

# **REQUEST FOR PROPOSAL**

**Solicitation No. 119-4090-07**

**Refrigerant Recovery and Disposal**

**Proposal Deadline for Submittal:**

**November 16, 2018 at 10:30 a.m.(Central Time)**

*Location: Burnet County Square Annex  
Conference Room  
133 E. Jackson St.  
Burnet, TX 78611*

**Purchasing Contact:**

**Carole Poppema  
Purchasing Agent  
(512) 756-5466  
cpoppema@burnetcountytexas.org**

**USPS Mail Complete Bid Package To:**

**Burnet County  
Purchasing Department  
Delivery Address:  
220 S. Pierce St.  
Burnet, TX 78611**

**UPS/FedEx/Deliver Complete Bid Package To:**

**Burnet County  
Purchasing Department  
Delivery Address:  
133 E. Jackson St.  
Burnet, TX 78611**

**A Pre-Bid Conference Will Not Be Held**

# SOLICITATION SUMMARY

## 1 GENERAL DESCRIPTION

It is the Intent of this Request for Proposal to solicit competitive sealed proposals for Refrigerant Recovery Company caused by local flooding event. The recovery of debris shall be for the duration of the collection period.

## 2 SCHEDULE OF EVENTS

Please find below a Tentative Schedule of Events for this Solicitation. The County reserves the right to revise the Tentative Schedule of Events if such revision is deemed to be in the best interest of the County.

RFP Advertise Dates: ..... .... November 9, November 13, and November 14, 2018

RFP Release Date:..... .... November 9, 2018

Deadline for Questions: ..... .... November 14, 2018 at 12:00pm (Central Time)

Proposal Due Date and Time: November 16, 2018 at 10:30am (Central Time)

Court Approval Date: ..... .... November 27, 2018

Notice to Proceed..... .... November 19, 2018

## 3 CONTRACT TERM

One (1)-year period with options to renew for four (4) additional one (1)-year periods.

## 4 APPLICABLE LAWS

This solicitation is being conducted in accordance with Texas Local Government Code Chapter 262.

## 5 RECEIPT OF REQUEST FOR PROPOSAL DOCUMENT

If you obtained this RFP document by notification through a newspaper advertisement or from our website, or you want to modify your contact information, please contact the Purchasing Contact person identified on the front cover.

## 6 INSURANCE REQUIREMENTS

Before a contract can be executed, the successful bidder shall provide evidence of insurance coverage in accordance with the "Insurance Provisions" section of the Special Provisions contained within this solicitation document. Bidders and their insurance agent, broker or representative must review the insurance provisions to understand its requirements and cost to contract with the County. An insurance affidavit is included in this solicitation verify the bidder and their insurance agent, broker or representative will comply with the insurance provisions if a contract is awarded.

7 SUBMITTAL LABEL

# IMPORTANT

## REQUIREMENT FOR BID / PROPOSAL SUBMITTAL

Bid/Proposal submittals must be properly labeled to ensure they are not inadvertently opened before the designated time. Therefore, please affix the label below to the outside of the sealed bid/proposal submittal package(s).

If the delivery service used (i.e. FedEx, UPS, courier, etc.) does not permit this label to be affixed on the outside of their delivery box or envelope, then the bidder/proposer must seal the contents of their bid/proposal and affix this label on the sealed package before they place that package in the box or envelope provided by the delivery service.

If this label is not used, it is the bidder's responsibility to ensure this information is written on the outside of the delivery package. Bids or proposals received by the Burnet County that do not have the information requested below displayed on the outside of their bid or proposal may be rejected.



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### BURNET COUNTY BID / PROPOSAL SUBMITTAL LABEL

Bid / Proposal Number: 119-4090-07

Bid / Proposal Name: Refrigerant Recovery and Disposal Services

Due Date and Time: \_\_\_\_\_

Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

8 NO BID FORM

## NO BID/PROPOSAL INFORMATION FORM

SOLICITATION NO. 119-4090-07

SOLICITATION TITLE: Refrigerant Recovery and Disposal Services

*If your firm elects not to submit a proposal, please complete and fax or email this form to:*

**Carole Poppema,  
Purchasing Agent, Burnet County  
Phone: (512) 756-5466 / Email: cpoppema@burnetcountytexas.org**

***Please check all that apply:***

- Do not sell the item(s) or services required
- Cannot be competitive
- Cannot meet the specifications or qualifications described in the attached bid
- Cannot provide insurance required
- Cannot provide bonding required
- Cannot comply with indemnification requirements
- Job too large
- Job too small
- Do not wish to do business with the County
- Company's current workload does not allow for additional work
- Other reason: \_\_\_\_\_

\_\_\_\_\_  
Company Name:

\_\_\_\_\_  
Authorized Officer or Agent:

Telephone: \_\_\_\_\_ Facsimile Number: \_\_\_\_\_

Email: \_\_\_\_\_

Burnet County is soliciting qualification packages for REFRIGERANT RECOVERY AND DISPOSAL SERVICES for the BURNET COUNTY COMMISSIONERS' COURT.

One (1) original and four (4) exact copies of the proposal must be received in the Purchasing Department on or before November 16, 2018 at 10:30am.

Proposals are to be delivered by USPS to:

Burnet County  
ATTN: Purchasing Department  
220 S. Pierce St.  
Burnet, Texas 78611

Proposals are to be delivered by UPS/FedEx/Courier to:

Burnet County  
ATTN: Purchasing Department  
133 E. Jackson St.  
Burnet, Texas 78611

All proposals, including a "NO BID", are due in the Purchasing Department by the due date in sealed envelopes or boxes. All proposals must be clearly marked with the RFP Number, the name of the company submitting the proposal package, and date and time of opening on the outside of the envelope/box and/or Air Bill/Delivery Receipt. Original proposal must be clearly marked "ORIGINAL" and contain all original signatures.

Any proposal received after the date and hour set for RFP opening will not be accepted. Respondent will be notified and will advise the County as to the disposition by either pick up, return at Respondent's expense, or destroyed with written authorization of the Respondent. If proposals are sent by mail to the Purchasing Department, the Respondent shall be responsible for actual delivery of the proposal package to the Purchasing Department before the date and hour set for RFP opening. If mail is delayed either in the postal service or in the internal mail system of the Burnet County beyond the date and hour set for the RFP opening, proposals thus delayed will not be considered and will be disposed of as authorized.

Proposals may be withdrawn at any time prior to the official opening. Alterations made before opening time must be initialed by Respondent guaranteeing authenticity. After the official opening, proposals become the property of the Burnet County and may not be amended, altered or withdrawn without the recommendations of the Purchasing Agent and the approval of County Commissioners' Court.

Burnet County is exempt from Federal Excise and State Sales Tax. The County is not exempt from Surplus Lines Tax or Texas Stamping Tax. Therefore, only applicable taxes must be included in this proposal.

No oral explanation by County officials or employees in regard to the meaning of the proposal specifications will be made and no oral instructions will be given before the award of the contract. Requests from interested Respondents for additional information or interpretation of the information included in the specifications and all questions should be directed in writing, via email to: Carole Poppema, at 512-756-5466 or [cpoppema@burnetcountytexas.org](mailto:cpoppema@burnetcountytexas.org)

All documents relating to this RFP including, but not limited to, the RFP document, questions and their answers, addenda and special notices will be posted under the RFP number on the Burnet County website and available for download by interested parties. No documents will be faxed or emailed after the initial Notice of Intent prior to RFP award. It is the Respondent's sole responsibility to review this site and retrieve all related documents prior to the RFP due date.

The deadline for receipt of all questions is 12:00 (Noon), Central Time, November 14, 2018. After the question deadline, all questions and their answers will be posted on the website <http://www.burnetcountytexas.org/page/auditor.bidrequests> and available for download by interested parties after the deadline for questions.

Proposal Response Forms must be fully completed and included in your response. Forms that have been retyped or altered may result in rejection of proposal. Detailed specifications have been provided and any deviations or exceptions must be referenced on the form provided. Unless deviations are specifically stated herein, services will be provided according to the specifications at no additional charge.

This RFP is issued in compliance with the Texas Purchasing Act, Section 262. Negotiations shall be conducted with responsible vendor(s) who submit proposals determined to be reasonably susceptible of being selected for award.

It is the Respondent's sole responsibility to print and review all pages of the RFP document, attachments, questions and their answers, addenda and special notices. The Proposal Signature Form must be signed and returned. Failure to provide signature on this form renders proposal non-responsive. Failure to complete and submit all required forms, including but not limited to the Reference Page, Certification of Eligibility, Checklist, Questionnaires (when applicable), Addenda (including revised forms), and any other specified forms or documents will be grounds for rejection of entire proposal.

**CONFIDENTIALITY:** Any material that is to be considered confidential in nature must be clearly marked as such and may be treated as confidential to the extent allowable in the Public Information Act. Pricing information is not considered confidential. Trade secrets or confidential information MUST be placed in a separate envelope marked "CONFIDENTIAL INFORMATION" and EACH PAGE must be marked "CONFIDENTIAL INFORMATION." Burnet County will make every *effort* to protect these papers from public disclosure as outlined in Texas Local Government Code, Section 262.

The Texas Public Information Act gives the public the right to request access to government information, subject to certain narrow exceptions. Burnet County is an entity subject to this Act. Therefore, please be advised that your company's declaration that certain information submitted in response to an RFP is "confidential" will not be treated as such if the County receives a request for a copy of the RFP. The County will of course make every effort

to inform your company of such a request and to provide you with an opportunity to object to the release of any proprietary information, but Burnet County cannot and will not make an agreement to withhold information from the public contrary to the County's responsibilities under the Additionally, to the extent your response is incorporated into the contract, that contract will become an official record available for public inspection.

Proposals shall be opened so as to avoid disclosure of contents to competing Respondents and kept secret during the process of negotiation. All proposals that have been submitted shall be open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.

The successful Contractor shall defend, indemnify, and hold harmless Burnet County from any and all liability or loss of any nature whatsoever arising out of or relating to the Contractor performing work on County premises, including, without limiting the generality of the foregoing coverage, any act or omission of the contractor, its agents, servants, employees, or invitees in the execution or performance of the contract.

**Continuing non-performance** of the vendor in terms of Specifications shall be a basis for the termination of the contract by the County. The County shall not pay for work, equipment, or supplies which are unsatisfactory. Vendors will be given a reasonable opportunity before termination to correct the deficiencies. This, however, shall in no way be construed as negating the basis for termination for non-performance.

The **contract may be terminated** by either party upon written thirty (30) days' notice prior to cancellation.

Proposals will be considered irregular if they show any omissions, alteration of form, additions or conditions not called for, or irregularities of any kind. However, Burnet County reserves the right to waive any irregularities and to make award in the best interest of the County.

Burnet County reserves the right to accept or reject in part or in whole any proposals submitted and to waive any technicalities for the best interest of the County. Proposals may be rejected, among other reasons, for any of the following specific reasons:

1. Proposals received after the time limit for receiving proposals.
2. Proposals containing any irregularities.
3. Unbalanced value of any items.

Vendors may be disqualified and their proposals not considered, among other reasons, for any of the following specific reasons:

1. Reason for believing collusion exists among the Vendors.
2. Reasonable grounds for believing that any Vendor is interested in more than one proposal for the work contemplated.
3. The Vendor being interested in any litigation against the County.
4. The Vendor being in arrears on any existing contract or having defaulted on a previous contract.
5. Lack of competency as revealed by a financial statement, experience and equipment, questionnaires, etc.
6. Uncompleted work which in the judgment of the County will prevent or hinder the prompt completion of additional work, if awarded.
7. Respondents shall not owe delinquent property tax in Burnet County.

Due care and diligence have been used in preparation of this information, and it is believed to be substantially correct. However, the responsibility for determining the full extent of the exposure and the verification of all information presented herein shall rest solely with the Respondent. Burnet County and its representatives will not be responsible for any errors or omissions in these specifications, nor for the failure on the part of the Respondent to determine the full extent of the exposures.

The successful Respondent may not assign their rights and duties under an award without the written consent of the Purchasing Agent. Such consent shall not relieve the assignor of liability in the event of default by the assignee.

## **SPECIAL TERMS AND CONDITIONS OF THE CONTRACT**

1. **Contract Terms:** Successful Respondent(s) will be awarded a contract, effective from date of award or notice to proceed as determined by Burnet County Purchasing. At County's option and approval by the vendor, the contract may be renewed for four (4) additional twelve (12) month periods, as further explained in Renewal Options. **Prices must remain firm for the entire contract.**
2. **Renewal Options:** Burnet County reserves the right to exercise an option to renew the contract of the vendor for four (4) additional twelve (12) month periods, provided such option is stipulated in the Special Conditions and agreed upon by both parties. If the County exercises the right in writing, the vendor shall update and submit any legal documents required during the initial solicitation by no later than thirty (30) calendar days prior to the commencement of the option period. These documents, if applicable, will be specified in the Special Conditions and include, but are not limited to, Insurance Certificates and Performance Bonds and must be in force for the full period of the option. If the updated documents are not submitted by the vendor in complete form within the time specified, the County will rescind its option and seek a new solicitation.
3. **Minimum Insurance Requirements:**
  - A. The Contractor shall take out, pay for and maintain at all times during the prosecution of the work under the contract, the following forms of insurance, in carriers acceptable to and approved by Burnet County.
    - 1) Comprehensive Commercial General Liability:
      - a. Bodily Injury/Personal Injury  
\$500,000 per occurrence  
\$1,000,000 aggregate
      - b. Property Damage  
\$500,000 per occurrence  
\$1,000,000 aggregate
    - 2) Professional Liability appropriate for performance of position  
\$500,000 per occurrence and in the aggregate
  - B. The County reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverage and their limits when deemed necessary and prudent by the County based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.



C. Required Provisions:

- 1) Proof of Carriage of Insurance - All certificates of insurance will be required in duplicate and filed with the Purchasing Agent.
- 2) All certificates shall provide Burnet County will receive an unconditional thirty days written notice in case of cancellation or any major change.
- 3) As to all applicable coverage, certificates shall name Burnet County and its officers, employees, and elected representatives as an additional insured.
- 4) All copies of the certificates of insurance shall reference the project name and RFP number for which the insurance is being supplied.
- 5) The Contractor agrees to waive subrogation against Burnet County, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent the loss, if any, is covered by the proceeds of insurance.
- 6) The Contractor is responsible for making sure any sub-contractor(s) performing work under this agreement has the required insurance coverage(s) and supplies Burnet County with the proper documents verifying the coverage.

4. **BOND REQUIREMENTS**

**A. Bid Bond**

THERE IS "NO BID BOND" REQUIRED ON THIS PROJECT!!!

**B. Power of Attorney**

Attorney-in-fact who signs proposals or contract bonds must file with each bond a certified and current copy of the power of attorney.

**C. Payment Bond and Performance Bond shall be as follows:**

For a contract in excess of \$100,000, a Performance Bond shall be executed in the amount of the contract upon the faithful performance of the work in accordance with the plans, specifications, and contract documents. This bond shall be solely for the protection of Burnet County.

For a contract in excess of \$25,000, a Payment Bond shall be executed in the amount of the contract solely for the protection of all claimants supplying labor or furnishing the material used on this project.

The cost for Bond premiums must be included in the Proposed Price.

Payment and Performance Bonds must be issued by an insurance/surety company licensed and authorized by the Texas State Board of Insurance to do business in the State of Texas.

## **SPECIAL TERMS AND CONDITIONS OF THE CONTRACT**

5. **Criminal Background Check:**

**Certain contracts may require vendors to enter sensitive security areas. These include, but are not limited to, Burnet County Sheriff's Department, Burnet County Courts, Burnet County Information Technology, etc.**

**If a particular contract requires your personnel to enter such a location the following could apply.**

- A. The successful Respondent shall provide information, including, but not limited to, name, date of birth, and driver's license number for each individual who will be performing work on Burnet County property.
- B. Vendor personnel who perform work on Burnet County property must submit to and pass a Law Enforcement Criminal Background Check. That status must be maintained by all vendor personnel entering County buildings for the duration of the contract.
- C. Criminal Background checks conducted by your firm may or may not be acceptable to certain departments depending on their particular requirements. The County reserves the right to conduct additional Criminal Background Checks as it deems necessary.
- D. Award of a contract could be affected by your firm's refusal to agree to these terms. Award could also be affected if your firm is unable to supply personnel who can pass a Criminal Background Check.

**Note: The Criminal Background Check applies to the individual and not the Company.**

## I. PROJECT DESCRIPTION

### A. PURPOSE

1. This Request for Proposals (RFP) invites Responses from experienced firms for the provision of Refrigerant Recovery and Disposal from 2221 N. Phillip Ranch Road, Granite Shoals, Texas, Burnet County, Texas, following a flooding event. The objective of the RFP and subsequent contracting activity is to secure the services of a capable and experienced Contractor who is capable of efficiently recovering refrigerant from between 100-200 units in a timely and cost-effective manner. The County intends to enter into a contract with one (1) Prime Contractor who may utilize both local and non-local resources to provide services for the event of October 2018. The Contractor will be expected to have an initial management team mobilized to Burnet County within 24 hours of receipt of the Notice to Proceed and to have mobilized all appropriate equipment and personnel to the Burnet County area within 48 hours of receipt of the Notice to Proceed. The County reserves the right to enter into contracts with more than one Prime Contractor in the event that no one firm can provide all of the necessary services.
2. Successful Respondent(s) will be awarded a contract, effective from date of award or notice to proceed as determined by Burnet County Purchasing Agent. At Burnet County's option and approval by the vendor, the contract may be renewed for four (4) additional twelve (12) month periods, as further explained in Renewal Options. **Prices must remain firm for the entire contract.**
3. The project is referred to as the Refrigerant Recovery and Disposal Contract in the following sections of this RFP.

### B. PROJECT SUMMARY

#### 1. Introduction

- a. The Refrigerant Recovery and Disposal Contract will encompass multiple areas of Burnet County. There are expected to be no less than 100 units and no more than 200 units.
- b. The County has identified the need for a Refrigerant Recovery Company to assist the County forces in completing debris management operations throughout the County. Prime Contractors will be selected for Refrigerant Recovery Company. For the purpose of Refrigerant Recovery Company, the Refrigerant Recovery Company must have the capacity to manage a large workforce and to carry the expenses associated with a major recovery operation prior to the initial County payment and between subsequent payments, as well as the capacity to provide the necessary bonds and insurance.
- c. The Contract(s) to be awarded for this project will be a unit fee.

#### 2. Refrigerant Recovery and Disposal Requirements

Planning for post-disaster cleanup operations is a function of the Burnet County Commissioners' Court. The debris management operations will be carried out under the cognizance of the Burnet County Commissioners' Court. That contractor is responsible for:

The County will prescribe the specific procedures to be followed after ascertaining the scope and nature of the disaster's impacts. The County has pre-designated Temporary Debris Staging and Reduction Sites (TDSR) for the sole purpose of the temporary staging and reduction of clean woody debris and construction and demolition refrigerant. The Prime Contractor will be responsible for all of the Refrigerant Recovery Company / Hauling activities during the course of the recovery/cleanup period.

## **II. STATEMENT OF WORK**

The following General Statement of Work is envisioned for the project and should be considered when responding to the RFP. Nothing in this description shall be construed to limiting the potential scope of work to this description or to requiring that this description be included in the final scope of work for the project. Nothing in the following General Statement of Work should be construed as limiting the types of work that a Refrigerant Recovery Company servicer may address in a response to this Request for Proposals. Respondents should address all services which, on the basis of their experience, are deemed necessary to achieving the County's Refrigerant Recovery Company goals.

### **A. GENERAL STATEMENT OF WORK- RECOVERY**

1. The Refrigerant Recovery Company Service Company shall provide all expertise, effort, personnel, refrigerant, and equipment necessary for the recovery and lawful disposal of refrigerant generated by natural or man-made disasters that impacted Burnet County, Texas. Specifically, the Refrigerant Recovery Company Service Company will be responsible for refrigerant recovery and disposal operations performed by the County's Refrigerant Recovery Company relative to debris at 2221 N. Phillip Ranch Road, Granite Shoals, Texas.
2. Services shall be performed on an "as needed basis" when directed by the Burnet County Commissioners' Court.
3. The Burnet County Commissioners' Court will provide guidance and direction on priorities and specific needs for the recovery operations. The Refrigerant Recovery and Disposal Company, in concert with the Burnet County Commissioners' Court, shall determine the method and manner of the refrigerant recovery and disposal that provide the greatest economy of operations and cost to the County. The Refrigerant Recovery and Disposal Company shall then provide for the cost-effective and efficient recovery of refrigerant accumulated or deposited on public property, as described above and the recovery and final disposal of those refrigerant. The Refrigerant Recovery and Disposal Company will be expected to provide all personnel, equipment, forms, record keeping, materials, supplies and other resources necessary to carry out the specified services and to provide ongoing and periodic reports to the County for its use in providing documentation to State and Federal officials pursuant to Federal reimbursement of eligible recovery costs. The Refrigerant Recovery and Disposal Company must be fully cognizant of all pertinent Federal (FEMA, U.S. Army Corps of Engineers, etc.) and State of Texas documentation requirements and procedures and be prepared to assist the County staff in compiling and managing information and data necessary for those purposes. Prior to initiating work under this project, the Refrigerant Recovery and Disposal Company shall present to the Burnet County Commissioners' Court for review and discussion a General

Operations Plan and sufficient supporting documentation to adequately describe all planned actions for recovery of the refrigerant, handling and eventual disposal of disaster generated refrigerant. The Refrigerant Recovery and Disposal Company shall agree to execute this plan, with all manners of contingencies recognized, upon being authorized by the County to begin work.

### **III. RFP RESPONSE REQUIREMENTS**

Refrigerant Recovery and Disposal Companies interested in providing Refrigerant Recovery and Disposal services must submit one (1) original and four (4) exact copies of their response to this RFP in the following format, utilizing numbered tabs for each of the sections.

#### **A. LETTER OF TRANSMITTAL AND AFFIDAVIT**

Each proposal must be accompanied by a Letter of Transmittal signed by an authorized representative of the Respondent. The letter must:

1. Identify the project by name as "Refrigerant Recovery and Disposal Services" and RFP Number.
2. Include the following information:
  - a. Name of firm or individual.
  - b. Permanent main officer address, telephone number and fax number.
  - c. If it is a disadvantaged business enterprise, the nature of that classification.
  - d. If a corporation, where incorporated.
  - e. How many years the firm has been engaged in business under the present name.
  - f. General types of work performed by the firm.
  - g. Contracts currently on hand or in effect.
  - h. The following questions and the firm's answers:
    - 1) Have you ever failed to complete any work awarded to you? If so, explain.
    - 2) Have you ever defaulted on a contract? If so, explain.
    - 3) Will you, upon request provide a detailed financial statement or any other information required by Burnet County?
    - 4) Will you submit updated resumes for all key personnel who might be assigned to this project if you are selected for the work?
    - 5) Will you, upon request, furnish documentation to support the information in your response to the RFP?
3. Provide a synopsis of the Refrigerant Recovery and Disposal Company's depth of knowledge of the project's scope and special requirements as the Refrigerant Recovery and Disposal Company perceives them.
4. Be signed by an individual, identified by name and title, authorized to represent the Respondent in this matter.
5. Identify the names, titles, telephone, and fax numbers of individuals who are

available to be contacted by the Burnet County Purchasing Department concerning the submittal and for additional information.

**IV. MANDATORY QUALIFICATION AND CONTRACTING CRITERIA.**

Provide evidence and statements of compliance/intent in the form of written documentation that the Refrigerant Recovery and Disposal Company is capable of entering into a contract with the County by satisfying the Mandatory Qualification and Contracting Requirements that follow:

**A. QUALIFICATION REQUIREMENTS**

1. Refrigerant Recovery and Disposal Company must have specific experience providing the specified services. Provide a statement of compliance.
2. Refrigerant Recovery and Disposal Company must not have been prohibited from doing business with any governmental entity for any reason within the last 10 years. Provide a statement of compliance.
3. Refrigerant Recovery and Disposal Company must not be operating under Chapter 11 or any other financial restraints that would preclude his ability to enter into equipment leasing or rental arrangements. Provide a statement of compliance.

**B. CONTRACTING REQUIREMENTS**

1. Successful Refrigerant Recovery and Disposal Company must, upon award of a contract, secure a Performance and Payment Bond for the full term of the contract. Upon contract activation, Payment and Performance Bonds are required to be filed with Commissioner's Court prior to the starting of a project. See Bond Requirements in Special Conditions.
2. Successful Refrigerant Recovery and Disposal Company must perform as an independent contractor and, as such, must have and maintain complete control over all of its employees and operations. Provide a statement of intent.
3. Successful Refrigerant Recovery and Disposal Company must not assign, sublet, or transfer its interest or obligations of this project. Provide a statement of intent.

**C. INSURANCE REQUIREMENTS**

1. Refrigerant Recovery and Disposal Company must provide proof of insurance to demonstrate compliance with the County's requirements specified in this package. See Insurance Requirements in Special Conditions.
2. Successful Refrigerant Recovery and Disposal Company must not begin any work under the contract until he/she has obtained all required insurance and provided the County Purchasing Agent with the related certificates and endorsements. Nor shall the Refrigerant Recovery and Disposal Company allow any Subcontractor to commence work until all similar insurance required of the Subcontractor has been so obtained. The Refrigerant Recovery and Disposal Company may provide insurance coverage for all his Subcontractors, at Refrigerant Recovery and Disposal Company's cost. However, all Subcontractors

must provide their own Workers' Compensation Insurance per State law. For the duration of the project, the Refrigerant Recovery and Disposal Company must provide the insurance listed below and document required coverage with certificates of insurance.

**D. USE OF SUBCONTRACTORS**

1. Successful Refrigerant Recovery and Disposal Company may use Subcontractors for this project. Refrigerant Recovery and Disposal Company must list Subcontractors proposed for this project and their respective duties.
2. No Subcontractor may provide services unless the County consents. The Refrigerant Recovery and Disposal Company shall be responsible for completing all contract work even if a Subcontractor has assumed responsibility to complete certain work. Also, the Refrigerant Recovery and Disposal Company shall be responsible for the actions and performance of all Subcontractors. Furthermore, the Refrigerant Recovery and Disposal Company agrees that any subcontract for this project will include the same mandatory insurance requirements in favor of the County as are specified in the County's contract with the Refrigerant Recovery and Disposal Company, unless Refrigerant Recovery and Disposal Company provides such coverage for his/her Subcontractors. However, all subcontractors must provide their own Workers' Compensation Insurance per State law. Subcontractor certificates of insurance and endorsements must be collected by the Refrigerant Recovery and Disposal Company and made available for County Purchasing Agent review upon request. Provide statement of compliance.

**V. PROJECT REQUIREMENTS.**

Provide detailed information on Refrigerant Recovery and Disposal Company's ability to satisfy the project requirements.

**A. EXPERIENCE:**

1. Describe Refrigerant Recovery and Disposal Company's overall experience performing large-scale Refrigerant Recovery Company and work similar to this project.
2. Describe Refrigerant Recovery and Disposal Company's experience during the last 5 years performing large-scale projects or other work similar to this project. The Refrigerant Recovery and Disposal Company must identify similar projects that he/she successfully completed, including date and location, nature of work, value of the contract, and the name and telephone number of the customer's point of contact for reference purposes.
3. Describe Refrigerant Recovery and Disposal Company's most recent experience in mobilizing large workforces under routine and emergency conditions.
4. If the Refrigerant Recovery and Disposal Company intends to use Subcontractors to assist in the work, the Refrigerant Recovery and Disposal Company shall also identify similar work successfully completed by the Subcontractors.
5. Document Refrigerant Recovery and Disposal Company's ability to provide appropriate training for personnel that will be employed for work under this project.

## **B. GENERAL PROJECT REQUIREMENTS**

Responses must acknowledge these basic requirements and base responses to this RFP on these general specifications.

1. Burnet County intends to engage a Refrigerant Recovery and Disposal Company to assist the County with Refrigerant Recovery Company at Temporary Debris Staging and Reduction Sites (TDSRS), and at disposal sites.
2. Burnet County will assign a Debris Manager (DM) and will establish a Contract Management Center or other operational group setting to provide overall coordination of recovery operations. The Debris Manager will be the primary point of contact for the Contractor and will resolve contract administration issues and disputes. The Recovery Services Contractor is to provide expertise for and assistance to the County's Debris Manager and also assist County staff at the Contract Management Center in overseeing and documenting the debris management operations.
  - a. Field recovery.
  - b. Debris management tracking.
  - c. Trip ticket management.
  - d. Data administration.
  - e. All recovery workforce requirements, including but not limited to staffing, training, equipment, safety training and enforcement, mobilization, transportation and logistic support.
  - f. Site Safety Plan preparation and maintenance.
  - g. Compliance with all applicable Federal, State and local rules relative to the recovery operations.
  - h. Preparation of documentation to support Federal cost reimbursement processes.
  - i. Related activities for effective and efficient debris management operations deemed necessary or desirable on the basis of the Contractor's experience when authorized by the County Debris Manager.

## **C. PROJECT APPROACH**

1. Provide a general description of how the Refrigerant Recovery and Disposal Company intends approach to the work. That description must include a statement of the requirements as Refrigerant Recovery and Disposal Company perceives them, resource mobilization strategy, and general field operations strategy. Exceptions to the project work as described by the County must fully be explained.
2. Provide a brief summary of the Project Work Plans (Field Operations, Communications, Work Site Safety, etc.) that will be developed for the project.

## **D. WORKFORCE INFORMATION**

1. Responses must acknowledge the workforce planning standards and must demonstrate the Respondent's ability to satisfy these requirements:
  - a. Within 24 hours of notification, the Refrigerant Recovery and Disposal



Company shall provide a sufficient number of professionals and qualified personnel to meet all contract requirements and recovery needs associated with this project, including, as a minimum force necessary to:

- b. All personnel shall be a minimum of 18 years of age, be fluent in the English language and have a valid driver's license issued in the United States. The Refrigerant Recovery and Disposal Company will be required to increase its staffing from this point depending on the scope of the debris/waste recovery operations.
  - d. The Refrigerant Recovery and Disposal Company shall provide all Refrigerant Recovery Company employees with appropriate personal protective equipment to include, but not be limited to, eye protection, hearing protection, safety shoes, safety vests, hard hats, and wet weather clothing, to comply with all applicable Federal, state and local occupational health and safety requirements.
  - e. The Refrigerant Recovery and Disposal Company shall provide Refrigerant Recovery Company employees with necessary transportation, all communications equipment (cell phone, satellite phones, radio, etc.) necessary to remain in contact with their supervisors or other key personnel who in turn are in direct contact with the Contract Management Center. The Contractor shall also provide all required logistical support for the personnel he/she engages, including lodging, meals and other necessary support services. The Contractor's supervisory personnel will be wholly responsible for support the Contractors operations and resolving conflicts within the scope of or in any way associated with those operations.
2. Respondents must provide a detailed description of the resources (workforce and equipment) available to be employed on the project, including:
- a. Summary of the Respondent's personnel that will be dedicated to the project, including:
    - 1) The number of management employees that will be assigned to the contract, their job titles, and responsibilities.
    - 2) The names of and resumes for all members of the Project Management Team.
    - 3) The name of the Respondent's claims representative.
  - b. List of the Subcontractors with whom the Respondent has agreements for post-disaster support.

## **F. DESCRIPTION OF RECOVERY SERVICES**

1. Respondent must provide a detailed description of the services that Respondent will perform upon issuance of each Notice to Proceed. The description of services shall address all elements of the General Statement of Work described in Section II of this RFP. In addition, the Respondent may include other services which, in the Respondent's experience, are necessary or desirable in carrying out the intent of the proposed Contract and/or achieving the County's stated goals with respect to debris management operations following a disaster.
2. The description of services must, at a minimum, include the following:
  - a. A detailed description of the method and manner of recovery and lawful disposal of disaster-generated debris to ensure that the debris recovery hauling contractors are performing in accordance with the provisions of the contracts, satisfying applicable local, State and Federal statutory and regulatory requirements and adhering to FEMA guidelines that govern the eligibility of those recovery services for Federal reimbursement of the County's costs. The information provided should demonstrate how the Respondent will satisfy the requirements of the project, including:
    - 1) Scope and sequence of recovery operations to be performed
    - 2) Manner in which volumes of debris/waste will be estimated in the field, at TDSRS locations, and at landfills or disposal sites
    - 3) Methodology for recovery the collection, tracking, and disposal of disaster related refrigerant
  - b. A summary of the Respondent's project approach and proposed operating procedures relative to these key elements of the project, including at a minimum:
    - 1) Refrigerant Recovery Company and Hauling Contractor workforce and equipment registration and tracking
    - 2) Equipment identification in the field
    - 3) Truck certification, registration, and marking
    - 4) Document management and controls, including Load Tickets and reports
    - 5) Data collection
    - 6) Data assimilation/integration

**H. EXCEPTIONS TO RFP REQUIREMENTS**

Respondents must fully explain any exceptions taken to the requirements of this RFP, including why any of the specified information was not included or why such information should not be considered in selecting a Refrigerant Recovery and Disposal Company for the project.

**I. OPTIONAL ADDITIONAL INFORMATION**

- 1. Respondents may provide relevant information in addition to the material and information specified in this RFP, to the extent that such information bears directly on the subject of this RFP.

**VI. EVALUATION OF RESPONSES**

**A. EVALUATION PROCESS**

- 1. Refrigerant Recovery and Disposal Companies will be evaluated for this project solely on the basis of the information submitted in response to the Request for Proposals. The County will use a two-step evaluation process to identify the Best Qualified responder.
  - a. Step I. Respondents must demonstrate that they satisfy the mandatory qualification and contracting criteria and project requirements by submitting the information specified in this RFP. All Responses will be screened for compliance with the mandatory qualification elements, such as the required statements of compliance. Those that satisfactorily complete that screening process will proceed to Step II.
  - b. Step II. Respondents will be evaluated on the basis of the technical and project performance information they submitted. Step II will result in point awards in the following categories. The point values shown are the maximums associated with each category:

1)	<b>Refrigerant Recovery and Disposal Company Experience</b>	<b>40 Points</b>
2)	<b>Project Approach</b>	<b>10 Points</b>
3)	<b>Capability, Capacity and Availability</b>	<b>20 Points</b>
4)	<b>Other Supporting Information</b>	<b>20 Points</b>
	• Resource availability, including all resources	
	• Number of Contracts in place	
5)	<b>Pricing</b>	<b>10 Points</b>
<hr/>		
	<b>TOTAL</b>	<b>100 Points</b>

- c. The total points assigned for each proposal will be the basis for identifying and selecting the best qualified Respondent.
- d. Submission of a response to this RFP implies Respondent's acceptance of the evaluation technique and that subjective judgment must be made by Burnet County during the assigning of points.
- e. The County reserves the right to deny qualification to any Refrigerant Recovery and Disposal Company that, in the opinion of the County, does not satisfy the Mandatory Pre-Qualification Criteria or is not capable of satisfying the Project Requirements. The County may, at its own discretion, waive defects, irregularities, or informalities in the pre-qualification process or in any response to the process that, in the County Contract Administrator's opinion, seems most advantageous to the County and in the best interest of the public.

## **VII. PRELIMINARY SPECIFICATIONS**

### **A. GENERAL**

The following preliminary specifications have been developed by Burnet County for recovery of disaster related debris and waste management operations carried out by the County's designated Refrigerant Recovery Company and Hauling Contractor. These Preliminary Specifications will be used in negotiating final specifications for the project once a Refrigerant Recovery and Disposal Company has been selected.

### **B. SITE RECOVERY SERVICES**

1. Monitors will be assigned in accordance with the Contractor's Recovery Plan and shall be responsible for carrying all provisions of this contract without specific additional direction from Burnet County. The following minimum conditions apply:
  - a. Contractor shall, within 48 hours, be prepared to provide qualified on-site personnel for Refrigerant Recovery Company operations at debris loading sites located throughout Burnet County.
  - b. Contractor must be prepared to provide personnel with transportation to and from the loading site(s), mobile communications equipment necessary to remain in contact with dispatch and supervisor(s) at all times, and all logistic support.

### **I. OTHER CONSIDERATIONS**

1. The Contractor shall supervise and direct the work, using qualified labor and proper equipment for all tasks. Safety of the Contractor's personnel and equipment is the responsibility of the Contractor. Additionally, the Contractor shall pay for all refrigerant, personnel, taxes, and fees necessary to perform under the terms of this contract.
2. The Contractor must be duly licensed in accordance with Federal and state statutory and regulatory requirements to perform the work. The Contractor shall be responsible for determining what permits are necessary to perform under the contract. The Contractor shall obtain all permits necessary to complete the work. Copies of all permits shall be submitted to the Debris Management Center before commencing work.
3. The Contractor shall be responsible for promptly responding to any notices of violations issued as a result of the Contractor's or any subcontractors' actions or operations during the performance of this contract. Corrections for any such violations shall be at no additional cost. The County's Debris Manager shall be immediately advised of any such violation or notice of violation and the corrective actions being taken.
4. The Contractor shall be responsible for paying any and all costs associated with violations of law or regulation relative to Contractor's activities. Such costs might include but are not limited to site cleanup and remediation; fines, administrative and civil penalties; and third-party claims imposed on Burnet County by any regulatory agency or by any third party as a result of

noncompliance with federal, state, or local environmental laws and regulations or nuisance statutes by Contractor, its subcontractors, or any other persons, corporations or legal entities retained by the Contractor under this contract.

5. The Contractor must attend all meetings required by Debris Manager to evaluate the performance of all monitors or to discuss any open contract issues.
6. The Contractor must provide sufficient personnel and management to assure the policies and procedures of work meets the requirements and intent of this contract.

## **VENDOR REFERENCES**

Please list three (3) references, **not including the Burnet County**, who can verify your performance as a vendor. Performance includes but shall not be limited to, sales and/or service, delivery, invoicing, and other items as may be required for Burnet County to determine your firm's ability to provide the intended goods or service of this RFP. The County prefers references to be from customers for whom your firm has provided the same items (sales and/or services) as those specified in this RFP. Inaccurate, obsolete or negative responses from the listed references could result in rejection of your proposal.

<b>REFERENCE ONE</b>
----------------------

GOVERNMENT/COMPANY NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CONTACT PERSON AND TITLE: \_\_\_\_\_ TELEPHONE  
NUMBER: \_\_\_\_\_ E-MAIL ADDRESS: \_\_\_\_\_  
\_ SCOPE OF WORK: \_\_\_\_\_  
CONTRACT PERIOD: \_\_\_\_\_

<b>REFERENCE TWO</b>
----------------------

GOVERNMENT/COMPANY NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CONTACT PERSON AND TITLE: \_\_\_\_\_ TELEPHONE  
NUMBER: \_\_\_\_\_ E-MAIL ADDRESS: \_\_\_\_\_  
\_ SCOPE OF WORK: \_\_\_\_\_  
CONTRACT PERIOD: \_\_\_\_\_

<b>REFERENCE THREE</b>
------------------------

GOVERNMENT/COMPANY NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CONTACT PERSON AND TITLE: \_\_\_\_\_ TELEPHONE  
NUMBER: \_\_\_\_\_ E-MAIL ADDRESS: \_\_\_\_\_  
\_ SCOPE OF WORK: \_\_\_\_\_  
CONTRACT PERIOD: \_\_\_\_\_

# PROPOSAL SIGNATURE FORM

The undersigned agrees this proposal becomes the property of Burnet County after the official submission.

The undersigned affirms he has familiarized himself with the local conditions under which the work is to be performed; satisfied himself of the conditions of delivery, handling and storage of equipment and all other matters which may be incidental to the work, before submitting a proposal.

The undersigned agrees if this proposal is accepted, to furnish any and all items/services upon which prices are offered, at the price(s) and upon the terms and conditions contained in the Specifications. The period for acceptance of this Proposal will be ninety (90) calendar days unless a different period is noted by the Respondent.

The undersigned affirms that they are duly authorized to execute this contract, that this proposal has not been prepared in collusion with any other Respondent, nor any employee of Burnet County, and that the contents of this proposal have not been communicated to any other Respondent or to any employee of Burnet County prior to the official submission of this RFP.

Vendor hereby assigns to purchase any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.

The undersigned affirms that they have read and do understand the specifications and any attachments contained in this RFP package. ***Failure to sign and return this form will result in the rejection of the entire proposal.***

**Signature** \_\_\_\_\_ **X**  
Authorized Representative

**NAME AND ADDRESS OF COMPANY:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Date \_\_\_\_\_ Name \_\_\_\_\_  
Title \_\_\_\_\_  
FAX No. \_\_\_\_\_  
Tel. No. \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**AFTER HOURS EMERGENCY CONTACT:**

Name: \_\_\_\_\_ Tel. No. \_\_\_\_\_





Did you sign your proposal  
and/or your addendum?

**If not, your proposal  
will be rejected**

**COMPANY IS:**

Business included in a corporate income Tax Return?     YES     NO

Corporation organized and existing under the laws of the State of \_\_\_\_\_

Partnership consisting of \_\_\_\_\_

Individual trading as \_\_\_\_\_

Principal offices are in the city of \_\_\_\_\_

# CERTIFICATION OF ELIGIBILITY

By submitting a proposal in response to this solicitation, the Respondent certifies that at the time of submission, he/she is not on the Federal Government's list of suspended, ineligible, or debarred contractors.

In the event of placement on the list between the time of proposal submission and time of award, the Respondent will notify the Burnet County Purchasing Agent. Failure to do so may result in terminating this contract for default.

Signature \_\_\_\_\_

**THIS FORM MUST BE SIGNED.**



## **SAFETY RECORD QUESTIONNAIRE**

The Burnet County City Commissioners' Court desires to avail itself of the benefits of Section 262 of the Local Government Code, and thereby consider the safety records of potential contractors prior to awarding this RFP. Pursuant to Section 262 of the Local Government Code, Burnet County has adopted the following written definition and criteria for accurately determining the safety record of a Respondent prior to award of this RFP.

The definition and criteria for determining the safety record of a Respondent for this consideration shall be:

If the Respondent in response to the questions in this Questionnaire reveals more than two (2) cases in which final orders have been entered by the Occupational Safety and Health Review Commission (OSHRC) against the Respondent for serious violations of OSHA regulations within the past three (3) years, County will, at its discretion, determine whether to disqualify the Respondent.

If the Respondent in response to the questions in this Questionnaire reveals more than one (1) case in which Respondent has received a citation from an environmental protection agency for violations within the past five (5) years, County will, at its discretion, determine whether to disqualify the Respondent. Environmental Protection Agencies include the U.S. Army Corps of Engineer (USACOE), the U.S. Fish and Wildlife Service (USFWS), the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), and its past associated agency: the Texas Natural Resource Conservation Commission (TNRCC), the Texas Department of Health, the Texas Parks and Wildlife Department (TPWD), the Structural Pest Control Board (SPCB), agencies of local governments responsible for enforcing environmental protection laws or regulations, and similar regulatory agencies of other states of the United States. Citations include notice of violation, notice of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, judicial final judgments. Notice of Violations and Notice of Enforcement received from TCEQ shall include those classified as major violations and moderate violations under TCEQ'S regulations for documentation of Compliance History, 30TAC, Chapter 60.2 (c) (1) and (2).

If the Respondent in response to the questions in this Questionnaire reveals that the Respondent has been convicted of a criminal offense within the past ten (10) years which resulted in serious bodily harm or death, County will determine whether to disqualify the Respondent.

## **SAFETY RECORD QUESTIONNAIRE**

In order to obtain proper information from Respondents so that County may consider the safety records of potential contractors prior to awarding bids on County contracts, Burnet County requires that Respondents answer the following three (3) questions and submit them with their proposals:

### **QUESTION ONE**

Has the Respondent, or the firm, corporation, partnership, or institution represented by the Respondent, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of OSHA within the past three (3) years?

\_\_\_\_\_Yes    \_\_\_\_\_No

If the Respondent has indicated yes for question number one above, the Respondent must provide Burnet County, with its proposal response, the following information with respect to each such citation.

1. Date of offense;
2. Location of establishment inspected;
3. Category of offense;
4. Final disposition of offense, if any; and
5. Penalty assessed.

## SAFETY RECORD QUESTIONNAIRE

### QUESTION TWO

Has the Respondent, or the firm, corporation, partnership, or institution represented by the Respondent, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of environmental protection laws or regulations with the past five years? Citations include notice of violation, notice of enforcement, suspension/revocations of state or federal licenses, or registrations, fines assessed pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, judicial final judgments. Notice of Violations and Notice of Enforcement received from TCEQ shall include those classified as major violations and moderate violations under TCEQ'S regulations for documentation of Compliance History, 30TAC, Chapter 60.2 (c) (1) and (2).

\_\_\_\_\_Yes    \_\_\_\_\_No

If the Respondent has indicated yes for question number two above, the Respondent must provide Burnet County, with its proposal response, the following information with respect to each such citation.

1. Date of offense;
2. Location where offense occurred;
3. Type of offense;
4. Final disposition of offense, if any; and
5. Penalty assessed.

## SAFETY RECORD QUESTIONNAIRE

### QUESTION THREE

Has the Respondent, or the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such firm, corporation, partnership, or institution, ever been convicted, within the past ten (10) years, of a criminal offense which resulted in serious bodily injury or death?

\_\_\_\_\_Yes    \_\_\_\_\_No

If the Respondent has indicated Yes for question number three above, the Respondent must provide Burnet County, with its proposal response, the following information with respect to each such citation.

1. Date of offense;
2. Location where offense occurred;
3. Type of offense;
4. Final disposition of offense, if any; and
5. Penalty assessed.

I certify that I have made no willful misrepresentations in this Questionnaire nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in this questionnaire will be investigated, with my full permission, and that any misrepresentations or omissions may cause my proposal to be rejected.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title



## ENVIRONMENTAL COMPLIANCE AND SAFETY RECORD

Pursuant to Sections 262 of the Texas Local Government Code, the County shall consider the environmental compliance/safety record of the Respondents and may determine at its reasonable discretion the disqualification of any Respondent which in response to the following question reveals more than two (2) or more violations, with the severity and nature of the violations to be considered in the determination.

Has the Respondent, or the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such firm, corporation, partnership, or institution, received citations for violations of environmental laws within the past three years? Citations include, but are not limited to: notices of violation; suspensions/revocations of state/federal licenses or registrations; fines assessed; pending criminal complaints; indictments; convictions; deferred adjudications; administrative orders; draft orders; final orders; and final judgments. Any citations from the following agencies must be supplied: Environmental Protection Agency (EPA); Texas Commission on Environmental Quality or its past associated agencies such as the Texas Natural Resource Conservation Commission (TNRCC), the Texas Water Commission, and the Texas Air Control Board; and the Texas Department of State Health Services and its predecessor agency the Texas Department of Health. Also include any citations from environmental regulatory agencies of other states of the United States.

\_\_\_\_\_Yes    \_\_\_\_\_No

If the Respondent has indicated yes for question number one above, the Respondent must provide Burnet County, with its proposal response, the following information with respect to each such citation.

1. Date of Citation;
2. Location of establishment inspected;
3. Category of offense;
4. Final disposition of offense, if any; and
5. Penalty assessed.

I certify that I have made no willful misrepresentations in this Questionnaire nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in this questionnaire will be investigated, with my full permission, and that any misrepresentations or omissions may cause my proposal to be rejected.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title





2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

- a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. Equal Employment Opportunity.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
- b. Key Definitions.

- (1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
  - (2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.
- c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
- d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:
- “During the performance of this contract, the contractor agrees as follows:
- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  - (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
  - (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section,

and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- b. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40

U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.

- c. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- d. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti-Kickback Act.”** However, for purposes of grant programs where both clauses do apply, FEMA requires the following contract clause:

“Compliance with the Copeland “Anti-Kickback” Act.

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

5. Contract Work Hours and Safety Standards Act.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work



done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by

FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

- c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.
    - a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

“Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal

government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual* Chapter IV, ¶ 6.d, and Appendix C, ¶ 2 [hereinafter *PDAT Supplement*]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530; *PDAT Supplement*, Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
- d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.
- e. Specifically, a covered transaction includes the following contracts for goods or services:

- (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
  - (2) The contract requires the approval of FEMA, regardless of amount.
  - (3) The contract is for federally-required audit services.
  - (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.
- d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

“Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; *PDAT Supplement*, Chapter IV, 6.c; Appendix C, ¶ 4.
- c. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or

attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See PDAT Supplement, Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

d. The following provides a Byrd Anti-Lobbying contract clause:

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date"

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.322; *PDAT Supplement*, Chapter V, ¶ 7.
- c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.”

#### 11. Additional FEMA Requirements.

- a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:
- b. Changes.

To be eligible for FEMA assistance under the non-Federal entity’s FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

- c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and

agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

12. DHS Seal, Logo, and Flags.

- a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).
- b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

13. Compliance with Federal Law, Regulations, and Executive Orders.

- a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor



will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. No Obligation by Federal Government.

- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. The following provides a contract clause regarding no obligation by the Federal Government: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

15. Program Fraud and False or Fraudulent Statements or Related Acts.

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: “The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

## **PROCUREMENT STANDARDS**

### **§200.318 General procurement standards.**

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration

will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.213 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 43309, July 22, 2015]

### **§200.319 Competition.**

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

#### **§200.320 Methods of procurement to be followed.**

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

#### **§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

#### **§200.322 Procurement of recovered materials.**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

### **§200.323 Contract cost and price.**

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

### **§200.324 Federal awarding agency or pass-through entity review.**

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

#### **§200.325 Bonding requirements.**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

#### **§200.326 Contract provisions.**

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.



APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

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