COMPLIANCE AUDIT OF
KENTUCKY HIGHLANDS INVESTMENT CORPORATION
LONDON, KENTUCKY

KENTUCKY HIGHLANDS ENERGY BUSINESS BOOT CAMP

ARC Grant Number: CO-15789-07

Grant Period: August 1, 2007 through July 1, 2009

CAUTION: *Certain information contained herein is subject to disclosure restrictions under the Freedom of Information Act, 5 U.S.C. 552 (b) (4). Distribution of this report should be limited to Appalachian Regional Commission and other pertinent parties.*

Report Number: 11-01

Date: December 9, 2010

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ARC Grant Number: CO-15789-07

Grant Period: August 1, 2007 through July 1, 2009

Prepared By:

Tichenor & Associates, LLP
Certified Public Accountants
304 Middletown Park Place, Suite C
Louisville, Kentucky 40243

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TICHENOR & ASSOCIATES, LLP

CERTIFIED PUBLIC ACCOUNTANTS and MANAGEMENT CONSULTANTS

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TO: Appalachian Regional Commission (ARC)
Office of Inspector General (OIG)

FROM: Tichenor & Associates, LLP
Louisville, Kentucky

REPORT FOR: The Federal Co-Chairman
ARC Executive Director
OIG Report Number: 11-01

SUBJECT: Compliance Audit Report on Kentucky Highlands Investment Corporation (KHIC), Kentucky Highlands Energy Business Boot Camp, ARC Grant Number: CO-15789-07.

OBJECTIVE: The objective of our audit was to determine if (a) the total funds provided to KHIC for its Kentucky Highlands Energy Business Boot Camp grant were expended in accordance with the ARC approved grant budget and did not violate any restrictions imposed by the terms and conditions of the grant; (b) the accounting, reporting, and internal control systems were appropriate, operating effectively, and implemented in accordance with generally accepted accounting principles; and (c) that the objectives of the grant were met.

BACKGROUND: ARC awarded Grant Number CO-15789-07 to KHIC for the period August 1, 2007 through July 1, 2009. Total grant funding was for an amount not to exceed $75,000 or 33.3% of actual, reasonable, and eligible project costs. ARC required that the grant be matched with $150,000 or 66.7% in cash, contributed services, or in-kind contributions, as approved by the ARC. ARC made four payments totaling $75,000.

The purpose of the grant was to provide funds to develop an Energy Business Boot Camp, providing intensive performance-based entrepreneurial training and mentoring to growing firms. Two consecutive nine-month camps were to be held, each with four businesses participating. The training was to include class room sessions, coaching meetings, networking events, and a regional energy symposium. The grant would underwrite contractual costs of implementing the program. It was expected that twelve new jobs would be created.

SCOPE: We performed a compliance audit of the grant, as described in the Objective above, for the period August 1, 2007 through July 1, 2009, at KHIC's office in London, Kentucky, on April 12, 2010 through April 23, 2010. Our audit was based on the terms of the grant agreement and on the application of certain agreed-upon procedures previously discussed with the ARC OIG. Specifically, we determined if the accountability over ARC funds was in accordance with applicable Office of Management and Budget (OMB) Circulars, if KHIC was in compliance with the requirements of the grant agreement and the ARC Grant Administration Manual, and if the objectives of the grant were met.

METHODOLOGY: We reviewed the grant agreement and KHIC's work plan, ARC Project Guidelines, the ARC Grant Administration Manual, pertinent OMB circulars, and the ARC Code. We interviewed KHIC personnel including the chief financial officer, the controller, and the development director.

All grant expenditures were tested to determine if the costs were within the approved budget, reasonable, and related to the grant. Indirect and matching costs were audited to determine if the costs were allowable, reasonable, and supported by adequate documentation. Receipts were tested to determine whether any program income was used to reduce grant program expenditures or to further the program, and if the use was approved by ARC.

We obtained an understanding of KHIC's accounting system and internal controls to determine if KHIC has the capability to accurately accumulate, record, and report revenues and costs associated with the grant.

We reviewed KHIC's interim and final progress reports, and supporting documentation to determine if the objectives of the grant were met.

We conducted this compliance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESULTS: The following results are based on our audit of ARC Grant Number CO-15789-07 – Kentucky Highlands Energy Business Boot Camp.

A. Incurred Costs

KHIC's financial records report total program costs of $225,000 (see **Appendix A** – Worksheet for Reimbursement Request) for the period from August 1, 2007 through July 1, 2009. Of these costs, $75,000 (33.3%) was attributed to ARC expenditures, with the remaining $150,000 (66.7%) attributed to matching and in-kind expenditures.

During the course of the audit, we tested the direct, indirect, and matching costs claimed and noted no instances of noncompliance with the terms and conditions of the grant agreement.

B. Internal Controls

During the course of the audit, we reviewed KHIC's system of internal controls. No areas of weakness were identified that could have affected the accountability of costs or compliance with the terms and conditions of the grant agreement.

C. Program Results

Our audit of KHIC's Kentucky Highlands Energy Business Boot Camp grant indicated that the specific objectives identified in the grant were achieved. Ten businesses participated in two boot camps, 140 people in total (121 not affiliated with KHIC) attended two energy symposia, and 21 jobs were created or sustained.

D. Other

1. Conflict between ARC Grant Administration Manual and the Grant Agreement

During our audit, we noted that the grantee transferred $7,413 budgeted for direct costs to indirect costs in order to meet the matching requirements of the grant. OMB Circular A-110 states that grantees shall request prior approval for the transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if required by the grantor agency. We inquired of ARC's grant manager about ARC's requirements and he stated that there was no requirement to seek ARC's prior approval for this transfer. His remark was consistent with ARC's Grant Administration Manual as the grant amount was below $100,000 and the change was less than ten percent of the project budget (see the first quotation provided below). However, a more authoritative source, the Grant Agreement, Part II of the General Provisions, requires prior approval for any budget change. See the second quotation provided below.

ARC's Grant Administration Manual, Frequently Asked Questions (FAQs), IV., BUDGET REVISIONS states:

> *Can changes be made to the budget after ARC approval?*
>
> *If the ARC grant exceeds $100,000, prior ARC approval is required when proposing changes to major line items where the total transfer exceeds ten percent of the project's total budget as last approved by ARC. Any other budget change that involves a substantial revision to the scope of work or objectives of the project (regardless of the grant amount) also requires prior ARC approval. If changes become necessary, submit a revised budget and narrative justification to the ARC project coordinator and your State Program Manager. Budget changes should receive state concurrence prior to ARC action. You should also send copies of minor budget revisions that do not require ARC approval to ARC and the State Program Manager so that files will reflect the correct budget at all times.*

The Grant Agreement: Part II, General Provisions, Article 3 Work Plan/Detailed Budget states:

> *...After approval by ARC all costs incurred for work performed after the effective date which are incurred in accord with the approved work plan and/or budget,* ***and only such costs****, shall be eligible for reimbursement.*

Therefore, because of the aforementioned conflict in terms and the potential for conflicting implementation of prior approval requirements across ARC; and also the possibility that the grantee could utilize funds that they are not entitled to use, or that funds could be expended for purposes contrary to the grant's objectives, we recommend that these conflicting requirements be resolved.

Recommendation:

We recommend ARC resolve the discrepancy between its grant administration manual and its grant agreement concerning the requirements for when a grantee is required to seek prior approval for program budget changes.

ARC's Response:

ARC accepted our recommendation to resolve the discrepancy, relating to budget amendments, between its grant administration manual and the general terms and conditions of grant agreements. ARC stated that they follow the policy articulated in the OMB Circulars and have amended their general grant terms and conditions by eliminating the following sentence from the Grant Agreement: Part II, General Provisions, Article 3 Work Plan/Detailed Budget:

> *...After approval by ARC all costs incurred for work performed after the effective date which are incurred in accord with the approved work plan and/or budget, and only such costs, shall be eligible for reimbursement.*

See **Appendix B** – ARC's Response.

Auditors' Conclusion:

ARC has amended their general grant terms and conditions to resolve the discrepancy between its grant administration manual and its grant agreement concerning the requirements for when a grantee is required to seek prior approval for program budget changes. ARC has removed from the general grant terms and conditions language that was more restrictive than the requirements of their grant administration manual. As a result, the recommendation is considered closed.

Tichenor & Associates, LLP

Louisville, Kentucky
April 23, 2010

APPENDIX A

WORKSHEET FOR REIMBURSEMENT REQUEST

Worksheet for Reimbursement Request

Kentucky Highlands Investment Corporation
Kentucky Highlands Energy Business Boot Camp
ARC Grant #: CO-15789-07

Reimbursement Period from 8/1/2007 to 7/1/2009

Approved Budget Category	Approved Budget	Actual Matching (Non-ARC) Cost	Actual ARC Cost	Total Cost	Total Program Outlays to Date	Budget Balance Remaining
Personnel	$ -	$ -	$ -	$ -	$ -	$ -
Fringe Benefits	-	-	-	-	-	-
Travel	6,000.00	7,720.46	-	7,720.46	7,720.46	(1,720.46)
Equipment	4,000.00	-	-	-	-	4,000.00
Supplies	3,000.00	1,137.00	-	1,137.00	1,137.00	1,863.00
Contractual	126,000.00	55,330.86	75,000.00	130,330.86	130,330.86	(4,330.86)
Other	60,000.00	52,398.28	-	52,398.28	52,398.28	7,601.72
Total Direct	199,000.00	116,586.60	75,000.00	191,586.60	191,586.60	7,413.40
Indirect Cost	26,000.00	33,413.40	-	33,413.40	33,413.40	(7,413.40)
Totals	$ 225,000.00	$ 150,000.00	$ 75,000.00	$ 225,000.00	$ 225,000.00	$ -

Appendix A

APPENDIX B

ARC'S RESPONSE

APPALACHIAN REGIONAL COMMISSION — A Proud Past, A New Vision

MEMORANDUM

TO: Tichenor & Associates, LLP

CC: Office of Inspector General (OIG)

FROM: Appalachian Regional Commission (ARC)

RE: Compliance Audit Report on Kentucky Highlands Energy Business Boot Camp, CO-15789-07

The compliance audit conducted by Tichenor & Associates on Kentucky Highlands Energy Business Boot Camp identified a discrepancy between instructions provided to grantees in ARC's Grant Administration Manual and the Grant Agreement, Part II of the General Provisions.

ARC concurs with the recommendation of the auditor to resolve the discrepancy relating to budget amendments between ARC's grants administrative manual and the general terms and conditions we attach to our grant agreements. We follow the policy articulated in the OMB Circulars and the language in the general terms and conditions may be read as more restrictive than the provisions of the circulars on this issue. Accordingly, we have amended our general terms and conditions to eliminate the restrictive language from Article 3. A copy of the amended Grant Agreement: General Terms is attached.

Thank you.

Molly Theobald
Director, Program Operations
Appalachian Regional Commission

12/2/10
Date

1666 CONNECTICUT AVENUE, NW, SUITE 700 WASHINGTON, DC 20009-1068 (202) 884-7700 FAX (202) 884-7691 www.arc.gov

PART II
APPALACHIAN REGIONAL COMMISSION
GRANT AGREEMENT: GENERAL PROVISIONS

Article 1 General Procedures.

ARC grants shall be administered as follows: grants to state and local government, in accord with OMB Circulars A-102 (Common Rule) and A-87; grants to non-profit organizations, in accord with OMB Circulars A-110 and A-122; grants to higher educational institutions, in accord with OMB Circular A-110 and A-21; and other Federal regulations as applicable.

Article 2 Restrictions on Use of ARC Funds.

Grantee warrants that it is cognizant of Section 224(b)(1) of the ARDA, which prohibits the use of ARDA funds to assist businesses to relocate from one area to another; and that, further, in keeping with Commission policy, it will not utilize ARDA funds actively to engage in any activity, the purpose of which is to encourage businesses now operating in one state to relocate into another state. No funds provided under this agreement will be used to publish or distribute material which would solicit such relocation.

Article 3 Work Plan/Detailed Budget.

(1) Grantee shall submit, as required by the ARC Project Coordinator, a work plan and/or budget for any and/or all of the tasks specified in Part I.

(2) Prior to submission of any work plan and/or budget so required by the ARC Project Coordinator, no costs shall be eligible for reimbursement, except those costs directly related to the preparation of such work plan and/or budget. Within one week after receipt, ARC shall complete a preliminary review of the work plan and/or budget and shall immediately advise the Grantee either that it is unacceptable or that it is preliminarily approved. After such preliminary approval by ARC, the Grantee may proceed with work on the project immediately with such modifications in the work plan and/or budget as required by ARC.

Article 4 Reports.

(1) Progress Reports. Grantee shall prepare and submit to the ARC Project Coordinator, progress reports indicating the work accomplished under the agreement to date, any problems encountered and ameliorative actions taken, and a forecast of work for the next report period.

(2) Final Report. Within one (1) month after the period of performance (see Part I), Grantee shall prepare and submit to the ARC Project Coordinator for approval, a final report (2 copies and a reproducible master) of all work accomplished under this Agreement including recommendations and conclusions based on the experience and results obtained.

Article 5 Contracting Procedures.

In contracting for services and/or purchasing equipment under this Agreement, Grantee shall assure that (1) all contracting shall be at prices and on terms most advantageous to the Grantee and to the project; and (2) all interested parties shall have a full and fair chance at doing business with the Grantee. Grantee shall arrange for all contracting through competitive bidding, or, if permitted by state law, other negotiating and contracting procedures that will assure compliance with (1) and (2) above.

Article 6 Subcontracting.

The Grantee shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining the prior written approval of the Project Coordinator, and subject to conditions and provisions as the Project Coordinator may deem necessary, in his/her discretion, to protect the interests of the Commission: Provided, however, that notwithstanding the foregoing unless otherwise provided herein, such prior written approval shall not be required for the purchase by the Grantee of articles, supplies, equipment and services which are both necessary for and merely incidental to the performance of the work required under this Agreement: Provided, further, however, that no provision of this article and no such approval by the Project Coordinator of any subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation by the Commission in addition to the total grant amount and the Commission shall not be responsible for fulfillment of Grantee's obligations to subcontractors: Provided, further, that no subcontracting shall be deemed to relieve the Grantee of any obligations under this Agreement.

Article 7 Coordination and Non-Duplication.

In carrying out the project under this Agreement, Grantee shall assure that the planning, design work and implementation of activities are coordinated with activities conducted by Grantee under other related ARC grants, if any, and shall assure that there shall be no duplication of effort or funding under this Agreement of any work or payments under those grants.

Article 8 Project Personnel.

ARC reserves the right to approve or disapprove the selection or continued participation of any personnel supported with funds made available under this Agreement.

Article 9 Compliance with Applicable Laws.

Grantee shall assure that all provisions of applicable federal, state, and local laws shall be complied with in the conduct of activities under this grant agreement. The ARC reserves the right to suspend or terminate this agreement in the event that

applicable federal, state, and local laws and regulations are not complied with. Such right shall not be exclusive and does not affect rights and remedies provided elsewhere by law, regulation, or agreement.

Article 10 Retention of Rights.

Title to equipment purchased with grant funds resides with the Grantee and assignees and successors approved by ARC, but the equipment must be accounted for during and after the end of the project period. Accountability may be satisfied by continued use during its useful life in the same or other projects related to objectives of the ARC, as approved by ARC. If the equipment is disposed of or transferred during its useful life to a use outside the scope of the ARC objectives, an amount equal to the resale value or the value of the ARC share at the time of disposal must be deposited in the grant account if still open, or the federal share must be refunded to ARC or an ARC-designated successor. ARC reserves the right to transfer such equipment and title thereto or other interest therein, to ARC, or an agency of the federal government or to another Grantee, in the event equipment, leased or purchased with funds under this agreement, is no longer used primarily for the purposes for which it is dedicated under this agreement, or is not used in substantial accord with the applicable provisions of this agreement.

It shall be Grantee's responsibility to monitor all use to ascertain that all such equipment is being used primarily for the purposes outlined herein. Grantee may propose to ARC that the equipment be transferred to another agency or entity which could utilize it for the purposes outlined in this agreement. Such transfers shall be subject to prior approval by the ARC Project Coordinator and to the reservation of rights in this Article.

Article 11 Method of Payment.

(1) Progress Payments. Grantee may receive progress payments (a) on the basis of the work performed; (b) upon ARC concurrence as to reasonableness of costs and submission of Form SF 270 (Request for Advance or Reimbursement); and; (c) upon submission to ARC of, and with the same frequency as, progress reports; and (d) upon determination by the ARC that the requirements of the agreement are being met. The total of such progress payments shall not exceed ninety (90) percent of the total grant amount unless specifically authorized in Part I of this agreement.

(2) Advance Payments. Grantee may receive advances of funds, in amounts sufficient to meet scheduled payroll costs and other related costs, including payments to subcontractors on the following basis: (a) Grantee's certification that a firm commitment has been obtained from each employee appointed under this agreement, or that firm, formal subcontracts have been executed which will require payments for goods and services to be delivered during the period for which advance is sought; (b) upon submission of form SF 270 (Request for Advance or Reimbursement) and on the basis of cost estimates approved by the ARC Project Coordinator; (c) Grantee's certification that any previous advance has been exhausted (if previous advance has not been exhausted, this remainder must be used to meet scheduled expenses payable during the next period); any additional advance subject to ARC concurrence as to need; and (d) satisfactory progress on tasks specified in Part I and the incorporated proposal.

Total Advance Payments shall not exceed 90 percent of the total grant amount unless specifically authorized in Part I of this agreement.

(3) Final Payment. Upon Grantee's satisfactory completion of the Agreement, Grantee shall receive any balance of funds which may be due under this Agreement.

(4) Disbursements. All disbursements shall be for obligations incurred, after the effective date, in the performance of this Agreement, and shall be supported by contracts, invoices, vouchers and other data, as appropriate, evidencing the disbursements.

NOTE: All payment requests must show the 9-digit taxpayer identifying number (TIN) assigned by the Internal Revenue Service. For individuals, the Social Security Number serves as the TIN; for businesses, the Employer Identification Number serves as the TIN.

Article 12 Grant-Related Income.

Grant-related income means gross income earned by Grantee from grant supported activities and shall include, but not be limited to, income from service fees, sale of commodities, or usage or rental fees. All grant-related income shall be reported to ARC in the progress and final reports required by this Agreement.

Article 13 Rebates and Discharges from Liability.

Grantee agrees that any refunds, rebates or credits, or other amounts (including interest earned thereon) received by the Grantee (or any Assignee) shall be paid to the Commission to the extent that they are properly allocable to costs for which the Grantee has been reimbursed under this Article. Grantee will, when requested, assign such amounts to the Commission and execute such releases as may be appropriate to discharge the Commission, its officers and agents from liabilities arising out of this Agreement.

Article 14 Records /Audit.

(1) Grantee shall establish procedures to ensure that all records pertaining to costs, expenses, and funds related to the Agreement shall be kept in a manner which is consistent with generally accepted accounting procedures. The documentation in support of each action in the accounting records shall be filed in such a manner that it can be readily located. Grantee shall maintain custody of time records, payrolls, and other data, as appropriate, to substantiate all services reported to the Commission as Contributed Services under this Agreement.

(2)All invoices, vouchers, statements of costs, and reports of disbursements of funds are subject to audit.

(3) Any payment may be reduced for overpayment(s) or increased for underpayment(s) on preceding invoices or vouchers. In the event of overpayment(s) ARC reserves the option of requiring the Grantee to reimburse the Commission for the amount of the overpayment(s).

(4) If Grantee has not provided either cash or contributed services of a value determined by the Commission to be sufficient to support the payments made by the Commission, or has failed to obligate or disburse any such sums for the purpose of this Agreement, the final payment shall be reduced, or

the Grantee shall make an appropriate refund.

(5) The Grantee agrees that the Federal Co-Chairman of the ARC, the Comptroller General of the United States, the ARC, or the duly authorized representatives of any of them shall, until the expiration of three years after final payment under this Agreement, have access to and the right to examine any books, documents, papers, and records of the Grantee involving transactions related to this Agreement.

(6) The Grantee will, in each subcontract, require the subcontractor to agree to the application of the provisions of this article in a similar manner to the subcontractor's records relating to said subcontract.

Article 15 Responsibilities.

Notwithstanding any other provisions of this Agreement, it is expressly agreed that:

(1) Grantee will carry out the program under this Agreement as an independent contractor and not as agent of the Commission;

(2) Grantee assumes sole and complete responsibility for the conduct of the program in such a manner as to assure the safety and welfare of all persons participating in or in any way involved in, or affected by, any activities conducted under this Agreement; and

(3) The Commission, by its provision of funds for this project, undertakes no responsibility in this regard.

Article 16 Grantee's Principal Personnel.

The Project Director shall be responsible for the general guidance and overall supervision of Grantee's efforts. The Project Director shall maintain liaison with the Commission's Project Coordinator. In the event the replacement of the Project Director becomes necessary, the Grantee will advise the Commission, in writing, of the change. The Commission reserves the right to disapprove any proposed substitute or addition.

Article 17 ARC Representative.

The Project Coordinator is responsible for (i) providing liaison between the Commission and the Grantee, and (ii) obtaining approval of work accomplished by Grantee. The Commission may, in its discretion, change the Project Coordinator at any time, in which event it shall notify the Grantee in writing of the change.

Article 18 State Administration and Liaison Officer.

Grantee shall submit copies of all correspondence, reports and requests for payment required to be submitted to ARC simultaneously to the State Administration and Liaison Officer named in this Agreement.

Article 19 Disputes.

(1) Procedure. Except as otherwise provided in this Agreement, in the event of any dispute arising under this Agreement concerning a question of fact which is not disposed of by agreement, a decision regarding the dispute shall be rendered by the Executive Director. The Grantee may, within 20 days from receipt of the Executive Director's written decision, submit to the Commission's Contract Review Committee (ARC-CRC), a written request for a review to which the ARC-CRC shall respond in writing within 60 days. Alternatively, the Grantee and the Executive Director may mutually agree to select any alternative means of dispute resolution to resolve such dispute. The decision of either the ARC-CRC or the arbitrator retained for the purpose of dispute resolution, shall be final and conclusive. Pending final decision under either alternative, the Grantee shall proceed diligently with the performance of the Agreement in accordance with the Executive Director's decision.

(2) Consideration of Questions of Law. This Article does not preclude the consideration of questions of law in connection with decisions provided for in the above paragraph; provided that nothing in this grant shall be construed as making final any decision of any administrative official, representative, or the ARC-CRC on a question of law.

(3) ARC Contract Review Committee. The ARC-CRC shall consist of the Federal Co-Chairman and the States' Co-Chairman or their appointed representatives. In a dispute in which one of the parties is either the State of the States' Co-Chairman or a Grantee from said State, the States' Vice Co-Chairman, or his/her representative, shall replace the States' Co-Chairman on the ARC-CRC for that dispute alone. Nothing herein shall operate in any way as a restriction on the powers of the Federal Co-Chairman or any state member of the Commission under the ARDA.

Article 20 Suspension/Termination for Cause.

The ARC shall have the right, upon written notice to the Grantee, to suspend or terminate this Agreement for cause, whenever the Federal Co-Chairman determines there is reasonable basis to believe there has been malfeasance, embezzlement, misappropriation, unauthorized application of federal funds or material false statement in the conduct of this Agreement or any other ARC grant agreement.

Article 21 Termination for Default.

The ARC may, by written notice to Grantee, terminate this Agreement in whole or in part in accordance with Part 52.249 of the Federal Acquisition Regulations' "Default (Fixed-Price Supply and Service)" clause in effect on the date of this Agreement including, but not limited to provisions regarding failure to perform due to causes beyond the control of Grantee, the status of completed and partially completed work after termination for default, excusable default, ARC's right to reprocure, and other remedies. Such regulations are incorporated by reference as part of this Agreement. The rights and remedies of the ARC provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

Article 22 Termination for Convenience.

The ARC may, by written notice to the Grantee, terminate this Agreement in whole or in part for the convenience of the Commission, whenever the ARC determines that such action is in its best interest. If this Agreement is so terminated, the rights, duties and obligations of the parties, including compensation of the Grantee, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date

of this Agreement and such regulations are incorporated by reference as part of this Agreement.

Article 23 Official Not to Benefit.

No member or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with an incorporated entity for its general benefit.

Article 24 Covenant Against Contingent Fees.

The Grantee warrants that no person or selling 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 of bona fide established commercial or selling agencies maintained by the Grantee for the purpose of securing business. For breach or violation of this warranty the Commission shall have the right to annul this Agreement without liability or in its discretion to deduct from the grant amount or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Article 25 Equal Opportunity.

Grantee shall carry out all programs and activities in compliance with Title VI of the Civil Rights Act of 1964, and other federal laws prohibiting discrimination, and in such a manner that no person shall, on the grounds of race, color, national origin, religion, sex, age or disability be excluded from participation in, be denied the benefits of, or be subject to discrimination with respect to any such programs or activities.

Article 26 Patent Rights.

All research and development grants are subject to the government-wide Patent Policies outlined in Department of Commerce regulations (37 CFR Part 401).

Article 27 Statement of Federal Funding.

When issuing statements, press releases, requests for proposals, bid solicitations, and any and all other public documents or announcements describing the project or program funded by this Agreement, Grantee agrees and warrants that it shall clearly state:(1) the percentage of the total cost of the program or project which will be financed with federal money, and (2) the dollar amount of federal funds for the project or program.

Article 28 Lobbying.

No funds made available under this Agreement may be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress; however, this Article does not bar communications with Members of Congress as described in Title 18, section 1913, of the U.S. Code.

Article 29 Copyrights

The Federal Government, through the Appalachian Regional Commission (ARC), reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes, any work developed under a contract, grant, subgrant, or contract under a grant or subgrant, and to use, and authorize others to use, for federal government purposes, any rights of copyright to which a grantee, a subgrantee or a contractor purchases ownership with grant support or contact funds. Such license to use includes, but is not limited to, the publication of such work on an ARC Web site. Use of such works for purposes related to Appalachia and the development of the Region is generally authorized by ARC to State and local governments in the ARC Region and to other public and private not-for-profit organizations serving the Region, including the Appalachian Local Development Districts.