ECONOMIC REVITALIZATION PROGRAM  
Beginning With Fiscal Year 2024**

**Terms and Conditions**

After entering into either a Project Development Agreement or a Construction Stage Contract, Subrecipients participating in the Abandoned Mine Land Economic Revitalization Program (“AMLER”) must follow the terms and conditions set forth below. This program is administered by the Virginia Department of Energy (“Virginia Energy”).

**A. Reimbursement**

1. Reimbursement under an AMLER award is typically provided for:
  - a. work performed;
  - b. equipment purchased, and
  - c. costs incurred by the grant recipient or subrecipient.
2. Subrecipients will submit electronic application for payment requests through Virginia Energy’s eForms web portal within 30 calendar days from receipt of an invoice by a contractor, consultant, vendor, or other entity for project-related expenses.
3. Payment requests must include appropriate supporting documentation (e.g. invoices from a contractor, consultant, or vendor) with sufficient detail or description to ensure the costs were incurred, the costs are allowable under the AMLER award.
4. Virginia Energy will remit payment for allowable expenses to the Subrecipient within 30 calendar days of the final approval date for the payment request. Subrecipients must remit payment to contractors, consultants, vendors, etc. within seven calendar days of receiving payment from Virginia Energy.

**B. Project Administration**

1. Subrecipients must follow the Virginia Public Procurement Act (VPPA) and Title 2 of the Code of Federal Regulations in obtaining goods or services and document such compliance.
2. Subrecipients must ensure compliance with requirements for bid bonding, performance bonding, and payment bonding as outlined in the VPPA.
3. Subrecipients may coordinate with a Virginia Energy procurement officer for guidance in following the VPPA and inclusion of small business, women and minority owned businesses (SWaM) in the procurement process.

4. Project applications must ensure that AMLER soft cost or overhead expenditures do not exceed 10% of the total AMLER funding request. Deviations from this rule will be considered only if sufficient justification is provided. Soft costs or overhead include project management, project development costs such as professional services for engineering, architectural design, environmental studies, and permits as well as inspections and other services during construction.
5. Subrecipients, their project partner entities, and any contractors must submit a completed federal Applicant Violator System (AVS) form (OMB #1029-0119) upon request to Virginia Energy including during vetting and prior to the execution of any agreements or contracts. Those parties must notify Virginia Energy when any relevant changes to their organizational structure are made by submitting an updated AVS form. Violations recorded in the system will exclude an entity from receiving AMLER funds until the violations are resolved, or the offender is no longer in an ownership or decision-making role with the entity.
6. Construction activities and the purchase of equipment cannot begin until the project plans are accepted by Virginia Energy and any applicable environmental or other regulatory permits or approvals have been obtained. Following such approvals, a contract will be executed between Virginia Energy and the Subrecipient for the project and an Authorization to Proceed (ATP) will be issued by Virginia Energy.
7. Real estate purchases must receive prior approval by Virginia Energy following issuance of an ATP. Virginia Energy will complete an appraisal and appraisal review of the property to be purchased in accordance with government auditing (Yellow Book) standards.
8. Virginia Energy will withhold 5% retainage on all payments except for soft costs and equipment purchased directly by the Subrecipient. Retainage should be reflected on the documentation submitted as part of the corresponding payment request.
9. All contracts over the small purchase threshold (\$100,000) must include administrative, contractual, or legal remedies for contractors who violate contract terms, and provide appropriate sanctions and penalties.
10. All contracts over \$10,000 must include provisions that allow termination of the contract for cause or for convenience. They must include notice of termination procedures.
11. Virginia Energy reserves the right to request additional information or impose additional conditions in the future.

12. AMLER funds cannot be used to reimburse travel expenses without prior permission.
13. Virginia Energy reserves the right to seek repayment of misused AMLER funds.
14. Recipients of State funding used for the purpose of purchasing or improving Real Property in whole or in part as defined in 2 CFR 200.1 shall consult Virginia Energy with regard to Virginia's security interest and the conditions for use and disposition. Virginia Energy should be consulted regarding any change in authorized purpose for the property and before pursuing property disposition for instructions from Virginia Energy and the terms of security interest release as applicable.
15. Equipment purchases using AMLER funds must receive prior approval by Virginia Energy. All equipment purchased with a per unit value greater than \$10,000 or having a useful life in excess of one year, will follow all reporting applicable requirements until disposition.
16. Virginia Energy reserves the right to maintain in its possession, use, or distribute at its sole discretion, any documents, plans, or other intellectual property produced in conjunction with AMLER funds for the purpose of successfully executing this or other projects. Furthermore, subrecipients must abide by CFR Title 37 Chapter IV Part 401 in reference to copyrights, rights in data, and patent rights for any discovery or invention which arises or is developed under the grant.
17. Subrecipients and their project partners must plan to proceed with project development and construction in a timely manner until complete. Virginia Energy will coordinate with Subrecipients to establish a reasonable timeline and expectations for project milestones.

### **C. Obligations of the Subrecipient**

Subrecipients must:

1. Prepare and provide to Virginia Energy the following project documents:
  - a. Scope of Work
  - b. Detailed Construction Plan, if applicable to the project
  - c. Categorized detailed Budget

These documents are subject to review and approval by Virginia Energy for inclusion in a project construction phase contract between Virginia Energy and the subrecipient.

2. Provide an explanatory addendum and submit to additional review when significant changes are made from the vetted project proposal that affect project outcomes.

3. Designate a Project Director who shall be knowledgeable of and responsible for project activities and who shall act as the contact between Virginia Energy and Subrecipient.
4. Strictly adhere to the OSMRE AMLER funding objectives outlined in the Guidance for Project Eligibility.
5. Erect a project sign at the project site's most convenient point of public access and in plain view prior to the construction phase and to be maintained for the project duration. The sign must comply with Virginia Energy specifications and display information including the project name and Virginia Energy logo that will be provided to the Subrecipient by Virginia Energy.
6. Maintain on the project site all information required by 4 VAC 25-130-707.12 including a description of the project, the exact location and boundaries of the project and that the Virginia Energy administration of the project is being financed with federal funds through its AMLER Program Grant.
7. Agree to not let the project development phase of the construction phase be idled for a cumulative period exceeding sixty (60) days.
8. Provide to Virginia Energy copies of all procurement documents and addenda the Subrecipient uses in contracting for professional services, the performance of construction work, equipment, materials, and other activities for the project.
9. Afford Virginia Energy personnel notice of and opportunity to attend and participate in all pre-bid and pre-construction conferences and other relevant meetings concerning the project, if any.
10. Provide free and reasonable access by Virginia Energy personnel to the project site for the purpose of conducting inspections.
11. Certify and acknowledge that that no work outside the project boundaries and limits shall be eligible through the AMLER AWARD or covered under the terms of this agreement.
12. Provide proof to Virginia Energy that the Subrecipient shall require its contractors to maintain in full force and effect during the life of the project a public liability insurance policy:
  - a. Worker's Compensation – Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the project shall be in noncompliance.
  2. Employers Liability - \$100,000.

3. Commercial General Liability - \$2,000,000 per occurrence and \$2,000,000 in the aggregate for construction projects or \$1,000,000 per occurrence and \$2,000,000 in the aggregate for non-construction projects. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia shall be added as an additional insured to the policy by an endorsement. Coverage shall not exclude claims resulting from explosion, collapse or underground damage.
  4. Automobile Liability - \$1,000,000 combined single limit (required only if a motor vehicle not owned by the Commonwealth is to be used in the project). Subrecipient must assure that the required coverage is maintained by the Subrecipient (or third party of such motor vehicle).
13. The Subrecipient shall indemnify, defend and hold harmless Virginia Energy/Commonwealth of Virginia, its agents, officers, employees, and designated representatives from any claims, damages, suits, actions, liabilities and costs of any nature or kind, whether at law or in equity, arising from or caused by performance by the Subrecipient or its agents, whether for design or construction of the project, or from the use of any materials, goods, or equipment of any kind or nature or any service of any kind, provided that such liability is not attributable to the sole negligence of the Virginia Energy.
  14. Neither the Subrecipient, its officers, agents, employees, assignees, whether for design or construction of the project, shall be deemed employees of the Commonwealth of Virginia or of Virginia Energy by virtue of the project, the location of the project, or the AMLER Award.
  15. The Subrecipient shall include in all project Requests for Proposals and Invitation for Bid packages the Virginia Energy supplied Applicant Violator System (AVS) form (OMB #1029-0119). All bidders must submit the completed form with the required project proposal or bid documents. Any subcontractors shall submit the Applicant Violator System (AVS) form documentation prior to the award of the bid(s) to the prime contractor. All contractors for project management, project design, or other contracted services associated with the project shall also submit the Applicant Violator System (AVS) form. Prior to the award of any such contract(s), the form(s) will be submitted to Virginia Energy for the required AVS check to confirm bidder eligibility by the use of the Applicant Violator System. Awards may not be made until the AVS check has been completed. Virginia Energy may direct the rejection of any contractor(s), subcontractor(s), or engineering firm(s) if the AVS review determines the entity, at the time of contract award, is not eligible to receive a permit or conditional permit to conduct surface coal mining operations under the Virginia Coal Surface Mining Reclamation Regulations.
  16. Comply with all laws relating to the wages paid to any individual performing the work of any mechanic, laborer, or worker on the work contracted to be done on this public project.

17. Upon completion of the project, provide Virginia Energy with a copy of “as built” drawings of the project and/or a certificate of completion.
18. The Subrecipient will comply with 48 CFR Part 31, Contract Cost Principles and Procedures. The Subrecipient also is governed by the administrative requirements of 10 CFR 600, Federal Financial Assistance Regulations. Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the OSMRE Award Administrator for guidance. It is the responsibility of the Subrecipient to identify such an inconsistency and bring it to the attention of Virginia Energy. The Subrecipient shall adhere, and require adherence by all vendors, contractors, and subcontractors performing work required by this project, to the federal rules as noted.
19. The Subrecipient shall provide expenditure timeline projections to Virginia Energy upon request.

#### **D. Monthly Reporting**

1. The Subrecipient will provide Virginia Energy with written monthly progress reports by the 15<sup>th</sup> day of each month for the previous month. The report shall include a brief narrative description of all work accomplished, difficulties or delays encountered along with necessary remedial actions(s), a schedule of future work, and jobs created/supported. The report should cover status and projected timelines for activities such as hiring consultants and contractors, development of project plans and EA, construction progress, etc.
2. The Subrecipient will provide Virginia Energy with written annual progress reports by July 31st each year for the period beginning July 1st of the previous year through June 30th of the current year. These reports should describe the current status of each AMLER project, including:
  - a. Economic benefits/performance measures accomplished during the reporting period;
  - b. Expected benefits/outstanding performance measures to be accomplished and timelines for completion;
  - c. Jobs supported and jobs created; and
  - d. The status of any real property purchased for purposes of the AMLER approved activity.
3. Any long-term reporting requirements will be conveyed upon completion of the project.

#### **E. Financial/Compliance Records Availability**

The Subrecipient agrees to retain and provide reasonable access to all books, records, and other documents relative to this project for five (5) years after final payment or until otherwise notified by Virginia Energy, whichever is later. Virginia Energy, its authorized agents, and/or State and Federal auditors shall have full access to and the right to examine.

#### **F. Noncompliance**

Failure of the grant subrecipient to comply with statutes, regulations, codes, or other terms and conditions of the AMLER award may result in Virginia Energy imposing additional conditions. If Virginia Energy determines that noncompliance cannot be remedied by imposing additional conditions, one or more of the following actions may be taken, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency or more severe enforcement action
2. Disallow (that is, deny both use of funds and any applicable 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 AMLER award.
4. Withhold further funding awards for the project or program.
5. Take other remedies that may be legally available.

#### **G. Requirements for Acknowledging AMLER Funding**

4. Subrecipients and their partners are required to acknowledge AMLER funding in their project-related public communications and publications. When scheduling and holding public events related to the project, subrecipients and their partners shall coordinate with Virginia Energy.
5. AMLER funding should be acknowledged in the following products when describing projects or programs funded in whole or in part with AMLER funds:
  - a. press releases, presentations and other public statements;
  - b. other publications, documents, or videos about projects funded by AMLER;
  - c. requests for proposals and bid invitations; and
  - d. and other documents describing projects funded in whole or in part with AMLER money.
6. Acknowledgements should include language similar to the following:

“The AMLER project described in this [publication/press release/production] was supported by the federal Office of Surface

Mining, Reclamation and Enforcement through the Virginia Department of Energy's Abandoned Mine Land Economic Revitalization program"

This should be followed by an acknowledgement of the level of AMLER funding except in requests for proposals, invitations to bid, etc.

## **H. Non-discrimination**

1. During the performance of this project, the Subrecipient agrees as follows:
  - a. The Subrecipient and its Contractors to follow all state and federal non-discrimination laws.
  - b. The Subrecipient and its Contractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or disabilities, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Subrecipient or its Contractor exists. The Subrecipient agrees to, and will require its Contractors to, post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - c. The Subrecipient, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient or its Contractors, will state, and require that its contractors state, that such subrecipient or contractor is an equal opportunity employer.
  - d. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
2. The Subrecipient and its Contractors will include the provisions of the three paragraphs above in every subcontract of any amount and every purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

## **I. Federal Requirements**

Subrecipients must comply and certify compliance with the following federal requirements:

7. The Endangered Species Act;
8. The Build America, Buy America Act;
9. The following federal regulations:
  - a. 2 C.F.R. Part 200 Subpart A (§§ 200.0 – 200.1) – Acronyms and Definitions;



- b. 2 C.F.R. Part 200 Subpart B (§§ 200.100 – 200.113) - General Provisions;
- c. 2 C.F.R. Part 200 Subpart D (§ 200.303) - Post Federal Award Requirements - Internal Controls;
- d. 2 C.F.R. Part 200 Subpart D (§§ 200.331 – 200.333)- Post Federal Award Requirements - Subrecipient Monitoring and Management; and
- e. 2 C.F.R. Part 200 Subpart F (§§ 200.500 – 200.521) - Audit Requirements.