

KENTUCKY
DIVISION OF OIL AND GAS

Federal Infrastructure
Contractors Informational
Meeting

Date: June 1, 2022

Bipartisan Infrastructure Law (BIL)

Three Types of Federal Orphan Plugging Fund Grants Identified as Available.

▶ Initial Grants

- ▶ Funds Must be Committed Within One Year of Receipt, 90% Within 90 Days, and Balance Returned if not Obligated by Required U.S. Department of Interior (DOI) Deadlines.

▶ **Formula Grants:** Based upon a DOI Formula (Well Count, Est. Plug Cost, & Jobs Loss)

- ▶ Each State's Eligibility Amount was Announced by DOI on January 31. A Formal Application will be Required once DOI Formula Grant Guidance is Provided.
- ▶ States Must Return Unobligated Grant Funds Five Years After Receipt.

▶ **Performance Grants (2 Sub-Types)**

- ▶ **Regulatory Improvement Grants:** Based upon 1) State Strengthened Plugging Standards, or 2) State Reduced Future Orphan Well Burdens, Ten Year Look-back Provision.
- ▶ **Matching Grants:** Based Upon Increased Spending of State Plugging Funds.

Bipartisan Infrastructure Law (BIL)

TWO TYPES OF ORPHAN WELL PLUGGING GRANTS NOW PENDING

- ▶ Kentucky Applied for a \$25M Large **Initial Grant** on May 13, 2022.
 - ▶ Expect DOI Approval in Mid-June.
 - ▶ First Project Packages will Come from the Federal Initial Grant Release Once Approved.
- ▶ DOI Announced on January 31 an Estimate of **Formula Grant** Eligibility for Each State.
 - ▶ Kentucky is Eligible to Apply for \$20.46M in Phase 1 Formula Grant, once DOI releases grant application guidance.
 - ▶ In the Future, Kentucky will be Eligible to Apply for the Phase 2 \$58.52M Balance of the Total Formula Grant Allotment.

How Will the Federal Program Be Different

All Bidding Will be Through the Finance & Administration Cabinet Division of Engineering and Contract Administration (DECA)

- ▶ DECA Rules Require Bid Bonds and Performance and Payment Bonds for All Projects.
- ▶ Bidders Must Route All of Their Request for Proposals (RFP) Package Questions through DECA. The Division of Oil and Gas (KDOG) Cannot Field Individual Inquiries by Contractors about Well Sites and RFP's.
- ▶ Contractor Site Visits will be Presented as a PowerPoint PDF Exhibit with a Summary of Each Well included in the Package, Where All Bidders will see the Same Message. Note: Contractors Must Incorporate Unforeseen Risk Considerations into Their Bid Cost Proposals.
- ▶ Only Complete Packages per DECA Requirements will be Accepted.
- ▶ Because of Sheer Well Project Volume, Standard Plugging Instructions by Area will be Utilized.
- ▶ Well Plugging and Tank Facility Cleanup Under the RFP's will Follow Guidelines of the Kentucky Abandoned Storage Tank and Orphan Well (KASTOW) Statutes (KRS 353.561-564).

DOI Standard Award Terms, DBA & BAA Shall Apply

- ▶ DOI “Standard Award Terms and Conditions” will be Required in all Grant Awards, available on the DOI website at: <https://www.doi.gov/grants/doi-standard-terms-and-conditions>
- ▶ For all project work under the BIL, award recipients will be required to comply with the **Davis-Bacon Act (DBA)**.
- ▶ Award recipients will be expected to comply with Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America’s Workers*.
- ▶ Pursuant to the **Buy America Act (BAA)**, none of the funds under a federal award that are part of Federal financial assistance for infrastructure may be obligated for a project unless **all** of the iron, steel, manufactured products, and construction materials purchased in the project are produced in the United States, unless subject to an approved waiver.

DOI Terms, Davis Bacon Act

▶ Davis-Bacon Requirements:

- ▶ Pay at least the Davis-Bacon prevailing wages listed in the applicable wage determinations included in the contract to laborers and mechanics who work on the site of work—
 - ▶ the Davis-Bacon prevailing wage is the **combination of the basic hourly rate and any fringe benefits listed** in a Davis-Bacon wage determination;
 - ▶ contractors can meet this obligation by paying each laborer and mechanic the applicable prevailing wage for the classification of work they perform entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits;
 - ▶ contractors must pay laborers and mechanics the applicable prevailing wages for all hours worked on the site of the work on a weekly basis (**except for contributions to bona fide fringe benefit plans, which must be made at least quarterly**);
- ▶ maintain an accurate record of hours worked and wages paid, including fringe benefit contributions;
- ▶ submit certified payrolls <https://www.dol.gov/agencies/whd/forms/wh347> to the contracting agency/funding recipient each week, within seven days of the payroll date for that workweek; and
- ▶ ensure that the required contract clauses and applicable wage determinations are incorporated into any lower-tier subcontracts.
- ▶ For more information, go to [Davis-Bacon and Related Acts | U.S. Department of Labor \(dol.gov\)](#)
- ▶ To register for a Davis-Bacon Seminar, go to [Prevailing Wage Seminars | U.S. Department of Labor \(dol.gov\)](#)

DOI Terms, Buy America Act

- ▶ **Buy America Act (BAA) and Executive Order 14005 *Ensuring the Future Is Made in All of America by All of America's Workers*:**
 - ▶ Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:
 - ▶ (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
 - ▶ (2) all manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
 - ▶ (3) all construction materials are manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.
 - ▶ The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

KY STEPS FOR CONTRACTORS

- ▶ **Step 1:** Register with Secretary of State to do Business in Kentucky (if not already registered). <https://www.sos.ky.gov/bus/business-filings/onlineservices/pages/default.aspx>
- ▶ **Step 2:** Register as a Vendor to access the eProcurement System (VSS)
 - ▶ Option 1: Register online at:
<https://emars311.ky.gov/webapp/vssprdonline3111d/AltSelfService>
 - or
 - ▶ Option 2: Complete the EZ Vendor Registration Application Form found here:
[EZ Vendor Registration Application.pdf \(ky.gov\)](#)
 - ▶ Once the form is completed, email the form to Kristi.Sharp@ky.gov
 - ▶ VERY IMPORTANT: Please be sure to write legibly on the form to ensure proper processing.

STEPS FOR CONTRACTORS

Registration Continued:

- ▶ Once the Customer Resource Center has verified your registration information, you will receive an email to confirm completion of your registration. This email may contain a request for more information.
- ▶ Once the registration is complete, the Vendor can log into <https://emars311.ky.gov/webapp/vssprdonline3111d/AltSelfService>
- ▶ Once logged in, vendors can add commodity codes to their account by activating the account after confirmation has been received from the Customer Resource Center. **For this program, register at minimum for the Commodity Code 912.**

STEPS FOR CONTRACTORS

- ▶ If you have any questions about vendor registration, activation or commodity codes, please contact the help desk at (502) 564-9641, Toll Free at (877) 973-4357 or Finance.CRCGroup@ky.gov
- ▶ Additional information is available on the Commonwealth's Purchasing and eProcurement Services website:
<https://finance.ky.gov/eProcurement/Pages/default.aspx>
- ▶ **Step 3: Annual Affidavit for Bidders, Offerors and Contractors Form**
 - ▶ All State Vendors are Required to Complete this Form Prior to Offering Any Bids.
 - ▶ The Form is Available on the eProcurement web page [2020 - Annual Required Affidavit for Bidders Offerors and Contractors.pdf \(ky.gov\)](#)

STEPS FOR CONTRACTORS

▶ Step 4: Obtain Required Insurance

▶ General Insurance:

▶ Interested vendor contractors will need no less than the following:

- ▶ Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage with a \$3,000,000 annual aggregate. The deductible or Self-Insured Retention per occurrence shall not be more than \$10,000.
 - ▶ Automobile Liability: \$500,000 combined single limit per accident for bodily injury and property damage.
 - ▶ Workers' Compensation and Employers Liability: Workers' Compensation with statutory benefits without limit, as required by the Kentucky Workers Compensation Act and employer's liability limits of \$1,000,000 per accident.
- ▶ Contractors are required to furnish the Coverage Certificate prior to commencing work and must keep up-to-date copies on file with the state until all work is completed.

STEPS FOR CONTRACTORS

▶ Step 5: Obtain Required Bonding

▶ Bid Bonds for Bidders:

- ▶ The Finance Cabinet DECA Group requires for all bids submitted a Bid Bond as Surety that a Bidder will hold its offer firm for the specified period. It can take the form of a surety bond or a certified check, which equals 5% of the Bid Amount.
- ▶ Surety bid bonds shall be executed by a surety company authorized to do business in this Commonwealth, and the contract instrument of bonds must be countersigned by a duly appointed and licensed resident agent.
- ▶ What happens if a company does not receive the contract for their respective bid?
 - ▶ The certified check shall be returned to that bidder promptly after the award is made. The successful bidder's check shall be returned after the contract is awarded or as soon as the bidder has filed a performance bond, if required. Checks may be returned by certified mail, return receipt requested. The return receipts shall be electronically attached or hard copies attached to each bidder's bid and filed in the bid folder.

- ▶ Complete details about the bidding process can be found on the DECA webpage at:

<https://finance.ky.gov/department-for-facilities-and-support-services/office-of-facility-development-and-efficiency/division-of-engineering-and-contract-administration/Pages/default.aspx>

STEPS FOR CONTRACTORS

- ▶ Performance and Payment Bonding for Successful Bidders:
 - ▶ The Contractor shall furnish separate performance and payment bonds to the Owner. The Contractor shall furnish a performance bond satisfactory to the Owner in an amount equal to one hundred percent (100%) of the Contract Sum as security for the faithful performance of the Contract.
 - ▶ The Contractor shall also furnish a payment bond satisfactory to the Owner in an amount equal to one hundred percent (100%) of the Contract Sum for the protection of all persons performing labor or furnishing materials, equipment or supplies for the Contractor or his Subcontractor for the performance of the Work provided for in the Contract, including security for payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance Law.
 - ▶ Each bond furnished by the Contractor shall incorporate by reference the terms of the Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Sum is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount.
 - ▶ The performance and payment bonds shall be executed by a surety company authorized to do business in this Commonwealth, and the contract instrument of bonds must be countersigned by a duly appointed and licensed resident agent.

GENERAL PLUGGING RFP PROCESS

- ▶ RFP'S Will Be Issued by the Finance and Administration Cabinet, Division of Engineering and Contract Administration (DECA) on Behalf of the Kentucky Energy and Environment Cabinet, Kentucky Division of Oil and Gas.
- ▶ The First RFP'S Will Be For Plugging and Remediation of Orphan Well Groups in Defined Geographic Areas to Improve Contractor Efficiency.
- ▶ Initial Grant Time Constraints Dictate that the First Series of Projects Focus on Plugging of Orphan Wells.
- ▶ Future RFP Packages Will Include Cleanup of Abandoned Tanks.

KENTUCKY REVISED STATUTES UPDATE

- ▶ In March 2022, the Kentucky Legislature Approved House Bill 669 and Senate Bill 315, and on April 8, 2022, the Governor signed the Bills into law.
- ▶ These Bills Implemented Certain Changes to KRS Chapter 353 KASTOW Program Requirements to Broaden Opportunities for All Contractors to Participate in the Federal Plugging Grant RFP Process.
- ▶ The Changes Help Promote and Encourage Small Business while Positively Impacting the Environment.

KRS 353.562 (11) KASTOW PROGRAM

...the number of eligible wells in the vendor's scope of work for contracts issued pursuant to subsection (10) of this section for all grant types established ... shall be limited as follows:

- a) One-third of the contracts issued in a 12 month period shall be limited to no more than 10 wells;
- b) One-third of the contracts issued in a 12 month period shall be limited to no more than 25 wells; and
- c) One-third or the remaining contracts issued within a 12 month period shall not have a limit on the number of wells in the scope of work.

A Typical RFP Process Schedule

- ▶ Day 1: Release of RFP
- ▶ Day 21: Vendors Written Questions Due to DECA by COB.
- ▶ Day 25: Commonwealth Response to Vendors Written Questions
- ▶ Day 30: Proposals Due by COB.
- ▶ Evaluation of Proposals
- ▶ Contract Awarded. Site work shall commence within thirty (30) days of the contract award date.
- ▶ Project Completion Date : Tentatively 180 Days from Award.

Notification of Issued RFP, View & Find RFP

- ▶ Registered Vendors will Receive Emails based on the Commodity Codes selected in VSS. The email will notify Vendors of any RFPs issued under that Commodity Code.
- ▶ Access to Solicitation, RFP, and Addenda
 - ▶ The Commonwealth wants each prospective vendor to have full and complete information on which to base a proposal response. Only information presented or referred to in this RFP and any additional written information that is supplied by the Commonwealth Buyer shall be used by vendors in preparing the response.
 - ▶ The solicitation, addenda, and attachments shall be posted to the VSS website at: <https://emars311.ky.gov/webapp/vssprdonline3111d/AltSelfService>
 - ▶ It is not necessary to register to access the solicitation. Unregistered vendors can access solicitations by clicking on public access.

RFP Reminders

- ▶ The vendor **MUST** include the following with the proposal submission. If the items highlighted below are not submitted with the proposal submission, the Commonwealth **MUST** deem the proposal non-responsive and SHALL NOT consider for award. All other items **MUST** be submitted prior to award.
 - ▶ FACE OF SOLICITATION - SIGNED
 - ▶ LATEST ADDENDUM - SIGNED
 - ▶ *PROPOSED TECHNICAL SOLUTION UNDER SEALED COVER AND BY CLOSING DATE AND TIME
 - ▶ *PROPOSED COST SOLUTION UNDER SEALED COVER AND BY CLOSING DATE AND TIME
 - ▶ REQUIRED AFFIDAVIT(S)
 - ▶ TRANSMITTAL LETTER
 - ▶ REVENUE FORM 10A100 KENTUCKY TAX REGISTRATION APPLICATION
 - ▶ CERTIFICATE OF AUTHORITY- REGISTRATION WITH SECRETARY OF STATE BY A FOREIGN ENTITY
 - ▶ EEO FORMS IF APPLICABLE BUYER WILL GET FROM SUCCESSFUL BIDDER
- ▶ **The Commonwealth defines SEALED as “a closure that must be broken to be opened and that thus reveals tampering”. (Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/seal>)*

Questions about RFP?

▶ Written Questions Regarding the RFP

- ▶ Vendors are encouraged to submit written questions. Written questions shall be submitted to the Commonwealth Buyer via email at Kristi.Sharp@ky.gov
- ▶ No questions shall be accepted after the date(s) listed unless the question(s) is considered material to the procurement.
- ▶ The Commonwealth shall respond to salient questions in writing by issuing an addendum to the solicitation.
- ▶ The addendum shall be posted to the VSS website.

How Will Bidders know Contract is Awarded?

▶ Notification of Award of Contract

- ▶ The procurement process will provide for the evaluation of proposals and selection of the successful proposal in accordance with State law and regulations. KRS Chapter 45A of the Kentucky Model Procurement Code provides the regulatory framework for the procurement of services by State agencies.
- ▶ All applicable statutes, regulations, policies and requirements shall become a part of an award as well as the Information Technology requirements.
- ▶ To view the award of contract(s) and the contractor(s) receiving the award(s) for this solicitation, access the VSS website at <https://emars311.ky.gov/webapp/vssprdonline3111d/AltSelfService>
- ▶ It is the vendor's responsibility to review this information in a timely fashion. No other notification of the results of an award of contract will be provided.

Questions/Comments

- ▶ This presentation will be placed on the DOG's webpage at: <https://eec.ky.gov/Natural-Resources/Oil-and-Gas/Pages/default.aspx> and the Energy and Environment Cabinet's "Building A Better KY" webpage at: <https://eec.ky.gov/Pages/Build.aspx>
- ▶ In addition to this presentation, links to various resources will be added to DOG's website.
- ▶ General questions about the BIL, DOG or this presentation should be emailed to OrphanWells@ky.gov
- ▶ Specific questions about the eProcurement process should be emailed to Kristi.Sharp@ky.gov
- ▶ Thank you for your time!