

MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
AGREEMENT FOR PROFESSIONAL SERVICES

This Professional Services Agreement ("Agreement") is made by and between the Monterey Bay Unified Air Pollution Control District dba Monterey Bay Air Resources District, (hereinafter "District") and the County of Santa Cruz, Department of Public Works, Recycling and Solid Waste Services, (hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **SERVICES TO BE PROVIDED.** The District hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows: **providing free yard waste drop off at the Ben Lomond Transfer Station to the residents of the San Lorenzo Valley. Event days will be scheduled periodically by mutual agreement during the contract period.**
2. **PAYMENTS BY DISTRICT.** District shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by District to CONTRACTOR under this Agreement shall not exceed \$7,500.00.
3. **TERM OF AGREEMENT.** The term of this Agreement is from October 31, 2017 to June 30, 2018, unless terminated sooner pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and District and with District signing last, and CONTRACTOR may not commence work before District signs this Agreement.
4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A. Scope of Services/Payment Provisions

5. **PERFORMANCE STANDARDS.**
 - 5.01. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the District, or immediate family of an employee of the District.
 - 5.02. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
 - 5.03. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use District premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6. PAYMENT CONDITIONS.

- 6.01. CONTRACTOR shall submit to the District an invoice on a form acceptable to District. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the District may require. The Administrative Services Manager or his or her designee shall certify the invoice; either in the requested amount or in such other amount as the District approves in conformity with this Agreement, and shall promptly submit such invoice to the District for payment. The District shall pay the amount certified within 30 days of receiving the certified invoice.
- 6.02. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

7. TERMINATION.

- 7.01. During the term of this Agreement, the District may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.02. The District may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If the District terminates this Agreement for good cause, the District may be relieved of the payment of any consideration to CONTRACTOR, and the District may proceed with the work in any manner, which the District deems proper. The cost to the District shall be deducted from any sum due the CONTRACTOR under this Agreement.

8. INDEMNIFICATION.

- 8.01 Indemnification for All Other Claims or Loss: For any claim, loss, injury, damage, expense or liability other than claims arising out of the CONTRACTOR's performance of professional services under this Agreement, CONTRACTOR shall indemnify, defend and hold harmless the DISTRICT, its governing board, directors, officers, employees, and agents against any claim for loss, injury, damage, expense or liability resulting from or alleging injury to or death of any person or loss of use of or damage to property, arising from or related to the performance of services under this Agreement by CONTRACTOR, its employees, subcontractors or agents, excepting only liability arising from the sole negligence, active negligence or willful misconduct of the DISTRICT, or defect in a design furnished by the DISTRICT.

9. INSURANCE.

- 9.01 Evidence of Coverage:
Prior to commencement of this Agreement, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements

executed by the insurance carrier shall accompany the certificate. In addition, CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the District, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the District has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the District's Administrative Services Manger.

9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Modification (Justification attached; subject to approval).

9.04. Other Insurance Requirements:

All insurance required by this Agreement shall be with a company acceptable to the District and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the District shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the District, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the District and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the District, CONTRACTOR shall file certificates of insurance with the District, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by District, annual certificates to District's Administrative Services Manager. If the certificate is not received by the expiration date, District shall notify CONTRACTOR and CONTRACTOR shall have ten calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles District, at its sole discretion, to terminate this Agreement immediately.

10. RECORDS AND CONFIDENTIALITY.

- 10.01. Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the District or prepared in connection with the performance of this Agreement, unless District specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to District any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential

information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

- 10.02. District Records. When this Agreement expires or terminates, CONTRACTOR shall return to District any District records which CONTRACTOR used or received from District to perform services under this Agreement.
 - 10.03. Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and District rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
 - 10.04. Access to and Audit of Records. The District shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the District or as part of any audit of the District, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
 - 10.05. Royalties and Inventions. District shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of District.
11. **NON-DISCRIMINATION.** During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.
 12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by the District pursuant to a contract with the state or federal government in which the District is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, District will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.
 13. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the District. No offer or obligation of permanent employment with the District or particular District department or agency is intended in any manner, and CONTRACTOR shall not become entitled by

virtue of this Agreement to receive from District any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold District harmless from any and all liability which District may incur because of CONTRACTOR's failure to pay such taxes.

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the District and CONTRACTOR'S contract administrators at the addresses listed below:

FOR DISTRICT:	FOR CONTRACTOR:
<p style="text-align: center;">Richard A. Stedman, Air Pollution Control Officer</p>	<p style="text-align: center;">Kasey Kolassa, Recycling and Solid Waste Services Manager</p>
<p style="text-align: center;">Address Monterey Bay Unified Air Pollution Control District dba Monterey Bay Air Resources District 24580 Silver Cloud Court Monterey, California 93940</p>	<p style="text-align: center;">Address County of Santa Cruz, Department of Public Works, Recycling and Solid Waste Services 701 Ocean St., Room 410 Santa Cruz, CA 95060</p>
<p style="text-align: center;">Phone 831-647-9411</p>	<p style="text-align: center;">Phone 831-454-2377</p>

15. MISCELLANEOUS PROVISIONS.

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the District and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the District and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the District. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the District. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the District and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both District and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The District and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority. Any individual executing this Agreement on behalf of the District or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the District and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the District and the CONTRACTOR as of the effective date of this Agreement, which is the date that the District signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

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IN WITNESS WHEREOF, District and CONTRACTOR have executed this Agreement as of the day and year written below.

**MONTEREY BAY UNIFIED AIR
POLLUTION CONTROL DISTRICT dba
MONTEREY BAY AIR RESOURCES
DISTRICT**

By: _____
Richard A. Stedman
Air Pollution Control Officer

Date: _____

Approved as to Form¹

By: _____
Les Girard, District Counsel

Date: _____

Approved as to Fiscal Provisions²

By: _____
Joyce Giuffre
Administrative Services Manager

Date: _____

Approved as to Liability Provisions³

By: _____
Joyce Giuffre
Administrative Services Manager

Date: _____

CONTRACTOR

County of Santa Cruz, Department of Public
Works

By: _____
John J. Presleigh, Director of Public Works

Date: _____

By: _____
Enrique Sahagun
Enrique Sahagun, Risk Manager

Date: _____

By: _____
L. Pille
County Counsel

Date: 10/16/17

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by District Counsel is required only if changes are made to the standard provisions of the PSA

²Approval by Administrative Services Manager is required for all Professional Service Agreements

³Approval by Administrative Services Manager is required only if changes are made in paragraph 8 or 9

EXHIBIT-A

**Professional Service Agreement Between
Monterey Bay Unified Air Pollution Control District dba Monterey Bay Air Resources District,
hereinafter referred to as "the District", and
County of Santa Cruz, Department of Public Works, Recycling and Solid Waste Services,
hereinafter referred to as "CONTRACTOR"**

Scope of Services / Payment Provisions

A. SCOPE OF SERVICES

A.1 CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

○ YARD WASTE FEE WAIVER

- Accept yard waste free of charge from residences of the Smoke Sensitive Area of the San Lorenzo Valley, Santa Cruz County as follows:
 - Dates: Event days will be scheduled upon mutual agreement between Management of the District and Contractor.
 - Location and Time: At the Ben Lomond Transfer Station, 9835 Newell Creek Road, Ben Lomond, CA 95005 from 7:30 a.m. to 3:30 p.m.
 - Eligible Residents: Yard waste must be generated at Santa Cruz County residences within the District's defined San Lorenzo Valley Smoke Sensitive Area which shall be understood to coincide with the towns and zip codes listed below:
 - Ben Lomond, 95005
 - Brookdale, 95007
 - Boulder Creek, 95006
 - Felton, 95018
 - Lompico, 95018
 - Mount Hermon, 95041
 - County of Santa Cruz scale house staff will verify proof of eligibility by checking customer driver's license, utility bill or property tax statement.
 - All yard waste received will be processed (chipped and grinded) on-site and marketed as mulch or bio-fuel product by GreenWaste Recovery as per Franchise Agreement (available on CONTRACTOR web site: www.santacruzcountyrecycles.org).

○ RESTRICTIONS

- No commercial or business generated yard waste.
- No lumber.
- No drop boxes or dump trucks.
- Residents hiring haulers must be present and show proof of load origin.
- Must meet acceptance standards for clean, sorted yard waste as defined in County of Santa Cruz, Unified Fee Schedule and per Wood Waste and Yard Waste

Acceptance Policy, Group 1 materials, as posted on CONTRACTOR website at: santacruzcountyrecycles.org.

○ PROMOTION

- CONTRACTOR will publicize “Free Yard Waste Clean-up Days” for eligible residents of the Smoke Sensitive Area of San Lorenzo Valley on its Recycling and Solid Waste Services web site (www.santacruzcountyrecycles.org).
- CONTRACTOR will provide the District access to an area of fence to post a banner publicizing the “Free Yard Waste Clean-up Days” across from the Ben Lomond Transfer Station scale house or other suitable location at the facility.
- CONTRACTOR will authorize the District use of its County Seal and its “County of Santa Cruz Recycles” logo after review and approval of “Free Yard Waste Clean-up Days” promotional materials produced by the District.
- The prohibition against disposal of poison oak shall be included in the promotion of free yard waste clean-up days.

○ REPORTING

- CONTRACTOR will provide the District with a report by June 30, 2018 containing dates, number of free yard waste participants, each load’s origin location by zip code, and quantity of free yard waste collected by tons from data collected at the scale house.

B. PAYMENT PROVISIONS

B.1 COMPENSATION/ PAYMENT

The District shall pay an amount not to exceed \$7,500.00 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

- District shall reimburse CONTRACTOR for no more than the rate of \$42.00/ton.
- District shall reimburse CONTRACTOR not more frequently than monthly in arrears, upon submission of an invoice for tons of material processed.
- Invoices shall be submitted on a form acceptable to District. Each invoice shall include name and address of CONTRACTOR; the time period covered by the invoice; current number (if any); current period invoice, cumulative invoices to date, and remaining balance.
- CONTRACTOR shall submit the final invoice upon completion of services, but no later than 60 days after the date of expiration of the term or termination of this agreement. District shall have no obligation to pay invoices submitted after that date.
- Amounts paid to CONTRACTOR that are determined by audit or otherwise to be unallowable shall be deducted from subsequent payments due to CONTRACTOR under this agreement, or CONTRACTOR shall promptly refund such amount to District on demand.

NOTE: All fees and costs stated herein shall include all applicable tax.

The CONTRACTOR warrants that the cost charged for services under the terms of this contract are not in excess of those charged any other client for the same services performed by the same individuals.

B.2 CONTRACTORS BILLING PROCEDURES

NOTE: Payment may be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Agreement, payment at conclusion of the Agreement, etc.

The District may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by the District.

DISALLOWED COSTS: The CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.