FEMA-Required Provisions for All Contracts

*Unless otherwise noted, the following contract provisions are required by the regulations at 2 C.F.R. Part 200 or by FEMA guidance to be included in all contracts funded in whole or in part with a FEMA Public Assistance grant. Red text provides further discussion of applicability. Text highlighted in yellow indicates a word or phrase that may require revision to conform to the specific language of the contract. All provisions should be carefully reviewed and revised as appropriate to fit within the context of the larger contract.*

# REMEDIES

*Required for all contracts in excess of $250,000. 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. FEMA does not provide guidance as to the recommended or required language for this provision. The following is only an example:*

If any work performed by the Contractor fails to meet the requirements of the Contract, any other applicable standards, codes or laws, or otherwise breaches the Contract, Applicant may in its sole discretion:

1. elect to have the Contractor re-perform or cause to be re-performed at Contractor’s sole expense, any of the work which failed to meet the requirements of the Contract;
2. hire another contractor to perform the work and deduct any additional costs incurred by Applicant as a result of substituting contractors from any amounts due to Contractor; or
3. pursue and obtain any and all other available legal or equitable remedies.

This Section shall in no way be interpreted to limit Applicant’s right to pursue and obtain any and all other available legal or equitable remedies against Contractor.

# TERMINATION FOR CONVENIENCE

*Required for all contracts in excess of $10,000. Must address termination for cause and for convenience by the applicant, including the manner by which it will be effected and the basis for settlement. The following is sample language that must be conformed to the specific circumstances of the Contract.*

This Contract may be terminated, in whole or in part, without cause, by either party upon thirty (30) calendar days prior written notice to the other party. Upon such termination, the Contractor waives any claims for damages from the termination without cause including, without limitation, any and all consequential claims, and as the sole right and remedy of the Contractor, Applicant shall compensate the Contractor for all authorized work satisfactorily and responsibly completed through the termination date. In the event of termination by the Contractor without cause, the following shall apply: (1) all bonds shall remain fully in force to insure Applicant’s ability to construct the project for the Contract amount; (2) the Applicant shall have the right to, at its option, solicit bids for the completion of the unfinished portion of the work, or to negotiate with the number two bidder under the original bid; and (3) the Contractor and his surety shall be jointly and severally responsible for all costs over the original Contract amount incurred by Applicant in completion of the project, in addition to liquidated damages, construction costs, such costs may include engineering, advertising, and administrative expenses incurred with the solicitations of bids for the completion of the unfinished portion of the work. In the event of termination without cause by either party, the obligations of the Contractor and his surety with respect to the warranty and maintenance shall remain in full force and effect for the portion of the work completed by the Contractor and shall not expire until the expiration of the prescribed time period measured from the final acceptance of the project in its entirety. These clauses shall survive the termination of this Contract.

# TERMINATION FOR CAUSE

*Required for all contracts in excess of $10,000. Must address termination for cause and for convenience by the applicant, including the manner by which it will be effected and the basis for settlement. The following is sample language that must be conformed to the specific circumstances of the Contract.*

Applicant reserves the right to terminate this Contract immediately, in whole or in part, at its sole discretion, for the following reasons:

1. Lack of funding. Lack of, or reduction in, funding or resources in which instance, Applicant shall provide the Contractor ten (10) days written notice of such termination or lack of funds;
2. Non-Performance. The Contractor’s non-performance of the specifications of this Contract or non-compliance with the terms of this Contract shall be a basis for termination of the Contract by Applicant. Termination, in whole or in part, Applicant under this Section may be made at Applicant’s option and without prejudice to any other remedy to which Applicant may be entitled to at law or in equity, or elsewhere under this Contract, by giving thirty (30) days written notice, with the understanding that all services being performed under this Contract shall cease upon the date specified in such notice. Applicant shall not pay for work, equipment, services or supplies that are unsatisfactory or unauthorized provided that "unsatisfactory” materials are in noncompliance with the terms herein. At Applicant’s sole discretion and with written notice by Applicant, the Contractor may be given a reasonable opportunity prior to termination to correct any deficiency in the work or services performed under this Contract. Applicant will consider a reasonable time to be thirty (30) calendar days to cure any problems and/or deficiencies with the Contractor’s performance, such problems and/or deficiencies being determined by Applicant. Nothing herein, however, shall be construed as negating the basis for termination for nonperformance or shall in no way limit or waive Applicant’s right to terminate this Contract under any other provisions herein.
3. The Contractor’s improper, misuse or inept performance of services under this Contract;
4. The Contractor’s failure to comply with the terms and provisions of this Contract;
5. The Contractor’s submission of invoices, data, statements and/or reports that are incorrect, incomplete and/or false in any way;
6. In Applicant‘s sole discretion, if termination is necessary to protect the health and safety of clients;
7. If the Contractor becomes or is declared insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of a receiver or similar officer for it, has a receiver of its assets or property appointed or makes an assignment for the benefit of all or substantially all of its creditors, institutes or causes to be instituted any proceeding in bankruptcy or reorganization or rearrangement of its affairs, enters into an agreement for the composition, extension, or adjustment of all or substantially all of its obligations, or has a material change in its key employees; and/or
8. The Contractor’s inability to perform under this Contract due to judicial order, injunction or any other court proceeding.

In the event of termination, Applicant may take possession of the premises and all materials, tools, and appliances, thereon and finish the work by whatever method it may deem expedient. In such cases, the Contractor shall only be entitled to receive payment for work satisfactorily completed prior to the termination date, subject to any setoffs due Applicant in completing the Project and for reimbursement of damages incurred. Applicant may take possession of and use any materials, plant, tools, equipment, and property of any kind furnished by Contractor to complete the work. If the expense incurred by Applicant to finish the work exceeds the unpaid balance on this Contract, the Contractor shall pay the difference to Applicant. The expense incurred by Applicant as herein provided, and the damage incurred through the Contractor' s default, shall be certified by the Project Manager. The Contractor shall be responsible for both liquidated damages attributable to delay and for excess completion costs. The liability of the Contractor and its surety or sureties for such damages and costs is joint and several. The obligations of the Contractor and his surety with respect to the warranty and maintenance shall remain in full force and effect for the portion of the Work completed by the Contractor and shall not expire until the expiration of the prescribed time period measured from the final acceptance of the project in its entirety. These clauses shall survive the termination of this Contract. If Applicant makes a determination pursuant to this Contract to hold the Contractor in default and terminate the Contract for cause and it is subsequently determined that any such determination was improper, unwarranted, or wrongful, then any such termination shall be deemed for all purposes as a termination without cause as described in Section \_\_\_. The Contractor agrees that it shall be entitled to no damages, allowances or expenses of any kind other than as provided in this Contract in connection with such termination, and does expressly waive, in the event of termination, any and all claims for consequential damages, loss of bonding capacity, destruction of business, unabsorbed home office overhead, lost profit and the like.

# EQUAL EMPLOYMENT OPPORTUNITY

*Required for all “federally assisted construction contracts” as defined at 41 C.F.R. § 60-1.3. That section provides,*

*Federally assisted construction contract means 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.*

*It also defines “construction work” as follows:*

*Construction work means 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.*

*The following language is required language provided in 41 C.F.R. § 60-1.4(b):*

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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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.

1. 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
2. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
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 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 (8) 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.

Applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if Applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

Applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

Applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to Applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from Applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

# DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT

*Applicable to prime construction contracts in excess of $2,000.* ***Does not apply to FEMA’s Public Assistance program, but does apply to others, including HUD’s CDBG Program****. Where there is a possibility the contract may be funded with federal dollars other than from FEMA’s Public Assistance program, we recommended that the provision be included in construction contracts greater than $2,000, with the words “if applicable.” Where the Davis Bacon Act applies, the* Applicant 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 Applicant must report all suspected or reported violations to the Federal awarding agency (i.e., FEMA). In situations where the Davis Bacon Act does not apply, neither does the Copeland “Anti-Kickback” Act and vice versa. Where applicable, FEMA requires the following provision:*

Compliance with the Davis-Bacon Act.

1. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
2. Contractors are 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.
3. Additionally, contractors are required to pay wages not less than once a week.

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 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.

# CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

*Required for all contracts in excess of $100,000 that involve the employment of mechanics or laborers. The following language is required:*

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 $27 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.

# RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

*Required for awards that meet the definition of “funding agreement” under 37 C.F.R. § 401.2(a)—“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.” This does not apply to FEMA’s Public Assistance program.*

# COMPLIANCE WITH CLEAN AIR AND CLEAN WATER ACT

*Required for all contracts in excess of $150,000. The following is a sample contract clause provided by FEMA:*

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 Applicant and understands and agrees that Applicant will, in turn, report each violation as required to assure notification to the 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 Applicant and understands and agrees that Applicant will, in turn, report each violation as required to assure notification to the 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.

# SUSPENSION AND DEBARMENT

*Required for all contracts. The following is a sample contract clause provided by FEMA that incorporates an optional method of verifying that contractors are not excluded or disqualified.*

Federal regulations restrict Applicant from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. The Contractor can verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.

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 Applicant. 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 Applicant, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

# BYRD ANTI-LOBBYING AMENDMENT

*Required for all contracts. Contractors that bid for an award of $100,000 or more must also file the required certification (see box, below).*

Contractors who apply or bid for an award of $100,000 or more shall file the required certification found at APPENDIX A, 44 C.F.R. PART 18. 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.

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| **Certification for Contracts, Grants, Loans, and Cooperative Agreements**(to be submitted with each bid or offer exceeding $100,000)The undersigned certifies, to the best of his or her knowledge and belief, 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 section 1352, title 31, U.S. Code. 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. Name of Contractor RFP or ITB No. Signature Printed Name Title Date |

# PROCUREMENT OF RECOVERED MATERIALS

*Required for all contract awarded by state agencies or agencies of a political subdivision of a state. A “state” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. This provision is not required for tribal governments or private parties, such as hospitals, institutions of higher educations, and non-profit organizations. The requirements of Section 6002 of the Solid Waste Disposal Act to procure certain designated items composed of the highest recovered material contract practicable apply where the purchase price of the item exceeds $10,000 or the value of the quantity acquired in the preceding fiscal year exceeded $10,000. It also requires an Applicant purchasing EPA-designated items to establish an affirmative procurement program doing so. The required elements of the affirmative procurement program are:*

1. *Preference program for purchasing the designated items;*
2. *Promotion program;*
3. *Procedures for obtaining estimates and certifications of recovered materials content and for verifying the estimates and certifications; and*
4. *Annual review and monitoring of the effectiveness of the program*

*Under the Act, applicants must require its contractors:*

*(1) Certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements; and*

*(2) Estimate the percentage of the total material utilized for the performance of the contract which is recovered materials (for contracts greater than $100,000).*

*The following provision is a sample provided by FEMA:*

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:
	* 1. Competitively within a timeframe providing for compliance with the Contract performance schedule;
		2. Meeting Contract performance requirements; or
		3. At a reasonable price.
2. Information about this requirement, along with the list of EPAdesignated items, is available at EPA’s Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program.
3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

# CHANGES

*Recommended for all contracts. FEMA recommends applicants include a changes clause in their contracts that describe 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. FEMA does not provide specific language for this provision, but notes that the language of the clause may differ depending on the nature of the contract and the end-item procured. A basic sample is provided below:*

Any changes to the scope of work, price, or schedule shall be made in writing and signed by an authorized representative of each party.

# ACCESS TO RECORDS

*Recommended for all contracts.*

The following access to records requirements apply to this Contract:

A. The Contractor agrees to provide Subrecipient Applicant, 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.

B. 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.

C. The Contractor agrees to provide the FEMA Administrator or his or her authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract.

D. In compliance with the Disaster Recovery Act of 2018, Applicant and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

# DHS SEAL, LOGO AND FLAGS

*Recommended for all contracts.*

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.

# COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

*Recommended for all contracts.*

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

# NO OBLIGATION BY FEDERAL GOVERNMENT

*Recommended for all contracts.*

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to Applicant, the Contractor, or any other party pertaining to any matter resulting from the Contract.

# PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

*Recommended for all contracts.*

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.

# CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

*Required for all contracts. As it relates to the prime contractor, FEMA recommends the inclusion of this requirement in the solicitation as well as the contract.*

If the Contractor intends to subcontract any portion of the work covered by this Contract, the Contractor must take all necessary affirmative steps to assure that small and minority businesses, women’s business enterprises and labor surplus area firms are solicited and used when possible. 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; and
	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.

*The following provisions are additional recommended provisions based on historical guidance from FEMA, which has been superseded by the new Public Assistance Program and Policy Guide (PAPPG). Because the PAPPG is not as comprehensive as much of the historical guidance, we often refer to superseded documents that have not been contradicted by new guidance for direction. While these provisions are not required, they may help reduce the risk of regulatory noncompliance or disallowance/deobligation on other bases.*

Additional Provisions for Debris Monitoring Contracts

# SAFE WORKING ENVIRONMENT

The Contractor must at all times provide a safe working environment, including properly constructed monitoring towers.

Loading site monitors shall be responsible for checking the area for safety considerations, such as downed power lines, children playing in the area, traffic control needs, and safe operation of trucks and equipment; implementing all safety requirements; performing a pre-work inspection of debris collection areas before loading to identify the location of covered utility meters, transformers, fire hydrants, mail boxes, etc., as a baseline to account for any collateral damage as a result of the debris removal operation; and ensuring that debris loads are contained properly before leaving the loading area.

Tower and site monitors shall be responsible for checking the area for safety considerations, such as downed power lines, children playing in the area, traffic control needs, and safe operation of trucks and equipment; and implementing all safety requirements.

Field supervisors shall be responsible for being familiar with, maintaining, and implementing all safety requirements.

# LOAD TICKET SYSTEM REQUIREMENTS

The Contractor must employ the use of a load ticket system that complies with FEMA requirements. Load tickets prepared by loading site monitors must include the following information:

* Contract number (identified by a number or name)
* Prime contractor’s name
* Date
* Truck number
* Truck driver’s name
* Description of the debris (Vegetation, Construction and Demolition Debris, White Goods, Household Hazardous Waste)
* Load location (GPS or address preferred)
* Loading date/time (departure from collection location)
* Loading Site Monitor name/signature

Load tickets prepared by tower or site monitors must include the following information:

* Truck capacity in cubic yards or tons
* Load size, either cubic yards (percent of capacity) or tons
* Unloading location
* Unloading date/time (arrival at disposal site)
* Tower/site monitor name/signature

# QUALIFICATIONS OF MONITORS

The Contractor shall utilize only monitors that are trained and possess skills adequate to fulfill their duties. Labor rates paid to the Contractor or shall be commensurate with skill level required by the job function. Professional engineers and qualifications are not required to perform debris monitoring duties. The Contractor must ensure its staff is familiar with FEMA debris removal eligibility criteria.

Additional Provisions for Debris Removal Contracts

# LIMITATION ON TIME AND MATERIALS PAYMENTS

*FEMA’s new guidance does not contain the specific 70 hour limit on T&M contracting that the previous guidance provided. The new guidance states limits T&M payment to a reasonable time based on the circumstances during which the applicant could not define a clear scope of work. This could be more or less than 70 hours.*

Payments based on time and materials costs are limited to work performed during the first 70 hours of actual work following a disaster event, unless otherwise agreed to in writing.

# INVOICES

The Contractor must submit invoices on a regular basis (no more than 30-day periods).

# PERIOD OF PERFORMANCE

Each work authorization issued under this Contract shall contain a time limit on the period of performance. The period of performance may only be modified by agreement of the Project Managers in writing.

# SUBCONTRACTORS

In the event the Contractor requires the services of any subcontractor or professional associate in connection with the work to be performed under this Contract, the Contractor shall secure the written approval of Applicant’s Project Manager before engaging such subcontractor or professional associate. Under no circumstances may the Contractor subcontract more than \_\_% of the work. The Contractor has identified the following entities as potential subcontractors it may request approval to engage:

* *[Insert list of subcontractors the contractor plans to use.]*

# LOADING AND COMPACTING EQUIPMENT

The Contractor must use mechanical equipment to load and reasonably compact debris into trucks and trailers.

# AMENDMENT

This Contract may be amended only with the written approval and agreement of the parties.