

CITY OF KEY WEST
REQUEST FOR PROPOSALS

FOR PROFESSIONAL SERVICES FOR MONITORING OF DEBRIS REMOVAL
AND RELATED SERVICES

RFP # 003-21

DUE DATE: April 9, 2021
3:30 PM

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES FOR MONITORING OF
DEBRIS REMOVAL AND RELATED SERVICES**

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**CITY OF KEY WEST
ANNOUNCEMENT: REQUEST FOR PROPOSALS**

Sealed Proposals for **REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES FOR MONITORING OF DEBRIS REMOVAL AND RELATED SERVICES PER PROPOSAL SPECIFICATIONS** addressed to the City of Key West, will be received at the office of the City Clerk, City of Key West, Florida, until 3:30 p.m., local time, on Friday, the 9th of April, 2021, at which time Proposals will be publicly opened and read in the City Clerk's office, 1300 White St. Any proposals received after the time specified will not be considered.

The City is seeking competitive proposals for debris removal monitoring. Price, qualifications, experience, and capacity will be considered. Should any unforeseen emergencies evolve which necessitates monitoring services, before the normal evolution of the competitive bidding process, then the City may call upon these Responders and others for emergency quotes for use under the City's emergency purchasing guidelines. Responders are urged to have an emergency quote packet similar if not exact to this RFP at the ready should such an emergency so arise.

The City of Key West solicits Proposals for Professional Services for Monitoring of Debris Removal and Related Services. Services would include monitoring debris removal and related services for the City in the event of a natural or man-made disaster, the City will execute a term contract. The contract will be for a five-year term and may extend for a three-year term if agreed to by both parties. No minimum amount of services or compensation will be guaranteed to any firm retained by the City. In addition, the City may make multiple awards for similar services at its sole discretion.

The contracted services sought include providing all expertise, personnel, tools, materials, supplies, equipment, transportation, supervision and all other services and facilities of any nature necessary for monitoring debris removal and related services to include but not be limited to the monitoring of disaster generated debris from public lands, easements, and rights-of-way. Removal of debris from private property may also be included. Removal and lawful disposal of all eligible event-generated debris within the legal boundaries of the City's jurisdiction, in accordance with the standards of the Federal Emergency Management Agency, Federal Highway Administration, Federal and State departments of environmental protection and the request for proposal package and other Responsible Parties.

From the RFP submissions, the City intends to rank the submissions, to obtain a prioritized list of vendors, from which the City may contract with for monitoring services, as available, in the order of the final ranking.

Specifications may be obtained by contacting Demand Star by Onvia. Please contact Demand Star at 1-800-711-1712 or at <http://www.demandstar.com/>, or www.cityofkeywest-fl.gov.

One (1) "hard copy" original and two (2) copies on flash drive, pdf format, of the proposal are to be enclosed in a sealed envelope clearly marked on the outside "Professional Services for Monitoring of Debris Removal and Related Services" and addressed to:

CITY CLERK
CITY OF KEY WEST, FLORIDA
CITY HALL
1300 White St.
KEY WEST, FLORIDA 33040

The successful Proposer will be required to furnish the necessary additional bond(s) for the faithful performance of the Contract, as prescribed in the Solicitation Documents. The Proposer will also be required to furnish documentation showing that he is in compliance with the licensing requirements of the State of Florida, Florida License to Bid, and that the provisions of Chapter 66 Section 87 of the Code of Ordinances of the CITY of Key West. Compliance with these provisions is required before he can enter into the agreement contained in the Contract Documents. At the time of award, the successful Proposer must demonstrate that he holds, as a minimum, the following licenses and certificates:

- A valid Occupational License issued by the City of Key West in accordance with Chapter 18 Section 116.
- License(s) required by State of Florida

All Proposal bonds, insurance contracts, and certificates of insurance shall be either executed by or countersigned by a licensed resident agent of the Surety or insurance company having his place of business in the State of Florida, and in all ways complying with the insurance laws of the State of Florida. Further, the said Surety or insurance company shall be duly licensed and qualified to do business in the State of Florida.

In order to perform public work, the successful Proposer shall hold such Contractors' and Business Licenses as required by State, County and City Statutes.

Before a Contract will be awarded for the work contemplated herein, the City will conduct such investigation as is necessary to determine the performance record and ability of the apparent low Proposer to perform the size and type of work specified under this Contract. Upon request, the Proposer shall submit such information as deemed necessary by the City to evaluate the Proposer's qualifications.

At the time of the award, the successful Proposer must show satisfactory documentation of such State, County, and City licenses as would be required. Any permit and/or license requirement and subsequent costs are located within the documents. The successful Proposer must also be able to satisfy the City Attorney as to such insurance coverage, and legal requirements as may be demanded by the proposal in question. The City may reject proposals (1) for budgetary reasons, (2) if the Proposer misstates or conceals a material fact in its proposal, (3) if the Proposal does not strictly conform to the law or is non-responsive to the Proposal requirements, (4) if the Proposal is conditional, or (5) if a change of circumstances occurs making the purpose of Proposal unnecessary to the City. The City may also waive any minor informalities or irregularities in any Proposal.

Dated this day of , 2021.

CITY OF KEY WEST

By: -----

David Sermak, Purchasing
Agent

REQUIREMENTS: REQUEST FOR PROPOSALS

The City of Key West (CITY) requires the services of a qualified company to provide Sealed Proposals for **REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES FOR MONITORING OF DEBRIS REMOVAL AND RELATED SERVICES**. The CITY, Requests Proposals for Professional Services for Monitoring of Debris Removal and Related Services. Services would include monitoring debris removal and related services for the CITY in the event of a natural or man-made disaster, the CITY will execute a term contract. The contract will be for a five-year term and may extend for a three-year term if agreed to by both parties. No minimum amount of services or compensation will be assured to any firm retained by the CITY. In addition, the CITY may retain other firms for similar services at its sole discretion.

The contracted services sought include providing all expertise, personnel, tools, materials, supplies, equipment, transportation, supervision and all other services and facilities of any nature necessary for monitoring debris removal and relate services to include but not be limited to the monitoring of disaster generated debris from public lands, easements, and rights-of-way. Removal of debris from private property may also be included, removal and lawful disposal of all eligible event-generated debris within the legal boundaries of the CITY's jurisdiction, in accordance with the standards of the Federal Emergency Management Agency, Federal Highway Administration, Federal and State departments of environmental protection and the request for proposal package.

The Proposer shall prepare submitted Proposals on the forms provided by the CITY with all blanks on the Proposal Form filled in by typewriter or written in ink.

Any proposal received after the response deadline will not be considered. Upon selection of the most qualified company and approval by the CITY commission, the CITY will negotiate a contract with the selected company. If the selected company does not execute the contract with the CITY within 30 days after award, the CITY reserves the right to award the contract to the next most qualified company. A Proposer may not withdraw their proposal before the expiration of 60 days from the date of proposal opening. A Proposer may withdraw their proposal after that date only if they provide written notification prior to the approval of selection by the CITY Commission. The City of Key West reserves the right to reject any or all of the proposals submitted.

The CITY reserves the right to reject any Proposal for the following reasons:

- For budgetary reasons.
- If the Proposer misstates or conceals a material fact in its proposal.
- If the Proposal does not strictly conform to the law or is non-responsive to the Proposal requirements.
- If the Proposal is conditional.
- If a change of circumstances occurs making the purpose of Proposal unnecessary to the City.
- The Proposer is or has been involved in any litigation against the CITY.

- The proposer has defaulted on any previous contract or is in arrears on any existing contract on any public or private matters.
- The submittal of more than one proposal from an individual, firm, partnership, corporation or association under the same or different names.
- The Proposer's previous work with the CITY has resulted in claims from third parties and or subcontractors.
- The Proposer has been debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs.

To be eligible for award, the Proposer must submit a completed proposal package and be able to document that it has:

- 1) A minimum five (5) years of experience in conducting disaster recovery logistical support and debris removal operations for County, CITY and or State Governments.
- 2) Knowledge and experience in FEMA and State public assistance reimbursement procedures; and
- 3) Has provided services similar to those required to a minimum of five (5) jurisdictions with a population of not less 30,000 persons.
- 4) Has capacity to provide requested services considering pre-event commitments within 150 miles of Key West.

The CITY may also waive any minor informalities or irregularities in any Proposal.

For questions concerning any aspect of this RFP please contact:

Kenneth Wardlow
City of Key West
P.O. Box 1409
Key West, FL 33040
(305) 809-3942
kwardlow@cityofkeywest-fl.gov

PROPOSER INSTRUCTIONS AND FORMAT: DEBRIS REMOVAL MONITORING

The City of Key West, Florida (CITY) is located on a remote island, with an international border and is vulnerable to natural and manmade disasters including hurricanes, tornadoes, floods, oil spills, hazardous material releases.

Disasters such as hurricanes often produce large volumes of debris. Debris and damaged trees create hazardous conditions including blocked roadways/drives and obstacles to emergency vehicles. These hazards and obstacles often block routine, essential, and emergency traffic, both vehicular and pedestrian. One of the first essential steps in securing the community is the removal of hazardous debris to allow for security, emergency, and other service traffic. It is in the best interest of the CITY to enter into a pre-event agreement for a term of 5 years with a firm to provide debris management and monitoring services in the event of a disaster.

REQUIREMENTS

The CITY is seeking qualifications and proposals for monitoring and managing the removal of disaster generated debris from public lands, easements, and rights-of-way. Removal of debris from private property may also be included. The primary purpose of these services is to insure that the entire debris removal, hauling, recycling and/or disposal process is done properly and expeditiously and is eligible for reimbursement under Federal Emergency Management Agency (FEMA) Public Assistance Program, Federal Highway Administration (FHWA) and state emergency management agency guidelines and other Responsible Parties. Additionally, the City seeks to utilize the results of this proposal process for the monitoring of other types of emergency services that may evolve from man-made disasters (e.g. oil spills, mass migrations etc.).

Respondent must meet the following general conditions:

- 1) Be able to provide monitoring of the clean-up, removal, separation, reduction and disposal of Debris as defined in the Scope of Services set forth on Attachment "A" attached hereto and incorporated herein by reference (the "Services");
- 2) Be willing and capable of performing the Services, including, but not limited to, proper documentation preparation, management, and event closure services.
- 3) Be knowledgeable and have experience in the provision of the Services for reimbursement through the FEMA Public Assistance and FHWA ER program; and
- 4) Be able to perform the Services and any other agreed to services in a timely manner, recognizing that the CITY desires to have this project completed within 30 days following completion of debris hauling and removal.

RESPONSE FORMAT: DEBRIS REMOVAL MONITORING

The Proposer shall prepare submitted Proposals on the forms provided by the CITY with the following information.

Company Profile:

A company profile including the firm name, business address, telephone number, year established (include former firm names and year established, if applicable), type of ownership, and parent company, if any. Provide the name of the person who shall serve as authorized negotiator for Respondent, should Respondent be selected to negotiate with CITY.

Experience:

Provide information indicative of experience on other projects of similar complexity that documents successful and reliable experience in past performance within the last seven (7) years, as it related to this proposal. The proposing firm must demonstrate that they have successfully performed services on at least 10 FEMA reimbursable disaster debris removal projects related to at least 3 different declared disasters, over the past seven (7) years, including at least two projects involving removal of at least 1,000,000 cubic yards of debris. Identify local governmental clients for whom similar services have been provided including name of client, client contact person, description of services performed, and quantity of debris monitored. Provide resumes of key staff. Respondent must demonstrate special disaster recovery program management services including monitoring of private property/right-of-entry (ROE) work, waterway/marine debris clean-up, sand recovery/beach remediation, hazardous tree/limb removal, hazardous material removal, vessel and vehicle recovery, asbestos removal, data management, contracting/invoice reconciliation, and FEMA appeals assistance.

Personnel:

Provide an organizational chart, resumes, and summary of staff qualifications. Demonstrate current capacity and current expertise in debris removal, solid waste and hazardous waste management and disposal. Respondent shall document knowledge and experience of personnel with Federal, State and local emergency management agencies, programs, funding sources and reimbursement processes.

Public Records:

Any material submitted in response to this Request for Proposals will become a "public record" and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes. Proposers must claim any applicable exemptions to disclosure provided by law in their response to the Request for Proposals. Proposers must identify materials to be protected and must state the reasons why such exclusion from public disclosure is necessary and legal. The City reserves the right to make all final determination(s) of the applicability of the Florida Public Records Law.

Cost of Proposal Preparation:

The Proposer assumes all risks and expenses associated with the preparation and submittal of a proposal in response to this Request for Proposals. The City shall not be liable for any expenses incurred by the Proposer when responding to this Request for Proposals.

Proposer is advised that delivery services may not be timely. It shall be the Proposals sole responsibility to ensure delivery prior to the required date and time.

Conflicts:

All Respondents must certify that Respondent, nor any employee thereof, has any conflict of interest, either direct or indirect, in connection with the services sought herein pursuant to Federal or state law. Has Respondent has had a contract related to debris removal cancelled within the past seven years. If so, state the name and address of the other contracting party and reason.

Technical Approach / General Operations Plan:

Provide a description of the Proposer's approach to the project including implementation of the RFP Scope of Services, startup procedures, debris estimating methodology, and management of debris recovery contractors. Especially, as it relates to:

- Pre-impact mobilization of resources
- NIMS Compliant Span-of-Control
 - Number of Project Managers to number of Field Supervisors
 - Number of Field Supervisors to number of Monitors
- Preventing fraudulent activity occurring between the pick-up and disposal sites
- Ensuring debris removal equipment isn't sidelined due to a lack of monitors
- Monitoring of seaweed removal, where a one-to-one ratio of monitor to equipment isn't practical nor necessary.
- Identifying debris loads originating from declared First Pass roadways, separate from debris collected from other locations.

References:

The respondent shall provide references for five debris projects of similar size performed over the past seven years. Include the client name, debris quantity, brief summary of work, along with name, address, and phone number of a responsible contact person.

Capacity:

Capacity to perform services timely for the CITY is critical and could be impacted by other obligations firms may have in the general area. Provide a listing of all active or pre-event debris contracts with cities, counties, or other entities within 200 miles of the CITY of Key West. Provide current obligations of Respondent, including time schedules and staff committed.

Fee Schedule:

Each Proposer must complete and submit the Cost Proposal Form / Unit Price (Table A). Cost will be evaluated using the hourly rates submitted below for the labor positions listed. The hourly labor rates shall include all applicable overhead and profit. Overtime hours will be paid at the same rate as regular time hours. All normal expenses shall be absorbed in hourly rates, including lodging, meals, transportation, and per Diem. Special costs such as boat rental and marine expenses may be billed to the CITY at cost without mark-up. Proposer may also include additional, optional positions and services for:

POSITIONS	Required	
Principal in Charge	(Y)	(N)
Project Manager	(Y)	(N)
Deputy Project Manager / Operations Manager	(Y)	(N)
Project Coordinator	(Y)	(N)
QC / QA Safety Manager	(Y)	(N)
Data Manager	(Y)	(N)
GIS Analyst	(Y)	(N)
Field Supervisor	(Y)	(N)
Debris Site/Tower Monitors	(Y)	(N)
Collection Monitor	(Y)	(N)
Citizen Drop-Off Site Manager	(Y)	(N)
Data Entry Clerk / Clerical	(Y)	(N)
Billing/Invoice Analysts	(Y)	(N)
Billing Invoice Manager	(Y)	(N)
FEMA Coordinator / Specialist	(Y)	(N)
Public Information Support Manager	(Y)	(N)
Call Center Staff	(Y)	(N)

Submittal:

Please submit one (1) "hard copy" original and two (2) copies on flash drive, pdf format, of the proposal, for a total of three (3) copies. Proposals and copies shall be submitted in a sealed envelope, clearly labeled with RFP Title, date, and company name.

EVALUATION OF PROPOSALS: DEBRIS REMOVAL MONITORING

Evaluation of proposals and selection of a monitoring and management firm shall be at the sole discretion of CITY. Professional firms will be evaluated using the following criteria and respective weights. Firms submitting a proposal in response to the RFP may be required to give an oral presentation to CITY representatives. The CITY's request for an oral presentation shall in no way constitute acceptance of a proposal or imply that an agreement is pending. The CITY reserves the right to award the opportunity to provide the services specified herein based on initial proposal submissions without oral presentations.

Proposals submitted will be opened publicly and read aloud at the time and place stated in the RFP.

The City will rank Proposals on the basis of a point system in which evaluation criteria will be applied. An Evaluation Panel will be appointed to review all Proposals for responsiveness and that all required submittals have been included. Any non-responsive Proposals will be rejected.

The Evaluation Panel is subject to the State Law and CITY Rules and Regulations. Florida Statute section 286.011 ("Government in Sunshine Law") requires that any meeting (including telephone conversations) between two or more members of a public board or commission, for the purpose of discussing any matter on which foreseeable action may be taken by the board or commission, must be publicly noticed and open to attendance by the general public.

Panel members will receive a copy of each Proposal.

After the initial meeting, each Panel member will independently review the Proposals for scoring in accordance with the established evaluation criteria. Questions or comments a Panel member has relative to any Proposal shall be directed to the Emergency Manager. Additional meetings of the Panel may be convened to initiate discussions or to develop and direct requests for information to one or more of the Proposers, the Legal Consultant, or City staff.

Ranking Meetings:

After the Panel members have completed their individual evaluations, the Panel will reconvene to score and conduct a ranking of the Proposals. The Emergency Manager will total and average the scores of each Panel member and calculate the score for each Proposer. This will establish a numeric ranking for each Proposer based on the Proposal and attachments. Additional meetings of the Panel may be convened if deemed necessary.

Final Ranking: The Evaluation Panel shall recommend the contract award to the Proposer with most points first. This action will end the duties of evaluation panel.

Basis of Scoring:

A ranking of Proposers submitting shall be based on weighted scoring criteria for the Proposals as follows:

GRADING CRITERIA	Max. POINTS
Costs	
1. Hourly Rates	35
	<u>35</u>
Qualifications and Experience	
2. References on recent projects of a minimum 200,000 C.Y. and scope, including two projects over 1,000,000 CY	4
3. Qualifications of firm and key staff	3
4. Diverse project experience including, ROW, C&D debris, marine debris, private property, structure demolition and vessel removal	8
5. Capacity to respond to major and catastrophic disasters, with few existing pre-event contracts within 200 miles of the City of Key West	8
6. Familiarity of local conditions	4
7. Description of past (within 5 years) and on-going litigation involving proposer and: municipality, subcontractor, etc.	5
	<u>32</u>
Technical Approach / Operations Plan	
8. Documentation of understanding Scope of Work	4
9. Technical Approach / General Operations Plan	4
10. Resources, capacity to perform, and Mobilization Plan	5
11. Ticket quality assurance / quality control program	8
	<u>21</u>
Financial Stability	
12. Years Proposer Company has been in business	3
13. Proposer's net worth and working capital	3
14. Size of projects successfully completed in the past 5 years	3
15. Strength of latest financial statement	3
	<u>12</u>
	100

SCOPE of SERVICES: DEBRIS REMOVAL MONITORING

Staff Mobilization:

When a potential disaster threatens the CITY, the debris monitoring firm will mobilize 24 to 72 hours in advance with key staff experienced in various aspects of debris operations (including truck certification, mapping/zone development, etc.) in order to participate in the "response" phase of the disaster event. Additional Monitor staff shall be contacted and put on standby for potential mobilization. Logistical arrangements for out of town staff such as lodging arrangements for key staff, is considered to be the responsibility of the Monitor.

A sample of the mobilization task order is attached as Figure 1.

SAMPLE

SAMPLE

**City of Key West Debris Removal
Mobilization Task Order**

Date: ____-____-____		Time: _____		Incident / Event: _____	
City Declaration Order: _____			Florida Declaration Order No.: ____-____-____		
Presidential Declaration Order No.: _____			FEMA Incident / Event No.: _____		
Contractor: <small>Name of Contractor</small>		Project Manager: _____ <small>Name of Approved PM</small>			
Contractor's Estimated Time of Arrival: _____			Number of Crews: _____		
1st Push Priority Locations:					
Roads: _____		Attach: Map / GPS / GIS			
Forecast Amount of Debris: Use Appropriate USAGE Model					
<input type="checkbox"/> Tornado / Hurricane:					
<input type="checkbox"/> Flood Debris:					
<input type="checkbox"/> C&O:					
<input type="checkbox"/> Vegetative:					
<input type="checkbox"/> HHW:					

Figure 1

Field Documentation of Work:

Monitor shall carefully document debris removal activities as well as hazardous trees and trees that contain hazardous hanging limbs that need to be removed. Monitor will work closely with the CITY and with FEMA/FHWA to determine the most effective methods of documentation to ensure that debris removal is eligible for federal funding. Monitor shall communicate with FEMA to ensure documentation supports project reimbursement. Monitor will work with FEMA in an effort to pre-validate as much eligible debris, tree and limb removal as practical.

Collection Monitoring of Rights-of-Way and Public Property Debris:

Monitor will provide collection monitors with each of the Contractor's loading crews to ensure each load is related to the disaster and is eligible for federal reimbursement. The street address and/or GPS coordinates will be recorded on each load ticket. The Monitor will initiate a multi-part ticket in the field for each load, containing information related to the location of the debris, time, date, truck identification, truck driver, etc. The ticket will then be delivered to the temporary debris storage and reduction site (TDSRS) or disposal site with the truck driver for load rating. Load ticketing and documentation will also be performed for hazardous tree and limb removal. This project may include monitoring the removal of abandoned cars, boats, marine debris, white goods, beach cleaning, and structure demolition. Monitor will provide similar services if debris removal from private property/right-of-entry (ROE) is approved for this project. Field monitoring of debris haulers shall be performed in accordance with current FEMA, FHWA and state requirements and in coordination with the CITY.

Monitor Training:

Monitor will provide training to all employees concerning safety, eligibility for reimbursement, and disaster specific information. The Monitor will be required to perform adequate training for locally hired staff at no expense to the CITY. All Monitor employees must be able to effectively communicate to a level appropriate to their responsibilities.

Spot Checks and Auditing of Monitors:

Monitor will provide roving monitors, field coordinators, and supervisory personnel to ensure that field monitors are making accurate eligibility calls, keeping good documentation, and are working effectively with the debris removal contractor.

Project Mapping:

Maps will be used to document the debris removal progress. The final pass along each roadway will be mapped for the CITY's information, and FEMA documentation. Monitor will assist the CITY in public communication and will document and relay any citizen complaints for action by the contractor or the CITY.

Truck Certification:

Monitor will establish a team of individuals who will inspect and certify vehicles for hauling storm related debris in accordance with FEMA guidelines. A certification sheet with measurement, photos, and calculations documenting the capacity of the truck is kept for load rating and ticket auditing. Summary books will be kept at each TDSRS/disposal site for quality control. Certifications should also include a methodology to discourage collection contractors from modifying their vehicle after certification, such as identifying unique attributes to the vehicle like sideboards. Photographs of the vehicle and its driver shall be documented. Periodic spot checks and recertification of trucks that were potentially altered after initial certification shall be performed.

Quality Control/ Quality Assurance, Safety Manager:

A QA/ QC program should be implemented by the Monitor to minimize errors in debris monitor tickets and all documentation functions. Eligibility of work, reliability of

documentation and data accuracy are critical in achieving full reimbursement for eligible project expenses.

TDSR / Disposal Sites:

Monitor will provide trained monitors at TDSR and disposal sites to call loads based on the amount of debris in each truck. It is imperative that these monitors make accurate calls to safeguard public funds. Monitors will also make sure that the trucks are empty as they leave the site. Furthermore, monitors will review the truck certification worksheets to make sure the trucks have not been modified to affect their capacity (shortened or removed sideboards, for example). Similar systems will be used to verify, track, and document hauling of reduced debris from TDSR sites through final disposal, if applicable.

Data Management:

Monitor will establish an advanced project data management system and enter load ticket information on a daily basis. This information can be provided to the CITY, FEMA, and the Contractor GPS coordinates or addresses for tree and stump removal, and debris removal progress, as applicable. Additionally, the staff will work with the Contractor to reconcile invoices, and review debris removal invoices for recommendation of payment by the CITY. Furthermore, Monitor will organize field information for FEMA documentation including photographs and/or GPS coordinates. Monitor will help track invoices for FEMA reimbursement and provide additional supporting information as requested.

Public Information Support:

Monitor may be asked to assist the CITY in public outreach following a disaster event as it relates to debris recovery efforts. This may include establishing and staffing (including supplying equipment, phone lines, etc.) a "debris hotline" to respond to public complaints and concerns or establishing a website. This also may include assistance with press releases, public notices, and other public information functions. All functions will be performed in a manner to maximize federal and state reimbursement.

Funding Support:

The Monitor shall assist the CITY in securing maximum reimbursement for eligible work from state and federal agencies. Specific funding support services may include working with the CITY to develop a cash flow strategy that focuses on early reimbursement. This includes assistance in preparing a debris quantity estimate that is supported by FEMA staff, early preparation of a project worksheet to cover the estimated cost of the entire debris removal effort at the outset of the project, and assisting the CITY and FEMA personnel with Project Worksheets, Versions, etc. Monitor shall be prepared to assist CITY with appeals based on their in-depth knowledge of FEMA and FHWA reimbursement policies. Monitor shall be prepared to assist the CITY, if requested, in tracking progress of Project Worksheets and providing quick response to any problem issue that may arise that could slow funding. Monitor shall be prepared to assist CITY in finding additional funding reimbursement sources related to disaster mitigation.

Recovery Services:

The CITY is interested in selecting a monitoring firm with field implementation and FEMA Reimbursement experience in community recovery including, but not limited to:

- Right-of-Entry (ROE) administration and data base management
- ROW and private property vegetative / C & D hazard removal monitoring
- ROW and private property demolition coordination and monitoring
- Monitoring of marine debris removal
- Beach sand sifting / cleaning

Other Related Services:

Services not specifically identified in this request. But are needed to provide a complete debris removal and documentation project.

Pre-Storm Coordination:

Monitor will be prepared to meet with the CITY once prior to June 1st of each year to coordinate services for the upcoming storm season. Additionally, Monitor shall meet with the CITY immediately prior to a credible disaster threat. These meetings shall occur at no cost to the CITY and are meant to facilitate increased coordination of efforts, to discuss the CITY's expectations of the Monitor, and to fast track recovery activities when a disaster strikes.

Safety Meetings and Monitoring Updates:

Safety of monitoring staff is of paramount importance. Monitor will hold regular meetings with debris monitors and staff for project updates and to communicate safety issues. If important information becomes available, the staff may meet more frequently.

Coordination Meetings with Contractor(s):

Monitor will initiate a coordination meeting with the debris removal contractor to help expedite the work, and to discuss any issues that may arise during the project. It is important that the monitor and contractor are communicating with each other to ensure a successful project.

Contractor Damages:

The Monitor may be asked to develop a database application to track and help the CITY manage damages caused by contractors during the debris clearing/removal process damages.

Status Reports:

Monitor will provide detailed daily or weekly status reports to the CITY as requested for use and information. Relevant project statistics and cumulative statistics will be shown in a straightforward manner to officials to provide information to the media or to their constituents.

ATTACHMENT A

**PROFESSIONAL SERVICES REQUEST FOR PROPOSAL FOR MONITORING OF
DEBRIS REMOVAL AND RELATED SERVICES
UNIT PRICE PROPOSAL FORM**

Proposal costs are inclusive of all related expenses including, but not limited to, contract administration, technical assistance to the CITY, personnel training and certification, TDMS management, services for security, safety, and associated actions necessary for implementation of debris management monitoring operations by the Proposer as defined in the Contract.

PROPOSAL FROM:

Company: _____

Address: _____

Phone/Fax: _____

To furnish all materials, equipment and labor and to perform all work in accordance with the Contract Documents for construction of: **Professional Services for Monitoring of Debris Removal and Related Services**, located at various locations within CITY OF KEY WEST, Florida.

To: *CITY OF KEY WEST
ATTN: CITY CLERK
1300 White St.
Key West, FL 33040*

- 1.0 The undersigned Proposer proposes and agrees, if this Proposal is accepted, to enter into a Contract with CITY in substantially the form as the Contract included in the Proposal Documents to perform all Work and any Additional Services as specified or indicated in the Proposal Documents at the unit prices and within the times indicated in this Proposal and in accordance with the other terms and conditions of the Proposal Documents.
- 2.0 Proposer accepts all of the terms and conditions of the Invitation to Proposal and Instructions to Proposers, including without limitation those dealing with the disposition of Proposal security. The Proposal will remain subject to acceptance for 90 days after the Proposal opening, or for such longer period of time that Proposer may agree to in writing upon request of CITY.
- 3.0 In submitting this Proposal, Proposer represents, as set forth in the Contract, that:
 - A. Proposer has examined and carefully studied the Proposal Documents, the other related data identified in the Proposal Documents, and the following Addenda, receipt of all, which is hereby acknowledged.

Addendum No.	Addendum Date
_____	_____
_____	_____
_____	_____

- B. Proposer has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work;
 - C. Proposer is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work;
 - D. Proposer has correlated the information known to Proposer, including location of the CITY in relation to any proposed final disposal sites, information and observations for CITY's Debris Separation/Reduction and Temporary Debris Management Sites obtained from visits to the Site, any reports and drawings identified in the Proposal Documents, and all additional examinations, investigations, and data provided with the Proposal Documents;
 - E. Proposer has given the CITY written notice of all conflicts, errors, ambiguities, or discrepancies that Proposer has discovered in the Proposal Documents, and the written resolution thereof by the CITY is acceptable to Proposer;
 - F. The Proposal Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Proposal is submitted.
- 4.0 Proposer further represents that this Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Proposer has not directly or indirectly induced or solicited any other Proposer to submit a false Proposal; Proposer has not solicited or induced any individual or entity to refrain from Proposal; and Proposer has not sought by collusion to obtain for itself any advantage over any other Proposer or over CITY.
- 5.0 Proposer acknowledges that there are no quantities guaranteed, and Unit Cost information is solely for the purpose of comparison of Proposals, and final payment for all Unit Price Proposal items will be based on actual services provided, determined as provided in the Contract Documents.
- 6.0 Proposer acknowledges that all unit costs include any necessary insurance and bonds.

Table A- Unit Price

Positions	Staffing Ratio	Hourly Rate	Estimated Hours	Extended Cost
Principal In Charge				
Project Manager				
Deputy / Operations Manager				
IT Specialist				
Project Coordinator				
Data Manager				
GIS Analyst				
Field Supervisor				
Debris Site / Tower Monitors				
Collection Monitor				
Citizen Drop Off Site Monitor				
Data Entry Clerk/ Clerical				
Billing / Invoice Analysts				
Billing / Invoice Manager				
FEMA Coordinator / Specialist				
Public Information Support Manager				
Call Center Staff				
Total Estimated Cost				

Confirmation of Signature of Unit Price Proposal Information

Name of Proposer

Signature of Proposer

Title

7.0 Proposer's Information:

The PROPOSER states that they are an experienced CONTRACTOR, providing Debris Monitoring Services and has completed similar Work within the last five years. This information has been provided on Contractor's Qualifications Statement Attachment D.

8.0 Proposer accepts the provisions of the Contract. If the Proposer takes exception to any of the provisions in the Contract, the Proposer will provide a list of the exceptions under a separate Tab.

9.0 The Proposer is familiar with the terms used in this Proposal and the meanings indicated.

PROPOSAL SUBMITTED on----- ' 2021

State Contractor License No. _____ . (if applicable)

License Type: -----

If Proposer is:
An Individual

Name (typed or printed): _____

By: _____ (SEAL)
(Individual's signature)

Doing business as: _____

Business address : _____ Phone No.: _____
FAX No.: _____

If Proposer is:
A Partnership

Partnership Name: _____ (SEAL)

By: _____
(Signature of general partner-- attach evidence of authority to sign)

Name (typed or printed) : _____ Business
address: _____

PhoneNo: _____ FAXNo: _____

If Proposer is:
A Corporation

Corporation Name: _____ address State of _____

Incorporation: _____

Type (General Business, Professional, Service, Limited Liability): _____

By: _____
(Signature -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(CORPORATE SEAL)

Attest: _____
(Signature of Corporate Secretary)

Business address: _____

Phone No: _____ FAX No: _____ Date of

Qualification to do business is _____

ATTACHMENT B PROPOSER'S TECHNICAL APPROACH / GENERAL OPERATIONS PLAN

A detailed description of how the Proposer would respond to a Hurricane or other event. In the Plan, assume that A Category 2 Hurricane has made landfall on the City of Key West generating the amount of debris described below.

Vegetative Debris	146,000	Cubic Yards
Construction and Demolition Debris	48,000	Cubic Yards
Mixed Debris	6,000	Cubic Yards
White Goods	1,000	Units
Household Hazardous Waste	<u>1,000</u>	Pounds
 Total Yards	 200,000	

Proposer's Operations Plan should be very detailed describing:

- Meetings,
- Timeline,
- Equipment to be mobilized,
- Manpower needed,
- Monitoring of collections,
- TMDS operations,
- Demobilization,
- Monitoring site remediation if needed,
- Close out.

Proposer shall include a detailed Safety Plan. Documentation of training for each crewmember must be submitted with the Proposal and updated annually.

ATTACHMENT C

PROPOSER'S QUALIFICATIONS STATEMENT FORM

The undersigned guarantees the truth and accuracy of all statements and the answers contained herein.

1. Please describe your company in detail.

2. The address of the principal place of business is:

3. Company telephone number, fax number and e-mail addresses:

4. Number of employees:

5. Number of employees or subcontractors to be assigned to this project (per event) and what is capacity?

6. Company Identification numbers for the Internal Revenue Service:

7. Provide **Occupational License Number (and County)**, if applicable, and expiration date:

8. How many years has your organization been in business? Does your organization have a specialty?

9. What is the last project of this nature or magnitude that you have completed? Please provide project description, reference and cost of work completed.

10. Have you ever failed to complete any work awarded to you? If so, where and why?

11 Give names, addresses and telephone numbers of three individuals, corporations, agencies, or institutions for which you have previously performed work. List of ALL disaster response contracts performed in the last 5 years, including customer name, total contract amount and yards removed. Use a separate tab if necessary.

11.1.

Name _____

Address _____

Telephone No.-----

11.2.

Name _____

Address _____

Telephone No. _____

11.3.

Name _____

Address _____

Telephone No.-----

12. List the following information concerning all contracts **in progress** as of the date of submission of this bid. (In event of co-venture, list the information for all co-ventures.)

Name of Project	Owner	Value	Contracted Completion Date	%of Completion to Date

(Continue list on insert sheet, if necessary)

13. Has the Proposer or Representative inspected the proposed project site and does the Bidder have a complete plan for performance of disaster response services?

14. Provide list of subcontractor(s), the work to be performed and also a list of major materials suppliers for this Project?

Sub-Contractor Name	Address	Work to be Performed

(Continue list on insert sheet, if necessary)

The foregoing list of subcontractor(s) may not be amended after award of the contract without the prior written approval of the City Manager.

15. What equipment do you own that is available for the work?

PROVIDE LIST IN ATTACHMENT

16. What equipment will you purchase for the proposed work?
(Continue list on insert sheet, if necessary)

18. What equipment will you rent for the proposed work?
(Continue list on insert sheet, if necessary)

19. State the names of the proposed project team and include resumes and give details of his or her qualifications and experience in managing similar work.

(Continue list on insert sheet, if necessary)

20. State the true, exact, correct and complete name of the partnership, corporation or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.)

20.1 The correct name of the Proposer is:

20.2 Insurance

20.2. The business is a (Sole Proprietorship) (Partnership) (Corporation).

20.3 The names of the corporate officers, or partners, or individuals doing business under a trade name, are as follows:

SUBMITTED BY:

SIGNATURE
STATE OF FLORIDA)
COUNTY OF _____) SS.
_____)

PRINT NAME/ TITLE

The foregoing instrument was acknowledged before me this ____ day of _____
2021, by _____ who is personally known to me or who has
produced _____ as identification and who did/did not take an Oath.

WITNESS my hand and official seal, this ____ day of _____, 2021.
(NOTARY SEAL)

(Signature of person taking acknowledgment)

ATTACHMENT D
PROPOSER'S MOST CURRENT FINANCIAL STATEMENT

ATTACHMENT F

STATEMENT THAT PROPOSER IS FAMILIAR WITH CITY'S TDMS SITES

SUMMARY OF LOCATIONS FOR TEMPORARY DEBRIS STORAGE AND REDUCTION SITES

PRIMARY SITES *(debris storage and reduction):*

1. Truman Waterfront Property approximately 5 acres
2. 5701 College Road approximately 4 acres
3. Wickers Football Field approximately 3 acres
4. Rockland Operations LLC 10 acres Rockland Key

SECONDARY SITES *(debris storage only):*

1. Trumbo Road Property approximately 2 acres
2. Indigenous Park approximately 1 acre
3. South Roosevelt Boulevard Bridal Path approximately 4 acres

ATTACHMENT G

DESCRIPTION OF AND SAMPLE OF PROPOSER'S TICKETS AND FORMS

- A Sample Load Ticket
- B Sample Truck Capacity Certification Form
- C Sample Force Labor Ticket
- D Description and Print Screens of Proposers Ticket Tracking Data Base

ATTACHMENT H

SWORN STATEMENT UNDER SECTION 287.133(3)(A) FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid or Proposal for _____

2. This sworn statement is submitted by _____
(name of entity submitting sworn statement)

whose business address is _____

and (if applicable) its Federal Employer Identification Number (FEIN) is _____

(If the entity has no FEIN, include the Social Security Number of the individual
signing this sworn statement _____

3. My name is _____
(please print name of individual signing)

and my relationship to the entity named above is _____

4. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including but not limited to, any bid or contract for goods or services to be provided to any public or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, material misrepresentation.

5. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

6. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means

1. A predecessor or successor of a person convicted of a public entity crime; or
2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting controlling interest in another person, or a pooling of equipment or income among persons when not for fair market

value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

7. I understand that a "person" as defined in Paragraph 287.133(1)(8), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
8. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies).

_____ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989, AND (Please indicate which additional statement applies.)

_____ There has been a proceeding concerning the conviction before a hearing of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order.)

_____ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order.)

_____ The person or affiliate has not been put on the convicted vendor list. (Please describe any action taken by or pending with the Department of General Services.)

(signature)

(date)

STATE OF _____

COUNTY OF _____

PERSONALLY APPEARED BEFORE ME, the undersigned authority,

_____ Who, after first being sworn by me, affixed his/her
(name of individual signing)

signature in the space provided above on this _____ day of _____, 20__.

My commission expires:

ATTACHMENT I

ANTI-KICKBACK AFFIDAVIT

STATE OF _____)

: SS

COUNTY OF _____)

I, the undersigned hereby duly sworn, depose and say that no portion of the sum herein bid will be paid to any employees of the City of Key West as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

By: _____

Sworn and subscribed before me this _____ day of _____ 20__.

NOTARY PUBLIC, State of Florida at Large

My Commission Expires:

ATTACHMENT J

CONFLICT OF INTEREST STATEMENT

Proposer must disclose the name of any person that is an employee of the City and also an officer, director, employee or agent of the Proposer, or a relative of an officer, director, employee or agent of the Proposer. Further, each Proposer must disclose the name of any City employee that owns, directly or indirectly, an interest of one percent (1%) or more in the Proposer's company, its affiliates, or parent or subsidiary organizations.

Persons Name

Describe the Persons Possible Conflict of Interest

ATTACHMENT K

ACKNOWLEDGEMENT OF CONFORMANCE WITH O.S.H.A. STANDARDS

TO: CITY OF KEY WEST

Proposer's Name: _____, hereby acknowledge and agree that they have the sole responsibility for compliance with all requirements of the Federal Occupational Safety and Health Act of 1970, and all State and Local Safety and Health regulations, and agree to indemnify and hold harmless the CITY, its officers, agents, employees, and consultants against any and all legal liability or loss the CITY, its officers, Agents, employees, and consultants may incur due to failure to comply with such act.

ATTEST

PROPOSERS NAME

ATTEST

By: _____

Title:

DATE

ATTACHMENT L

COPY OF STATE OF FLORIDA CORPORATE
FILINGS; OR
ARTICLES OF INCORPORATION AS REQUIRED BY
THE SECRETARY OF STATE, FLORIDA
City of Key West Business Tax Receipt
General Service
"Debris Removal Monitoring"

ATTACHMENT M

CITY OF KEY WEST INDEMNIFICATION FORM

To the fullest extent permitted by law, the CONTRACTOR expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents and employees *(herein called the "indemnitees") from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR, its Subcontractors or persons employed or utilized by them in the performance of the Contract. Claims by indemnitees for indemnification shall be limited to the amount of CONTRACTOR's insurance or \$1 million per occurrence, whichever is greater. The parties acknowledge that the amount of the indemnity required hereunder bears a reasonable commercial relationship to the Contract and it is part of the project specifications or the bid documents, if any.

The indemnification obligations under the Contract shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR under Workers' Compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the CONTRACTOR or of any third party to whom CONTRACTOR may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of the work.

CONTRACTOR: _____
Address

Signature

Print Name

Title

DATE: _____

ATTACHMENT N

REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES FOR MONITORING
DEBRIS REMOVAL AND RELATED SERVICES PROVIDER: COPY OF DRAFT
CONTRACT DOCUMENTS

ATTACHMENT O

EQUAL BENEFITS FOR DOMESTIC PARTNERS AFFIDAVIT

STATE OF _____)

: SS

COUNTY OF _____)

I, the undersigned hereby duly sworn, depose and say that the firm of _____

_____ provides benefits to domestic partners of its employees on the same basis as it provides benefits to employees' spouses, per City of Key West Code of Ordinances Sec. 2-799.

By: _____

Sworn and subscribed before me this _____ day of _____ 20 ____.

NOTARY PUBLIC, State of Florida at Large

My Commission Expires:

ATTACHMENT P

CONE OF SILENCE AFFIDAVIT

STATE OF _____)

: SS

COUNTY OF _____)

I, the undersigned hereby duly sworn, depose and say that all owner(s), partners, officers, directors, employees and agents representing the firm of _____ have read and understand the limitations and procedures regarding communications concerning City of Key West Code of Ordinances Sec. 2-773 Cone of Silence.

By: _____

Sworn and subscribed before me this

_____ day of _____ 20_____.

NOTARY PUBLIC, State of _____ at Large

My Commission Expires: _____

ATTACHMENT R

Acknowledgement of Conformance with FEMA / NIMS Standards

TO: CITY OF KEY WEST

Proposer's Name: _____, hereby acknowledge and agree that I/We have the sole responsibility for compliance with all requirements of the Federal Emergency Management Agency and the National Incident Management System and all State regulations, and agree to indemnify and hold harmless the CITY, its officers, agents, employees, and consultants against any and all legal liability or loss the CITY, its officers, agents, employees, and consultants may incur due to failure to comply with such act.

ATTEST

PROPOSERS NAME

ATTEST

By: _____

Title: _____

DATE



FEMA

CONTRACT PROVISIONS TEMPLATE

FEMA Office of Chief Counsel

Procurement Disaster Assistance Team



INTRODUCTION

Required Contract Clauses

If a non-Federal entity (state or non-state) wants to use federal funds to pay or reimburse their expenses for equipment or services under a contract, that contract must contain the applicable clauses described in [Appendix II to the Uniform Rules](#) (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) under 2 C.F.R. § 200.326. In addition, there are certain contract clauses which are required or recommended by FEMA.

This document outlines the federally required contract provisions in addition to FEMA-recommended provisions.

- For some of the required clauses, sample language or references to find sample language are provided.
- Sample language for certain required clauses (remedies, termination for cause and convenience, changes) is not provided since these must be drafted in accordance with the non-Federal entity's applicable local laws and procedures.
- For the clauses which require that exact language be included, the required language is provided. Those clauses are specifically identified below.

Please note that the non-Federal entity alone is responsible for 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.





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Tools: Contract Provisions Quick Reference Guide

Table 1. Key

KEY	
Required/Recommended Provision	<input type="checkbox"/>
Required/Recommended Provision and Required Exact Language	<input type="checkbox"/>
Not Required for PA Awards (Grants)	<input type="checkbox"/>

Table 2. Required Contract Provisions

	Required Provision	Contract Criteria	Sample Language?
1.	Legal/contractual/administrative remedies for breach of contract	> SAT (\$250k)	No. It is based on applicant's procedures.
2.	Termination for cause or convenience	> \$10k	No. It is based on applicant's procedures.
3.	Equal Employment Opportunity	Construction work	Yes. 41 CFR Part 60-1.4(b)
4.	Davis Bacon Act	Construction work	Not applicable to PA grants
5.	Copeland Anti-Kickback Act	Construction work > \$2,000	Not applicable to PA grants
6.	Contract Work Hours and Safety Standards Act	> \$100k + mechanics or laborers	Yes. 29 CFR 5.5(b)
7.	Rights to inventions made under a contract or agreement	Funding agreement	Not applicable to PA grants
8.	Clean Air Act and Federal Water Pollution Control Act	>\$150k	Yes
9.	Debarment and Suspension	All	Yes
10.	Byrd Anti-Lobbying Amendment	All (>\$100k: Certification)	Yes. Clause and certification
11.	Procurement of Recovered Materials	Applicant is a state or political subdivision of a state. Work involves the use of materials.	Yes
12.	Access to Records	All	Yes





Table 3. Recommended Contract Provisions

	Recommended Provision	Contract Criteria	Sample Language?
13.	Contract Changes or Modifications	All	No. It depends on nature of contract and end-item procured.
14.	DHS Seal, Logo, and Flags	All	Yes
15.	Compliance with Federal Law, Regulations and Executive Orders	All	Yes
16.	No Obligation by Federal Government	All	Yes
17.	Program Fraud and False or Fraudulent Statements or Related Acts	All	Yes





1. REMEDIES.

- a. Standard. Contracts for more than the simplified acquisition threshold, currently set at \$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. 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. Standard. 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. If applicable, exact language below in subsection 3.d is required.

- 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.
 - i. 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.

- ii. **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. **Required Language.** 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, 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.

(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





FEMA

receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.





FEMA

(8) 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.

The 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 the 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.

The 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.

The 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, the 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 the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

4. DAVIS-BACON ACT.

- a. **Standard.** 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. 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.
- b. **Applicability.** 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.**
- c. **Requirements.** If applicable, the non-federal entity must do the following.
 - i. 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.
 - ii. Additionally, pursuant 2 C.F.R. Part 200, Appendix II, ¶ D, contracts subject to the Davis-Bacon Act, 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





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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.

- iii. 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").

Suggested Language. The following provides a sample contract clause:

Compliance with the Davis-Bacon Act.

- a. 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.
- b. 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.
- c. Additionally, contractors are required to pay wages not less than once a week.

5. COPELAND ANTI-KICKBACK ACT.

- a. Standard. Recipient and subrecipient contracts must 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").
- b. Applicability. This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. **It does not apply to the FEMA Public Assistance Program.**





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- c. **Requirements.** If applicable, the non-federal entity must 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). 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. Additionally, in accordance with the regulation, each contractor and subcontractor must furnish each week a statement with respect to the wages paid each of its employees engaged in work covered by the Copeland Anti-Kickback Act and the Davis Bacon Act during the preceding weekly payroll period. The report shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work.

Sample Language. The following provides a sample contract clause:

Compliance with the Copeland “Anti-Kickback” Act.

- a. **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.
- b. **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.
- c. **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.”





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6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

- a. **Standard.** Where applicable (see 40 U.S.C. §§ 3701-3708), 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. 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. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.
- b. **Applicability.** This requirement applies to all FEMA contracts awarded by the non-federal entity in excess of \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- c. **Suggested Language.** The regulation at 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including the following contract clause:

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 (b)(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





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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 (b)(1) of this section, in the sum of \$26 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 (b)(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 (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(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 (b)(1) through (4) of this section.

7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.

- a. **Standard.** 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.





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- b. **Applicability.** This requirement applies to “*funding agreements*,” but it **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.”

- c. **Funding Agreements Definition.** The regulation at 37 C.F.R. § 401.2(a) 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.

8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.

- a. **Standard.** If applicable, contracts 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.

- b. **Applicability.** This requirement applies to contracts awarded by a non-federal entity of amounts in excess of \$150,000 under a federal grant.

- c. **Suggested Language.** The following provides a sample contract clause.

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 applicant entering into the contract) and understands and





agrees that the (name of the applicant entering into the contract) 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 the (name of the applicant entering into the contract) and understands and agrees that the (name of the applicant entering into the contract) 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.

9. DEBARMENT AND SUSPENSION.

- a. Standard. 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).
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
- c. Requirements.





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- i. 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 2 C.F.R. § 200.213. 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. See 2 C.F.R. § 180.530.
- ii. 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 subrecipients.
- iii. 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. Suggested Language. 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





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- (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's 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 recipient/subrecipient/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 (insert name of recipient/subrecipient/applicant), 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. **Standard.** 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. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 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 Federal awarding agency.
- b. **Applicability.** This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of \$100,000





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or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 31 U.S.C. § 1352; and 44 C.F.R. Part 18.

c. Suggested Language.

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 who in turn will forward the certification(s) to the awarding agency.

d. Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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.





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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.

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. Chap. 38, Administrative Remedies for False Claims and Statements, 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. **Standard.** 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. See 2 C.F.R. Part 200, Appendix II, ¶ J; and 2 C.F.R. § 200.322.
- b. **Applicability.** This requirement applies to all contracts awarded by a non-federal entity under FEMA grant and cooperative agreement programs.
- c. **Requirements.** 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. **Suggested Language.**
 - (i) 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 —
 - Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
 - (ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
 - (iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”





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Additional FEMA Requirements/Recommendations.

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

REQUIRED PROVISIONS:

1. ACCESS TO RECORDS.

- a. Standard. All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS/FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, Section 1225 of the Disaster Recovery Reform Act of 2018 prohibits FEMA from providing reimbursement to any state, local, tribal, or territorial government, or private non-profit for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.
- b. Suggested Language.

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,





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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.

(4) In compliance with the Disaster Recovery Act of 2018, the **(write in name of the non-federal entity)** 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.

RECOMMENDED PROVISIONS:

2. CHANGES.

- a. **Standard.** 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.
- b. **Applicability.** 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.

3. DHS SEAL, LOGO, AND FLAGS.

- a. **Standard.** Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).
- b. **Applicability.** FEMA recommends that all non-Federal entities 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.

c. Suggested Language.

“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.”

4. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS.

a. Standard. The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.

b. Applicability. FEMA recommends that all non-Federal entities 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.

c. Suggested Language.

“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.”

5. NO OBLIGATION BY FEDERAL GOVERNMENT.

a. Standard. FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.

b. Applicability. FEMA recommends that the non-Federal entity 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.

c. Suggested Language.

“The Federal Government is not a party to this contract and is not subject to





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any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

6. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

- a. **Standard.** Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. 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. **Suggested Language.**

“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.”





PUBLIC ASSISTANCE: PURCHASING GOODS OR SERVICES THROUGH COOPERATIVE PURCHASING PROGRAMS

The Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program provides supplemental assistance to states, tribes, and local governmental entities, as well as certain private non-profit organizations (hereinafter referred to as applicants) to assist them with recovering from emergencies and major disasters. FEMA's [Public Assistance Program and Policy Guide](#) provides comprehensive information regarding assistance that FEMA can provide and the requirements that applicants must follow in order to receive the assistance. The purpose of this Fact Sheet is to provide key information regarding the use of cooperative purchasing programs by non-state applicants for procurements above the simplified acquisition threshold. Failure to follow federal contracting requirements may jeopardize FEMA funding for costs associated with that contract.

Understanding Cooperative Purchasing Programs

A “**COOPERATIVE PURCHASING PROGRAM**” is a cooperative arrangement for acquiring goods or services that involves aggregating the demand of two or more entities in an effort to obtain a more economical purchase. Entities typically sign up to use cooperative purchasing programs through a cooperative purchasing agreement. Program membership may provide entities with access to lists of agreements or contracts for goods and services at pre-negotiated rates or prices. Typically, the member then purchases the goods or services by negotiating with participating vendors and placing purchase orders or entering into contracts based on the rates or prices listed in the cooperative purchasing program's agreements or contracts with vendors.

NOTE: Cooperative purchasing programs are distinguishable from joint procurements. A “**JOINT PROCUREMENT**” is a method of contracting in which two or more purchasers agree from the outset to use a single solicitation and enter into a single contract with a vendor for the delivery of goods and/or services. FEMA sees fewer compliance issues with joint procurements. While joint procurements are not the focus of this fact sheet, they still must comply with the federal procurement requirements.

DISCLAIMER: This Fact Sheet is intended to provide general information on procurement compliance and is not inclusive of every rule that an applicant may need to comply with. Additional information regarding the federal procurement standards can be found at the following webpage: www.fema.gov/procurement-disaster-assistance-team.

ATTENTION

- While the federal procurement standards encourage the use of cooperative purchasing where appropriate, non-state applicants should exercise caution when using such programs and work closely with the procuring entity to ensure compliance with the federal procurement standards found at 2 C.F.R. §§ 200.318- 200.326.
- An applicant that decides to use a cooperative purchasing program must document and explain how its use of the program complied with all federal procurement standards and applicable state, tribal and local procurement rules and policies.

“FEMA's mission is to help people before, during and after disasters.”

**FREQUENT COMPLIANCE ISSUES WITH COOPERATIVE
PURCHASING PROGRAMS FOR PROCUREMENTS ABOVE THE SIMPLIFIED
ACQUISITION THRESHOLD**

Full and Open Competition, 2 C.F.R. § 200.319 (applicable to non-state applicants)

Non-state applicants must ensure that the solicitations used by cooperative purchasing programs include a clear and accurate description of the scope of work or goods actually required by the non-state applicant. Additionally, cooperative purchasing programs that place overly restrictive requirements on solicitations risk noncompliance with the full and open competition requirements.

Procurement Method, 2 C.F.R. § 200.320 (applicable to non-state applicants)

Cooperative purchasing programs must be in compliance with the allowable procurement methods. Some of these methods of procurement require that non-state applicants publicly advertise or publicize the solicitations, solicit bids from an adequate number of known suppliers, and award contracts to the responsible, responsive firm with the lowest price or to the responsive firm whose proposal is most advantageous to the program with price and other factors considered.

Socio-economic Contracting, 2 C.F.R. § 200.321 (applicable to non-state applicants)

Non-state applicants must ensure cooperative purchasing programs take the applicable affirmative steps to encourage participation of small businesses, minority businesses, and women owned enterprises. Failure to take any of the affirmative steps violates 2 C.F.R. § 200.321.

Geographic Preferences, 2 C.F.R. § 200.319(b) (applicable to non-state applicants)

Any geographic preferences that a cooperative purchasing program uses in evaluating bids or proposals and any additional terms and conditions in a cooperative purchasing program's pre-negotiated agreements that favor or give preference to local suppliers would violate 2 C.F.R. § 200.319(b) and be restrictive of competition.

Contract Provisions, 2 C.F.R. § 200.326 (applicable to state and non-state applicants)

Cooperative purchase programs at times do not include the federally required contract provisions in their agreements with vendors. All state and non-state applicant 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).

Cost or Price Analysis, 2 C.F.R. § 200.323 (applicable to non-state applicants)

Non-state applicants must conduct an independent cost or price analysis when using cooperative purchasing agreements.

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Public Assistance: Procurement Conducted Under Exigent or Emergency Circumstances

The Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program provides supplemental assistance to states, territories, tribes, and local governmental entities, as well as certain private non-profit organizations (applicants) following major disasters and emergencies declared by the President. FEMA's *Public Assistance Program and Policy Guide* (<http://www.fema.gov/public-assistance-policy-and-guidance>) provides comprehensive information regarding assistance that FEMA can make available, and the requirements that applicants must follow in order to receive the assistance. This Fact Sheet provides key information that non-state applicants need to consider when utilizing contracted resources under exigent or emergency circumstances.

Federal regulations (2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards) establish requirements for non-state applicants concerning the exigency or emergency exception that permits the use of noncompetitive procurements, frequently referred to as “sole-source contracting.” These exceptions and associated procurement requirements are discussed further below. The information presented within applies to all categories of work under the PA Program. Emergency work funded under Category A (Debris Removal) and Category B (Emergency Protective Measures) is most often associated with a public exigency or emergency. However, there may be instances where exigent or emergency circumstances necessitate the use of noncompetitive procurements for permanent work (Categories C-G). The answers to the frequently asked questions below provide additional guidance on the acceptable use of noncompetitive proposals under exigent or emergency circumstances, which is described in regulation at 2 C.F.R. § 200.320(f)(2).

It is essential that all applicants understand that both FEMA and the U.S. Department of Homeland Security's Office of Inspector General (OIG) closely review applicant procurement actions and contract selections, with a particular emphasis on noncompetitive procurement actions, to evaluate compliance with Federal requirements. ***Failure to follow federal contracting and procurement requirements puts applicants at risk of not receiving reimbursement for otherwise eligible disaster costs.***

What is the exigency or emergency exception?

Non-state applicants must follow the procurement requirements found at 2 C.F.R. §§ 200.317 – 200.326. However, Federal regulations allow for noncompetitive procurements under certain circumstances, including when a non-state applicant determines that immediate actions required to address the public exigency or emergency cannot be delayed by a competitive solicitation. This represents an exception to requirements for full and open competition. FEMA approval is not required for use of noncompetitive procurements under the emergency or exigency exception, however, the use of noncompetitive procurements does not relieve non-state applicants from complying with other procurement requirements or from ensuring that costs are reasonable.

“FEMA's mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards.”

When referring to procurement activity, FEMA defines both exigency and emergency as situations that demand immediate aid or action. The difference between the two is that:

- In the case of an **exigency**, there is a need to avoid, prevent or alleviate serious harm or injury, financial or otherwise, to the applicant, and use of competitive procurement proposals would prevent the urgent action required to address the situation. Thus, a noncompetitive procurement may be appropriate.
- In the case of an **emergency**, a threat to life, public health or safety, or improved property requires immediate action to alleviate the threat.

While emergency conditions generally are short-lived, exigent circumstances can exist for a period of weeks or months.

Exigency Example: A tornado impacts a city in June and causes widespread and catastrophic damage, including damage to a city school. The city wants to repair the school and have it ready for use by the beginning of the school year in September. The city estimates, based on past experience, that awarding a contract using a sealed bidding process would require at least 90 days, and the city's engineer estimates that the repair work would last another 60 days. This would extend the project beyond the beginning of the school year. Rather than conducting a sealed bidding process, the city—in compliance with State and local law—wants to sole source with a contractor it has contracted with previously. The City can demonstrate that this constitutes an “exigent circumstance” because use of a sealed bidding process would cause an unacceptable delay and thus procurement by non-competitive methods was necessary based on the particular situation.

Emergency Example: Severe weather impacts a city and causes widespread and catastrophic damage, including loss of life, widespread flooding, loss of power, damage to public and private structures, and millions of cubic yards of debris across the city, leaving almost the entire jurisdiction inaccessible. The city needs to begin debris removal activities immediately to restore access to the community, support search and rescue operations, power restoration, and address health and safety concerns. Under these circumstances, the city may find it necessary to award noncompetitive contracts to address threats to life, property and public health.

When does the exigency or emergency exception apply and for how long?

Use of the public exigency or emergency exception *is only permissible during the actual exigent or emergency circumstances*. Exigency or emergency circumstances will vary for each incident, thus it is difficult to determine in advance or assign a particular time frame when noncompetitive procurements may be warranted. Exigent or emergency circumstances may exist for two days, two weeks, two months or even longer in some cases. Non-state applicants must ensure that work performed under the noncompetitively procured contracts is specifically related to the exigent or emergency circumstance in effect at the time of procurement. Importantly, because the exception to competitive procurement is available only while the exigent or emergency circumstances exist, applicants should, upon awarding a noncompetitive contract, immediately begin the process of competitively procuring similar goods and services in order to transition to the competitively procured contracts as soon as the exigent or emergency circumstances cease to exist.

FEMA may review a non-state applicant's justification that exigent or emergency circumstances warrant an exception to competitive procurement. If the agency determines that exigent or emergency

circumstances did not exist or did not preclude a non-state applicant from adhering to competitive procurement requirements, FEMA may disallow all or part of the non-state applicant's cost related to the contract. (2 C.F.R. 200.338)

What documentation is required to support the use of the exigency or emergency exception?

While FEMA approval is not required to use noncompetitive procurement proposals under the emergency or exigency exception, non-state applicants must document and provide justification for the use of the exigency or emergency exception. A list of elements that applicants may wish to include as part of its written justification can be found at the end of this Fact Sheet. The justification must be included in the non-state applicant's records for each Public Assistance-funded project.

Do any Federal procurement requirements apply if a non-state applicant is sole sourcing a contract under exigent or emergency circumstances?

Yes, non-state applicants must comply with the following requirements, regardless of whether exigent or emergency circumstances exist:

- Contracts must include the required contract clauses (2 C.F.R. 200.326 & Appendix II);
- Contracts must include the Federal bonding requirements if the contract is for construction or facility improvement (2 C.F.R. 200.325);
- Contracts must be awarded to a responsible contractor (2 C.F.R. 200.318(h));
- The non-state applicant must complete a cost or price analysis to determine that the cost or price of the contract is fair and reasonable; (2 C.F.R. 200.323(a) and (b));
- The use of cost-plus-percentage-of-cost contracting is prohibited (2 C.F.R. 200.323(c)).
- Use of time and materials contracts must comply with 2 C.F.R. 200.318(j)

What if the non-state applicant wants to use a pre-awarded or pre-existing contract in an exigency or emergency, and that contract does not comply with the Federal procurement requirements?

If a pre-awarded or pre-existing contract is not in compliance with the Federal procurement requirements (e.g., the contract was not fully and openly competed, or the six affirmative socioeconomic contracting steps were not completed (2 CFR 200.321)), it may still be possible to use the contract for the duration of the exigency or emergency. FEMA recommends that applicants review the list of procurement requirements above and take actions to modify pre-awarded or pre-existing contracts where applicable. In addition, applicants must prepare the appropriate documentation to justify the use of a noncompetitively procured contract.

Can non-state applicants use Time and Materials (T&M) contracts in an exigency or emergency?

Yes, but only under certain circumstances. FEMA advises against the use of T&M contracts and generally limits the use of these contracts to a short time period where the scope or duration of the work is unclear. T&M contracts do not incentivize contractors to control costs or maximize labor efficiency. FEMA may reimburse costs incurred under a T&M contract only if all of the following apply:

- No other contract was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and
- The applicant can demonstrate it provided a high degree of oversight to obtain reasonable assurance that the contractor used efficient methods and effective cost controls.

Can a non-state applicant award cost-plus-a-percentage-of-cost contracts or contracts with a percentage-of construction-cost method in an exigency or emergency?

No. This prohibition applies to all work, regardless of the circumstances (2 C.F.R. § 200.323(d)).

Can non-state applicants use *piggyback* contracts in an exigency or emergency?

Piggyback contracting occurs when one entity assigns the contractual rights it has in a contract to a non-state applicant. Generally, FEMA discourages piggyback contracts because the original contract pertains to the needs of the original entity, with a specific scope of work for that entity. While there may be circumstances when piggybacking is permissible, in almost all instances, the scope of work would need to be changed to include the needs of a non-state applicant, and changes to the scope of work are generally not permitted as there is not likely to be full and open competition for the expanded scope of work. However, during emergency and exigency circumstances, non-state applicants may be able to piggyback another entity's contract and expand the scope of a contract for the period of the emergency or exigency circumstance.

Note that a non-state applicant may choose to enter into a separate contract with the same contractor as another entity, using the same terms and conditions as in that other entity's contract, with only a change in the scope of work and the associated costs. However, this is sole-source contracting rather than piggyback contracting and it must meet the requirements for noncompetitive procurement under exigency or emergency circumstances as described elsewhere in this Fact Sheet.

If a non-state applicant is contemplating the use of piggyback contracting, they should contact their state or territory liaison to request FEMA assistance with contract review.

Can States use Time and Materials (T&M) or Cost Plus Percentage of Cost contracts in an exigency or emergency?

2 C.F.R. § 200.317 requires state applicants to follow: (1) the same policies and procedures they use for procurements using non-Federal funds; (2) 2 C.F.R. §200.322 (procurement of recovered materials); and (3) 2 C.F.R. §200.326 (required contract provisions). These requirements apply regardless of whether exigency or emergency circumstances exist. For purposes of the federal procurement requirements, states are defined as the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Mariana Islands, and any agency or instrumentality thereof except for local governments. Tribal governments are not considered to be States when applying federal procurement standards required by 2 C.F.R. Part 200.

States must ensure that they are in compliance with the cost principles in 2 C.F.R. §§200.400 – 200.474, including ensuring that costs are reasonable, as defined in 2 C.F.R. § 200.404. While the federal procurement rules do not prohibit the use of T&M contracts and Cost Plus Percentage of Cost contracts by state entities, FEMA discourages states from using these contracts because they generally lack provisions that control costs and maximize efficiency in performing work. FEMA and the OIG closely scrutinize these types of contracts for cost reasonableness.

Although T&M contracts are discouraged, there may be instances where T&M contracts are appropriate in the short term for activities such as debris removal, emergency power restoration, or other immediate actions required to address emergency health and safety threats. States entering into T&M contracts are encouraged to include language in the contract that specifies a ceiling price and limits the duration of the

contract to a short time period, thus providing the state time to develop a scope of work and transition to the more competitive procurement procedures.

Additional Information and Resources

Non-state applicants should consult as soon as possible after a declared disaster with all appropriate parties, including legal counsel, to review their procurement policies, actions and contracts against federal procurement requirements. Non-state applicants also should contact their State or Territory liaisons to request assistance with any procurement activity concerns.

Detailed procurement and contracting information is available on the FEMA website at www.fema.gov/procurement-disaster-assistance-team. FEMA's *Public Assistance Program and Policy Guide* is available at (<http://www.fema.gov/public-assistance-policy-and-guidance>), and the Code of Federal Regulations referenced in this guidance can be accessed at www.eCFR.gov.

Suggested Elements for Noncompetitive Procurement Justification

1. Identify which of the four circumstances listed in 2 C.F.R. § 200.320(f) justify a non-competitive procurement:
 - (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.
2. Provide a brief description of the product or service being procured, including the expected amount of the procurement.
3. Explain why a noncompetitive procurement is necessary. The justification should explain the nature of the public exigency or emergency, including specific conditions and circumstances that clearly illustrate why procurement other than through noncompetitive proposals would cause unacceptable delay in addressing the public exigency or emergency. (Failure to plan for transition to competitive procurement cannot be the basis for continued use of noncompetitive procurement based on public exigency or emergency).
4. State how long the non-competitively procured contract will be used for the defined scope of work, and the impact on that scope of work should the noncompetitively procured contract not be available for that amount of time (e.g., how long do you anticipate the exigency or emergency circumstances will continue; how long will it take to identify your requirements and award a contract that complies with all procurement requirements; or how long would it take another contractor to reach the same level of competence).
5. Describe the specific steps taken to determine that full-and-open competition could not have been used, or was not used, for the scope of work (e.g., research conducted to determine that there were limited qualified resources available that could meet the contract provisions).
6. Describe any known conflicts of interest and any efforts that were made to identify possible conflicts of interest before the noncompetitive procurement occurred. If no efforts were made, explain why.
7. Include any other information justifying the use of noncompetitive procurement in the specific instance.

NOTE: A separate justification is required for each instance of noncompetitive procurement.

Procurements under Grants

Requirements for Recipients and Subrecipients When Procuring Services and Supplies with Funding under Stafford Act Grant Programs

The Uniform Rules

- Public Assistance applicants will often use contractors to help them carry out work under their Stafford Act awards. These contracts are a commercial transaction between the applicant and their contractor, and FEMA has no contractual relationship between the two. Although FEMA is not a party to the contract, if it is using federal funding to pay for the contract, the applicant must comply with federal laws, including the federal procurement standards.
- The federal procurement standards are found at 2 C.F.R. §§ 200.317-200.326 and they apply to contracts under the Public Assistance program associated with disasters declared on or after December 26, 2014.
- Failure to follow federal contracting requirements when procuring and selecting contractors puts applicants at risk of not receiving full reimbursement for associated disaster costs.

The Basics

- These Replays are intended to provide you with a broad overview of the Federal procurement standards applicable to disaster assistance awards under the Stafford Act.
- The Department of Homeland Security (DHS) Office of Inspector General (OIG), as a responsible steward of public funds, is on the lookout for indications of noncompliance.
 - Failure to comply with Federal procurement standards can result in very serious consequences, including not receiving federal funding. See 2 C.F.R. § 200.338
 - Some of the most common findings resulting from OIG audits involve:
 - Noncompetitive contracting practices
 - Failure to include required contract provisions
 - Failure to perform required procedures to ensure small and minority businesses, women-owned enterprises, and labor surplus area firms are used when possible
 - Cost-plus-percentage-of-cost contracting
- These Replays are not intended to be, nor should it be considered as, legal advice.
 - Please refer to your organization's servicing counsel for resolution of any legal matters.

Key Players

- **Recipient:** Receives and administers the Federal award
Includes: States and Tribal Indian Governments
- **Subrecipient:** The non-Federal entity that receives a subaward from a recipient entity to carry out part of a Federal program, and which is accountable to the recipient for the use of the funds provided.
Includes: Local and Tribal Indian Governments (for declarations of the State), Institutions of Higher Education (IHEs), Hospitals, other Private Nonprofit Organizations (PNPs), Houses of Worship, and State agencies or instrumentalities receiving funds from the pass-through entity.



- **Federal Awarding Agency:** As the Federal awarding agency, FEMA is responsible for ensuring proper performance under the FEMA award, including compliance with the procurement standards.
- **Program Delivery Manager (PDMG):** The primary point of contact for applicants, providing customer service and programmatic guidance throughout the grant process.
- **Infrastructure Branch Director (IBD):** Provides leadership and operational direction for the Public Assistance Program and infrastructure-related Emergency Support Functions (ESFs).
- **Public Assistance Group Supervisor (PAGS):** In operations where ESFs are not activated, the Public Assistance Group Supervisor (PAGS) provides leadership and management direction in the delivery of the Public Assistance (PA) Program.

Applicability of the Federal Procurement Standards

- There are different sets of procurement rules that apply to states and non-state entities, so Public Assistance applicants must determine whether they are a state or a non-state entity to determine which procurement standards will apply in their case. Applicants should consult their legal counsel if they have questions regarding their entity type.
- **State Entity:** 2 C.F.R. § 200.90 defines a state entity as any state or territory of the United States, and any agencies or instrumentalities of that state or territory.
- **Non-State Entity:** Non-state entities are any eligible Public Assistance applicant that does not meet the “state” definition, which includes: Local and Tribal Governments, Institutions of Higher Education (IHEs), Hospitals, other Private Nonprofit Organizations (PNPs), and Houses of Worship.

Rules for State Procurements

- States must follow the procurement procedures found at 2 C.F.R. § 200.317, which include:
 1. Following the same policies and procedures it uses for procurements from its non-federal funds;
 2. Comply with Environmental Protection Agency guidelines found at 2 C.F.R. § 200.322 (procurement of recovered materials); and
 3. Include all necessary contract provisions required by 2 C.F.R. § 200.326 (required contract provisions).

Rules for Non-State Procurements

318	General Procurement Standards	<ul style="list-style-type: none"> • The standards at 2 C.F.R. §§ 200.318-200.326 only address a small portion of rules that can possibly apply to a non-state procurement. If the federal rules do not address a concept, the non-state should seek guidance from their own rules. If, however, there is a difference between the entities’ rules and the federal standards, the most restrictive of the two standards applies. • There are federal procurement standards that apply to the non-states procurement policies, solicitation phase, and contract award phase.
319	Competition	
320	Procurement Methods	
321	Socio-Economic Contracting	
322	Recovered Materials	
323	Contract Cost or Price	
324	Review of Procurements	
325	Bonding Requirements	
326	Contract Provisions	

- The rules found at 2 CFR §§ 200.318-200.326 are broken down on the left-hand side.





Competition

- The standard at 2 C.F.R. § 200.319 requires that procurement transactions be conducted in a manner ensuring **full and open competition**. Full and open competition means that all responsible contractors are permitted to submit a sealed bid or proposal on the procurement.
- There are numerous benefits to full and open competition which include:
 - Increasing probability of reasonable pricing from most qualified contractor;
 - Preventing favoritism, collusion, fraud, waste, and abuse; and
 - Allowing the opportunity for small and minority firms, women's business enterprises, and labor surplus area firms to participate in federally-funded work.
- Non-state entities should have written procurement procedures governing their procurement transactions. These procedures must ensure that all solicitation documents incorporate a clear and accurate description of the needs for the goods or services being procured. These descriptions must not unduly restrict competition.
- The federal procurement standards have identified 7 situations at 2 C.F.R. §200.319(a) that are considered to be restrictive of full and open competition, and therefore should be avoided. These include:
 1. Requiring unnecessary experience;
 2. Excessive bonding requirements;
 3. Specifying only a brand name product;
 4. Noncompetitive pricing practices;
 5. Organizational conflicts of interest;
 6. Noncompetitive contracts to contractors on retainer; and
 7. Any arbitrary action in the procurement process.
- There are bonding requirements at 2 C.F.R § 200.325 for construction or facility improvement contracts exceeding the simplified acquisition threshold. Bonding requirements must not unduly restrict competition.
 - Bid Guarantee: Each bidder must provide a bid guarantee equivalent to five percent of the bid price.
 - Performance Bond: There must be a performance bond on the part of the contractor for 100 percent of the contract price.
 - Payment Bond: There must be a payment bond on the part of the contractor for 100 percent of the contract price.
- To preserve full and open competition, the rules require that contractors who help draft the applicant's requirements, statements of work, specifications, and solicitation documents be excluded from competing for such procurement.
- Non-Federal entities are prohibited from using statutorily or administratively imposed geographical preferences in the evaluation of bids or proposals. However, there are limited



exceptions to this rule. Non-Federal entities may use geographical preferences when considering state licensing requirements. Also, the use of geographic location is allowed as one selection criteria when contracting for architectural and engineering (A/E) services, so long as its application leaves an appropriate number of qualified firms for consideration, given the nature and size of the project.





Methods of Procurement

- Non-state applicants must comply with one of the five methods of procurement set forth at 2 C.F.R. § 200.320, which include:
 1. Micro-Purchase Procedures
 2. Small Purchase Procedures
 3. Sealed Bidding
 4. Competitive Proposals
 5. Noncompetitive Proposals

Micro-Purchase Procedures

- A non-state entity may use the micro-purchase procedures for the acquisition of supplies or services where the total dollar amount of the services or supplies does not exceed the micro-purchase threshold. While the micro-purchase threshold is adjusted from time to time, it is currently \$10,000.
- The rules allow for non-state applicants to award micro-purchases without soliciting competitive bids or proposals so long as the price is reasonable.
- To the extent practicable, micro-purchases should be distributed equitably among qualified suppliers.

Small Purchase Procedures

- This relatively simple and informal method of procurement is allowed for purchases where the total dollar amount of the requirement does not exceed the simplified acquisition threshold (SAT). While the SAT is adjusted from time to time, it is currently \$250,000.
- For this method of procurement, price or rate quotations must be obtained from an “adequate number” of qualified sources. What is an adequate number of sources will depend upon the facts and circumstances of the procurement, but in no case should this be less than three. *See page V-8 of the Detailed Resources Supplement for additional guidance.*
- When seeking to use the micro-purchase and small purchase methods, the non-state entity must avoid the intentional “splitting” of purchases or transactions to circumvent the dollar threshold limitations.

Sealed Bidding

- The sealed bidding method of procurement is the preferred method of contracting when the non-state applicant’s requirement is known and specific in detail and the procurement lends itself to a fixed price contract type. Selection of the successful bidder will be made principally based on price.
- The solicitation document used is known as an invitation for bids (IFB). The IFB must describe the specifications for the requirement and include instructions for interested bidders. All bids will be opened at the time and place prescribed in the invitation for bids. For local and tribal governments, the bids must be opened publicly.
- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time. In this context, what is an adequate number of known suppliers



depends on the facts and circumstances of the procurement. For local and tribal governments, the IFBs must be publicly advertised.

- The award will be made in writing to the lowest priced, responsive, and responsible bidder.

Competitive Proposal

- The competitive proposal method is normally used when the conditions are not appropriate for sealed bidding, including when the requirement is not specific in detail.
- The solicitation document used, known as a request for proposals (RFP), must be solicited from an adequate number of qualified sources. In this context, what is an adequate number of known suppliers depends on the facts and circumstances of the procurement.
- The RFP must be publicized, have instructions for potential contractors, and identify the evaluation factors that will be considered along with their relative importance. The non-state applicant must have a written method for conducting technical evaluations of the proposals received.
- Procurement of A/E professional services is the only instance when price may be excluded as an evaluation factor. Under this qualifications-based procurement of A/E professional services, competitors' qualifications are evaluated, and the most qualified competitor is selected. However, this selection is subject to negotiation of fair and reasonable compensation, and the procurement must be limited to A/E professional services and cannot be used to purchase other types of services even though these A/E firms are potential sources to perform efforts beyond A/E professional services. *See page V-14 of the Detailed Resources Supplement for additional guidance on this limited exception for excluding price as an evaluation factor in competitive proposals.*
- The award will be made to the responsible contractor whose proposal is most advantageous, with price and other factors considered.





Noncompetitive Proposals/Sole-Sourcing

- The federal procurement standards are clear regarding the need to have full and open competition. There are, however, limited situations where noncompetitive proposal methods may be allowed; but only in instances where one or more of the following circumstances apply:
 1. The item is available only from a single source;
 2. Exigency or emergency circumstance;
 3. Awarding agency or pass-through entity approval; or
 4. Inadequate competition
- In any event, it is extremely important for the non-state applicant to document the basis for the justification of the noncompetitive procurement.
- **Single Source:** The use of this exception to full and open competition is allowed when the non-state applicant requires supplies or services that are truly only available from a single source.
- **Exigency or Emergency Circumstance:** The public exigency or emergency will not permit a delay resulting from the full and open competition process.
 - The use of this exception to full and open competition is limited and only permissible during the period of actual exigency or emergency. Once this period ends, the non-state applicant must transition to a procurement compliant with the requirements of full and open competition.
 - Although the terms are often used interchangeably, “exigency” and “emergency” are not necessarily the same.
 - **Emergency:** an unexpected and unusually dangerous situation that calls for immediate action or an urgent need for assistance or relief. E.g. threat to life, public health or safety, improved property, and/or some other form of dangerous situation.
 - Example: A severed power line remains live and is dangling near an apartment building. If not addressed immediately, this live wire poses a risk of igniting the building on fire or causing bodily harm. The emergency would not extend to repair and restoration of the city’s power lines beyond resolution of this limited dangerous situation.
 - **Exigency:** something that is necessary in a particular situation that requires or demands immediate aid or action.
 - Example: Augusta, GA using a noncompetitive procurement in advance of The Masters Golf Tournament to remove debris blocking the roadways. If not removed immediately, the debris threatened to force cancellation of this major economic activity for the region. The exigency only existed up until the day that the tournament started. Full and open competition was required for procurements after the commencement of the tournament.



- **Awarding Agency Approval:** The non-state applicant may use this noncompetitive proposal method in the rare instance when the “awarding agency” or “pass-through entity” expressly authorizes the sole source in response to a written request from the non-Federal entity.
- **Inadequate Competition:** This exception can be used when, after solicitation of a number of sources, competition is determined inadequate.
 - The solicitation must have complied with all procurement standards and still only received a single offer or bid, single responsive offer or bid, or no responsive bids or proposal caused by conditions outside of the subrecipient’s control.
 - **NOTE:** Justification for why there is inadequate competition and why the noncompetitive procurement was used without cancelling the solicitation and resoliciting offers or bids must be documented, so evaluating whether the solicitation was sufficiently publicized and speaking with solicited firms to determine why they did not submit offers or bids may be required to ensure the initial solicitation was not overly restrictive. If the award moves forward in light of any restrictive specifications, then documentation should be provided for why the restrictive specification or delivery requirement was necessary and could not be modified so as to enable additional competition.
 - *Page 80 of the Field Manual offers additional guidance on this matter and can be found in the Detailed Resources section of the PDAT website.*





Socioeconomic Affirmative Steps

- In addition to the requirements of full and open competition, the non-state applicant must take the necessary affirmative steps found at 2 C.F.R. § 200.321 to make sure small and minority businesses, women-owned enterprises, and labor surplus area firms are used when possible. Affirmative steps must include at least the following six steps:
 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.
- Labor surplus areas are localities that have a civilian average annual unemployment rate during the previous two calendar years of 20% or more above the average annual civil unemployment rate for all states during that same period. *See page V-27 of the Detailed Resources Supplement available on the PDAT website for additional information.*
- This procurement rule does not require subrecipients to avoid the selection of responsive, responsible contractors who do not fall under one of the business categories listed in 2 C.F. R. § 200.321, but instead is a requirement for full and open competition which includes the consideration of these small and minority businesses, women's business enterprises, and labor surplus area firms.
- **Remember:** The OIG frequently cites non-state entities for failure to employ the required procedures to take affirmative steps to ensure small and minority businesses, women-owned enterprises, and labor surplus area firms are considered.

Cost or Price Analysis

- A non-state entity must perform a price or cost analysis in connection with every procurement action above the simplified acquisition threshold, including contract modifications, as required by 2 C.F.R. § 200.323.





- The method and degree of analysis is dependent on the facts and circumstances surrounding the particular procurement, but, as a starting point, the non-state entity must make independent estimates before receiving bids or proposals.
- **Price Analysis:** The examination and evaluation of a proposed price without evaluating its separate cost elements and proposed profit. Techniques may include comparing offers with one another; comparing prior proposed prices and contract prices with current proposed prices for the same or similar goods or services; comparing offers with competitive published price lists, published market prices, or similar indexes; comparing proposed prices with independently developed estimates of the non-state entity; and comparing proposed prices with prices of the same or similar items obtained through market research.
- **Cost Analysis:** The review and evaluation of the separate cost elements (such as labor hours, overhead, materials, etc.) and proposed profit in a proposal to determine a fair and reasonable price for a contract and the application of judgement to determine how well the proposed costs represent what the cost of the contract should be.
- A non-state entity shall 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.
- Documentation of cost or price analysis can be useful as evidence that costs are reasonable.



Contract Types

- **Time and Materials (T&M) Contract (2 C.F.R. § 318(j))** A contract whose cost to a non-state entity is the sum of:
 1. The actual cost of materials; and
 2. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- A non-state entity may use T&M contracts only after determination that:
 1. No other contract is suitable, AND
 2. the contract includes a ceiling price that the contractor exceeds at its own risk.
- T&M contracts provide no positive profit incentive to the contractor for cost control or labor efficiency, which is why the Uniform Rules require the inclusion of a contract ceiling price.
- The Uniform Rules also require the non-state entity to maintain a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- Use of T&M contracts are generally limited to a reasonable time based on the circumstances during which the applicant cannot define a clear scope of work. OIG may recommend disallowance of costs based on the inappropriate use of T&M contracts beyond a limited period and where a scope of work can be determined.

- **Cost Plus Percentage of Cost (CPPC) – Prohibited!**
 - A cost plus percentage of cost contract is a cost reimbursement contract containing some element that obligates the subgrantee to pay the contractor an amount (in the form of either profit or cost), undetermined at the time the contract was made and to be incurred in the future, based on a percentage of future costs.
 - The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.
 - Rationale: There is no incentive for a contractor to control costs, and this type of contract incentivizes a contractor to increase its profits by increasing costs of performance.
 - Criteria evidencing this type of contract include:
 1. Payment is on a predetermined percentage rate
 2. The predetermined percentage rate is applied to actual performance costs
 3. The contractor's entitlement is uncertain at the time of contracting
 4. The contractor's entitlement increases commensurately with increased performance costs

Required Contract Provisions

- The required contract provisions apply to both state and non-state entities.
- Under 2 C.F.R. § 200.326, all contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.





- A non-Federal entity's contracts are required to contain certain provisions – some are based on sound contracting practices and others are required by federal law, executive order, and regulations.
- Failure to include the required contract provisions is one of the most common findings under OIG audits of IHEs, hospitals, and PNPs.
- The PDAT website includes a *Contract Provisions Template* that provides additional guidance including required contract provisions, sample language, and insight about which provisions might apply under various circumstances.
 - This template provides information on potentially applicable required contract provisions, which may be determined by the type of entity involved, the project type, or contract price.
- Always consult with your organization's servicing legal counsel for resolution of any questions regarding contract provisions required in your specific circumstances.



Contractor Responsibility

- The non-state entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Matters to be considered: (1) contractor integrity; (2) compliance with public policy; (3) record of past performance; and (4) financial and technical resources. See 2 C.F.R. § 200.318(h)
 - *The Detailed Resources Supplement, available on the PDAT website, provides additional information on page IV-6 regarding assessment of contractor responsibility using these mandatory criteria.*
- **Suspension & Debarment:** Non-Federal entities (including state and non-state entities) are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 C.F.R. Part 180. 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 or activities. 2 C.F.R. § 200.213
 - Non-Federal entities must not make any award or permit any award at any tier to parties listed on the government-wide exclusions in the System for Award Management ("SAM"), which can be found at www.sam.gov.
 - DHS has adopted debarment and suspension guidelines at 2 C.F.R. Part 3000, which adopt OMB's regulations at 2 C.F.R. Part 180 and provide supplemental policies and procedures.
 - When searching for contractors on SAM.gov, note that a search yielding no results only means that the contractor you are searching for has not registered and is not in and of itself proof that both the contractor and company you are searching for are in good standing.



General Procurement Standards (2 C.F.R. § 200.318)

- Non-state entities must use their own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided the procurement conforms to applicable Federal law and the standards set forth in 2 C.F.R. Part 200.
 - **Note:** NFEs must comply with all other applicable Federal laws, regulations, and executive orders when procuring services or property under a FEMA award. The requirements identified in this Replay only address the Federal procurement standards and not the other requirements established and made applicable through the Uniform Rules.
- For non-state entities, there are eleven general procurement standards; **eight** are mandatory.
 1. **Contractor Oversight:** Must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
 - If non-state entity organizations lack qualified personnel to undertake such oversight, then FEMA expects the non-state entity to acquire the necessary services from sources outside of the entity's organization. Such contracts and services will remain subject to compliance with all procurement standards at 2 CFR Part 200.
 2. **Necessity:** Must have procedures that avoid acquisition of unnecessary or duplicative supplies or services.
 - FEMA expects the non-state entity to limit procurements to current and reasonably expected needs to carry out the scope of work under the FEMA award, and does not allow for the addition of quantities or options to the contract solely for needs unrelated to the scope of work under the FEMA award or for assignment to another party at a later date.
 3. **Standards of Conduct:** Must maintain written standards of conduct covering conflicts of interest and governing the actions of employees engaged in the selection, award, and administration of contracts.
 - These standards of conduct must include "organizational conflicts of interest." Organizational conflicts of interest mean 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.
 - 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.
 4. **Conflict of Interest:** 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.
 5. **Gifts:** The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything else of monetary value from contractors/subcontractors.





6. **Awards to Responsible Contractors:** Must award contracts only to **responsible** contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.
 - Matters that must be considered:
 - Contractor integrity
 - Compliance with public policy
 - Record of past performance
 - Financial and technical resources
 - Additional information regarding these mandatory criteria when evaluating whether a contractor is responsible can be found beginning on *Page IV-6 of the Detailed Resources Supplement available on the PDAT website.*
7. **Records:** Must maintain records sufficient to detail the history of the procurement, which must include, but are not limited to, rationale for the method of procurement; selection of contract type; contractor selection or rejection; and the basis for the contract price.
 - Document, document, document!
8. **Settlement of Issues:** Must alone be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual issues and administrative issues arising out of procurements.
 - Neither FEMA nor the Uniform Rules relieve the NFE of any contractual responsibilities under its contracts.
 - *Additional information regarding NFE responsibility for settlement of issues can be found on page IV-12 of the Detailed Resources Supplement available on the PDAT website.*



- The Uniform Rules also include three encouraged procurement standards.
 - **Use of intergovernmental agreements:** To foster greater efficiency and promote cost-effective use of shared services, state and local intergovernmental agreements or inter-entity agreements are encouraged where appropriate for procurement or use of common or shared goods and services.
 - **Piggybacking:** While piggybacking is not prohibited by the federal procurement regulations, there are strict rules that a non-state entity must follow to be compliant. Non-state entities must ensure that 1) the original procurement complies with federal regulations, 2) the scope of work does not exceed what was contemplated by the original contract, 3) the original contract contains an assignability clause, and 4) the cost is reasonable. *See pages 30-32 of the Field Manual available on the PDAT website for additional considerations.*
 - **Use of federal excess/surplus property:** 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. Such equipment/property would be acquired through the Federal Surplus Personal Property Donation Program carried out by the General Services Administration (GSA).
 - **Value engineering:** Encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.



Records

- 2 C.F.R. § 200.318(i) requires the maintenance of records sufficient to detail the history of a procurement. These records should include, but are not limited to:
 - Rationale for the method of procurement used for each contract (micro-purchase, small purchase procedures, sealed bidding, competitive proposals, and noncompetitive proposals), including a justification for using any procurement by noncompetitive proposal methods;
 - Rationale for selecting the type of contract used (fixed price, cost reimbursement, or time and materials);
 - Rationale for contractor selection or rejection, including written documentation that a prospective contractor qualifies as responsible and set forth the basis for that determination;
 - Basis for the contract price, which will include the cost or price analysis for contracts exceeding the simplified acquisition threshold; and
 - Other appropriate documentation, including the examples listed on *Page IV-9 of the Detailed Resources Supplement and page 23 of the Field Manual; both available on the PDAT website.*
- FEMA expects that the non-state entity will maintain reasonable documentation, such that documents included in a procurement history should be in line with the size and complexity of the procurement.
 - Always ensure procurement records are retained for the minimum time frame dictated by local, state, and federal requirements, and at least three years from the date of submission of the final expenditure report for the award. 2 C.F.R. § 200.333
 - Ensure recordkeeping processes for your organization are documented and well known, as this will assist in maintaining knowledge-retention in the absence of any person(s) who might typically handle procurement documentation for the organization.
- The Uniform Rules provide that FEMA, DHS Office of Inspector General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the NFE which are pertinent to the FEMA award, to make audits, examinations, excerpts, and transcripts.
- **Pre-Award Procurement Review**
 - **Review of Technical Specifications**
 - A non-state entity must make available the technical specifications for a proposed procurement upon request by FEMA or the pass-through entity.
 - **Review of Other Procurement Documents**
 - A non-state entity must make available upon request, for FEMA or pass-through entity pre-procurement review, other procurement documents such as requests for proposals, invitations for bids, independent cost estimates, etc. in certain circumstances.
 - Exemption: A non-state entity is exempt from the pre-procurement review if FEMA or the pass-through entity determines that its procurement systems comply with the standards under 2 C.F.R. Part 200.



- **Post-Award Procurement Review**
 - This requirement applies to both state and non-state NFEs.
 - FEMA may review a NFE's procurement documents after the NFE's contract award as part of FEMA's authority and responsibility to monitor financial assistance execution and ensure proper performance and compliance with the terms and conditions of the FEMA award.
 - Such a review may occur during close-out of a FEMA award, close-out of an individual project under a FEMA award, or through a FEMA audit or monitoring visit.



Things to Do in Advance

• General Requirements

- All non-state entities must have *written* procedures for procurement transactions.
 - These procedures must ensure that all solicitations incorporate clear and accurate descriptions of the technical requirements for the goods or services being procured.
 - Should incorporate clear descriptions, nonrestrictive specifications, qualitative requirements, acknowledgement that FEMA is providing the funds, statement of the contract type, be free of any features that unduly restrict competition, and mention that prospective contractors will need to comply with all applicable Federal laws, regulations, executive orders, and FEMA requirements.
 - Must identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

• Prequalified Lists: A prequalified list is a list of vendors that the applicant has vetted possessing the qualifications and technical abilities to satisfy an applicant's potential requirement.

- **THIS IS NOT A CONTRACT**
- Many non-state applicants have prequalified lists that essentially serve as contract research.
- If using, 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.
- Cannot exclude potential bidders or offerors from qualifying during the solicitation period, even if they were not on the prequalified list.
 - Must still comply with all applicable procurement standards in the award of the contract, including solicitation, evaluation, and subsequent award of a contract.
 - Any additional interested contractors must be permitted to submit their qualifications in response to the solicitation and, if deemed qualified, submit their bids or proposals for consideration.

• Advanced/Pre-Positioned Contracts: Advance contracts, also referred to as prepositioned contracts or pre-awarded contracts, may be awarded before an incident occurs for the potential performance of work under the Public Assistance Grant Program under a Stafford Act emergency or major disaster.


- **THIS IS A CONTRACT**
- The contract must have been originally procured in full compliance with the procurement standards under the Uniform Rules.
- The scope of work originally procured must not exceed the reasonably expected needs during a future declaration.
- The scope of work performed must fall within the scope of work of the original contract and there are no cardinal changes.
- The pricing structure must be reasonable.



- May NOT use FEMA assistance to fund projects beyond the original scope of an existing contract.
 - i.e. **cardinal change** (out of scope changes): after-the-fact addition of parties able to use the contract, changes in the type or extent of work to be performed, use of the contract in manner/duration that was not originally anticipated, etc.
 - Non-state entities may utilize modification clauses to bring existing pre-positioned contracts into compliance with the Federal procurement regulations so long as the deviation in the existing contract is possible to cure. *See Page VI-7 of the Detailed Resources Supplement available on the PDAT website.*
 - State entities must follow their own procurement rules and procedures and contract rules on whether cardinal changes are permissible without a separate procurement.
- **Cooperative Purchasing:** A cooperative arrangement for acquiring goods or services that involves combining the demand of two or more entities in an effort to obtain a more economical purchase. Entities typically sign up to use cooperative purchasing programs through a cooperative purchasing agreement. Program membership may provide entities with access to lists of agreements or contracts for goods and services at pre-negotiated rates or prices. Non-state entities:
 - Must ensure the solicitations used by cooperative purchasing programs include a clear and accurate description of the scope of work or goods required.
 - Must comply with the allowable procurement methods, including any requirements to publicly advertise or publicize solicitations, solicit bids from an adequate number of known suppliers, and award contracts to responsible, responsive firms with the lowest price or whose proposal is most advantageous to the program with price and other factors considered.
 - Must ensure cooperative purchasing programs take the applicable affirmative steps required by 2 C.F.R. § 200.321 to encourage participation of small and minority businesses, women's business enterprises, and labor surplus area firms.
 - Must not be restrictive of competition, including any geographic preferences that a cooperative purchasing program uses in evaluating bids or proposals and any additional terms or conditions that favor or give preference to local suppliers.
 - Must still ensure that any contracts contain the applicable required contract provisions under 2 C.F.R. § 200.326.
 - Must conduct an independent cost or price analysis when using cooperative purchasing agreements.
 - NOTE: Cooperative purchasing programs are distinguishable from joint procurements. A "joint procurement" is a method of contracting in which two or more purchasers agree from the outset to use a single solicitation and enter into a single contract with a vendor for the delivery of goods and/or services.



Tools & Resources

- 
- **PDAT Website:** www.fema.gov/procurement-disaster-assistance-team
 - Several extremely helpful resources, including those referenced throughout these Replays, can be found on the PDAT website. These resources will help to provide additional information on the Federal procurement rules governing FEMA Public Assistance grants. These resources include:
 - Contract Provisions Template;
 - Field Manual;
 - Detailed Resources Supplement;
 - Checklists;
 - Online webinars are available as refreshers on the materials covered today; and
 - Much, much more.
 - **Procurement Rules Online:** www.ecfr.gov
 - Title 2 → Subtitle A → Chapter II → Part 200 → Subpart D → Procurement Standards
 - 2 C.F.R. 200.317-326 can be viewed in its entirety at this website.
 - Always refer to your organization's servicing legal counsel for resolution of any legal questions.
 - **System for Award Management (SAM)-** www.SAM.gov
 - Always check with www.sam.gov to confirm you are not entering into a covered transaction with a party listed on the government-wide exclusions list.
 - System for Award Management 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 regulator authority other than Executive Order 12549.
 - The regulations at 2 C.F.R. Part 180 and 2 C.F.R. Part 3000 specifically prohibit a NFE from entering into a "covered transaction" with a party listed on the SAM Exclusions.
 - **Other Points of Contact**
 - Always be aware of local and state procurement rules in addition to the Federal requirements discussed today.
 - Please refer to your local procurement staff for any questions related to state and local procurement rules.
 - If you have any questions regarding Federal procurement requirements, contact your dedicated FEMA Public Assistance Staff.





ATTACHMENT T

CITY OF KEY WEST

**AGREEMENT TO FURNISH
MONITORING OF DEBRIS REMOVAL
AND RELATED SERVICES
TO THE
CITY OF KEY WEST**

2021

Contractor:

Agreement to Furnish Professional Services for Monitoring of Debris Removal and Related Services to the City of Key West

This AGREEMENT is made and entered into by and between the City of Key West, Florida, a municipal corporation of the State of Florida, whose address is P.O. Box 1409, Key West, Florida 33041, hereafter referred to as the "CITY" and -----authorized to transact business in the State of Florida, whose address is-----, hereafter referred to as the "CONTRACTOR". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 9.1.

Article 1. Scope of Services

Contractor shall provide all expertise, personnel, tools, materials, equipment, transportation, supervision and all other services and facilities of any nature necessary to execute, complete and deliver the monitoring of debris removal and related services as requested by the City in the event of a natural or man-made disaster. The CITY engages CONSULTANT to perform those Services described in the CITY'S Request for Proposals #003-21 and Consultant's Response to the said Request for Proposals, a copy of which is attached hereto, incorporated for reference, and more particularly described as Exhibit A.

These contracted services shall include all items listed below and provide for the cost. Effective and efficient monitoring of debris removal and related services as requested by the City in the event of a natural or man-made disaster in accordance with FEMA requirements. Contract services will only be performed when requested and as designated by the City Manager (or his designee) by approved Work Authorization issued in writing.

The City reserves the right to assign work to various contractors, at its sole discretion. The City also reserves the right to approve all subcontractors hired by the contractor and/or to require the contractor to dismiss a subcontractor upon request.

1.1 Staff Mobilization

When a potential disaster threatens the CITY, the Contractor will mobilize 24 to 72 hours in advance with key staff experienced in various aspects of debris operations (including truck certification, mapping/zone development, etc.) in order to participate in the "response" phase of the disaster event. A "Mobilization Task Order" in a form substantially similar to Figure 1, attached hereto below, will be forwarded to the debris monitoring firm, acknowledging the CITY's request for services. Additional Contractor staff shall be contacted and put on standby for potential mobilization. Logistical

arrangements for out of town staff such as lodging arrangements for key staff, is considered to be the responsibility of the Contractor.

1.2 Field Documentation of Work

Contractor shall carefully document debris removal activities as well as hazardous trees and trees that contain hazardous hanging limbs that need to be removed. Contractor will work closely with the CITY and with FEMA/FHWA to determine the most effective methods of documentation to ensure that debris removal is eligible for federal funding. Contractor shall communicate with FEMA to ensure documentation supports project reimbursement. Contractor will work with FEMA in an effort to pre-validate as much eligible debris, tree and limb removal as practical.

1.3 Collection Monitoring of Rights-of-Way and Public Property Debris

Contractor will provide collection monitors with each of the Contractor's loading crews to ensure each load is related to the disaster and is eligible for federal reimbursement. The street address and/or GPS coordinates will be recorded on each load ticket. The Contractor will initiate a multi-party ticket in the field for each load, containing information related to the location of the debris, time, date, truck identification, truck driver, etc. The ticket will then be delivered to the temporary debris storage and reduction site (TDSRS) or disposal site with the truck driver for road rating. Load ticketing and documentation will also be performed for hazardous tree and limb removal. This may include monitoring the removal of abandoned cars, boats, marine debris, white goods, beach cleaning, and structure demolition. Contractor will provide similar services if debris removal from private property/right-of-entry (ROE) is approved for this project. Field monitoring of debris haulers shall be performed in accordance with current FEMA, FHWA and state requirements and in coordination with the CITY.

1.4 Training

Contractor will provide training to all employees concerning safety, eligibility for reimbursement, and disaster specific information. The Contractor will be required to perform adequate training for locally hired staff at no expense to the CITY. All of Contractor's employees must be able to effectively communicate to a level appropriate to their responsibilities.

1.5 Spot Checks and Auditing of Monitors

Contractor will provide roving monitors, field coordinators, and supervisory personnel to ensure that field monitors are making accurate eligibility calls, keeping good documentation, and are working effectively with the debris removal contractor.

1.6 Project Mapping

Maps will be used to document the debris removal progress. The final pass along each roadway will be mapped for the CITY's information, and FEMA documentation. Contractor will assist the CITY in public communication and will document and relay any citizen complaints for action by the contractor or the CITY.

1.7 Truck Certification

Contractor will establish a team of individuals who will inspect and certify vehicles for hauling storm related debris in accordance with FEMA guidelines. A certification sheet with measurement, photos, and calculations documenting the capacity of the truck is kept for load rating and ticket auditing. Summary books will be kept at each TDSRS/disposal site for quality control. Certifications should also include a methodology to discourage collection contractors from modifying their vehicle after certification, such as identifying unique attributes to the vehicle like sideboards. Photographs of the vehicle and its driver shall be documented. Periodic spot checks and recertification of trucks that were potentially altered after initial certification shall be performed.

1.8 Quality Control / Quality Assurance, Safety Manager

A QA/ QC program should be implemented by the Contractor to minimize errors in debris monitor tickets and all documentation functions. Eligibility of work, reliability of documentation and data accuracy are critical in achieving full reimbursement for eligible project expenses.

1.9 TDSR / Disposal Sites

Contractor will provide trained monitors at TDSR and disposal sites to call loads based on the amount of debris in each truck. It is imperative that these monitors make accurate calls to safeguard public funds. Monitors will also make sure that the trucks are empty as they leave the site. Furthermore, monitors will review the truck certification worksheets to make sure the trucks have not been modified to affect their capacity (shortened or removed sideboards, for example). Similar systems *will* be used to verify, track, and document hauling of reduced debris from TDSR sites through final disposal, if applicable.

1.10 Data Management

Contractor will establish an advanced project data management system and enter load ticket information on a daily basis. This information can be provided to the CITY, FEMA, and the Contractor GPS coordinates or addresses for tree and stump removal, and debris removal progress, as applicable. Additionally, the staff will work with the Contractor to reconcile Invoices, and review debris removal Invoices for recommendation of payment by the CITY. Furthermore, Contractor will organize field information for FEMA documentation including photographs and/or GPS coordinates. Contractor will help track invoices for FEMA reimbursement and provide additional supporting information as requested.

1.11 Public Information Support

Contractor may be asked to assist the CITY in public outreach following a disaster event as it relates to debris recovery efforts. This may include establishing and staffing (including supplying equipment, phone lines, etc.) a "debris hotline" to respond to public complaints and concerns or establishing a website. This also may include assistance

with press releases, public notices, and other public information functions. All functions will be performed in a manner to maximize federal and state reimbursement.

1.12 Funding Support

The Contractor shall assist the CITY in securing maximum reimbursement for eligible work from state and federal agencies. Specific funding support services may include working with the CITY to develop a cash flow strategy that focuses on early reimbursement. This includes assistance in preparing a debris quantity estimate that is supported by FEMA staff, *early* preparation of a project worksheet to cover the estimated cost of the entire debris removal effort at the outset of the project, and assisting the CITY and FEMA personnel with Project Worksheets, Versions, etc. Contractor shall be prepared to assist CITY with appeals based on their in-depth knowledge of FEMA and FHWA reimbursement policies. Contractor shall be prepared to assist the CITY, if requested, in tracking progress of Project Worksheets and providing quick response to any problem issue that may arise that could slow funding. Contractor shall be prepared to assist CITY in finding additional funding reimbursement sources related to disaster mitigation.

1.13 Recovery Services

Contractor will conduct field Implementation and utilize FEMA reimbursement experience in community recovery including, but not limited to:

- Right-of-Entry (ROE) administration and data base management
- ROW and private property vegetative / C & D hazard removal monitoring
- ROW and private property demolition coordination and monitoring of marine debris removal
- Beach sand sifting / cleaning

1.14 Other Related Services

Services not specifically identified in this request, but are needed to provide a complete debris removal and documentation project.

1.15 Pre-Storm Coordination

Contractor will be prepared to meet with the CITY once prior to June 1st of each year to coordinate services for the upcoming storm season. Additionally, Contractor shall meet with the CITY immediately prior to a credible disaster threat. These meetings shall occur at no cost to the CITY and are meant to facilitate increased coordination of efforts, to discuss the CITY's expectations of the Contractor, and to fast track recovery activities when a disaster strikes.

1.16 Safety Meetings and Monitoring Updates

Safety of monitoring staff is of paramount importance. Contractor will hold regular meetings *with* debris monitors and staff for project updates and to communicate safety issues. If important information becomes available, the staff may meet more frequently.

1.17 Coordination Meetings with Contractor(s)

Contractor will initiate a coordination meeting with the debris removal contractor to help expedite the work, and to discuss any issues that may arise during the project. It is important that the monitor and debris removal contractor are communicating with each other to ensure a successful project.

1.18 Contractor Damages

The Contractor may be asked to develop a database application to track and help the CITY manage damages caused by debris removal contractors during the debris clearing/removal process damages.

1.19 Status Reports

Contractor will provide detailed daily or weekly status reports to the CITY as requested for use and information. Relevant project statistics and cumulative statistics will be shown in a straightforward manner to officials to provide information to the media or to their constituents.

SAMPLE

SAMPLE

City of Key West Debris Removal
Mobilization Task Order

Date: _____ Time: _____ Incident/ Event: _____

City Declaration Order: _____ Florida Declaration Order No.: _____

Presidential Declaration Order No.: _____ FEMA Incident/ Event No.: _____

Contractor: _____ Project Manager: _____
Name of Contractor Name of Approved PM

Contractor's Estimated Time of Arrival: ----- "*****" Number of Crews: _____ .

11t Push Priority Locations:

Roads: _____
Attach: Map/ GPS / GIS

Forecast Amount of Debris: Use Appropriate USACE Model

- Tornado/ Hurricane:
- Flood Debris:
- C&D:
- Vegetative:
- HHW:

Figure 1

Article 2. Compensation

The Contractor will be compensated for work completed by the Contractor in accordance with the Fee Schedule attached hereto and identified as Attachment A. The Contractor will submit proof of work in the form of force labor tickets and or hourly time and materials tickets. The Contractor will provide the City with Daily reports. The Contractor will submit the City a weekly summary report and Invoice for services.

Article 3. Invoicing and Payment

Monthly invoices will be issued by CONTRACTOR for all work performed during the preceding month under this AGREEMENT, as prescribed in Article 2. Invoices are to be submitted and paid in accordance with the Florida Prompt Payment Act.

Article 4. Performance of Services

The contractor agrees to perform contracted services in a professional and workmanlike manner and in compliance with all applicable laws, ordinances, rules, regulations, and permits. Only the highest quality workmanship will be acceptable. Services, equipment and workmanship not conforming to the intent of the Agreement *or* meeting the approval of the City may be rejected. Replacements and/or re-work, as required, will be accomplished on a timely basis at no additional cost to the City.

Article 5. Standards of Performance

5.1 Contractor Representative and General Operations Plan

The Contractor shall have a knowledgeable and responsible representative report to the City and provide a copy of final Contractor's General Operations Plan within ten (10) days following the execution of the Agreement. The City will approve the General Operations Plan prior to its implementation within the City. The Contractor's Representative shall have the authority to implement all actions required to begin the performance of contracted services as set forth in the Agreement and the Contractor's General Operations Plan.

5.2 Mobilization

When a notice to proceed in advance of an event has been received by the Contractor, he/she will make all necessary arrangements to mobilize a minimum of 50% of the required resources within 24 hours and 100% of the required resources within 48 hours to commence and conduct these contracted services. It is the City's discretion to require pre-event staging at a location designated by the City. The City may take such other actions as necessary to address the failure of the Contractor to mobilize resources on the schedule required by the City

Article 6. General Responsibilities

6.1 Other Agreements

The City may be required to enter into agreements with Federal and/or State agencies for disaster relief. The Contractor shall be bound by the terms and conditions of such agreements, regardless of the additional burdens of compliance. City will provide the Contractor with a copy of any applicable agreements.

6.2 The City's Obligations

The City shall furnish all information and documents necessary for the commencement of contracted services, including a written Mobilization Task Order.

6.3 Contractor's Conduct of Work

The Contractor shall be responsible for planning and conducting all operations in a satisfactory and professional manner. All Contractor personnel and subcontractors shall demonstrate and maintain a courteous and responsible demeanor toward all persons.

6.4 Supervision by Contractor

The Contractor will supervise and/or direct all contracted services performed by its employees, agents and subcontractors. The Contractor is solely responsible for all means, methods, techniques, safety and other procedures. The Contractor will employ and maintain a qualified Contractor's Representative as project manager at the work site(s) who shall have full authority to act on behalf of the Contractor. All communications given to the Contractor's Representative by the City shall be as binding as if given to the Contractor.

6.5 Self-sufficiency of Contractor and Subcontractor's

The Contractor shall ensure that its work force, including subcontractors, maintain self-sufficiency related to fuel, vehicle repair/maintenance, housing, sanitation, food and related accommodations, in a manner that is consistent with local requirements and minimizing adverse effects on the community.

6.6 Damages by Contractor

The Contractor shall be responsible for conducting all operations, whether contemplated by the Contract or later requested as specialized services, in such a manner as to cause the minimum damage possible to existing public, private and commercial property and/or infrastructure. The Contractor shall also be responsible for any damages due to the negligence of its employees and subcontractors. The Contractor must report such damage to the City in writing within 24 hours. Should any property be damaged due to negligence on the part of the Contractor, the City may either bill the Contractor for the damages, withhold funds due to the Contractor, or the Contractor may also repair all damage to the satisfaction of the City. The

determination of whether "negligence" has occurred shall be made by the City in its sole discretion.

6.7 Contractor's Duty Regarding Other Contractor(s)

The Contractor acknowledges the presence of other contractors involved in disaster response and recovery activities by the federal, state and local government and of any private utility, and shall not interfere with their work.

Article 7. General Terms and Conditions

7.1 Equipment

The contractor shall operate all trucks, trailers and all other equipment in compliance with any / all applicable federal, state and local rules and regulations. Equipment shall be in good working condition. Should operation of equipment _be required outside of the public ROW, the Contractor will ensure that a Right-of-Entry has been obtained prior to property entry.

7.2 Workdays/Hours

Workdays and/or work hours shall be as directed by the City following consultation and notification to Contractor. Working hours on holidays shall be at the discretion of the City.

7.3 Utilizing Local Resources

Contractor shall, to every extent possible, give priority to utilizing labor and other resources originating within Monroe County.

7.4 Work Safety

Contractor shall provide and enforce a safe work environment as prescribed in the Occupational Safety and Health Act of 1970, as amended. Contractor will provide such safety equipment, training and supervision as may be required by the City and/or other governmental regulations. Contractor shall ensure that Its subcontracts contain an equivalent safety provision.

7.5 Corrective Actions Required of Contractor

When instructed by the City's Representative, the Contractor will immediately implement corrective actions to address health and safety issues and/or any other actions inconsistent with any of the terms of the Contract, as determined by the City in its sole discretion, and notify the City within 24 hours.

7.6 6 Other Agencies

The term "government" as used in the Agreement refers to those governmental agencies which may have a regulatory or funding interest in the Contract.

Article 8. Reports, Certifications and Documentation

8.1 Reports:

The Contractor shall submit periodic, written reports in a format required by the City documenting the progress of Contractor's activities.

8.1.1 Data Reconciliation

Reconciliation of data will be accomplished weekly between the Contractor and the City's Representative. All discrepancies will be resolved within 5 days.

8.1.2 Online Data Storage/Access

Throughout debris removal operations, Contractor will maintain an ongoing updated online secured Internet database accessible by the City that stores data detailing Contractor's activities. These online databases will remain available for five years following project closeout.

8.1.3 Final Project Closeout

Upon final inspection and/or closeout of the project by the City, Contractor shall prepare and submit a detailed description of all Contractor's activities in an electronic spreadsheet, to include the total cost of the project invoiced to the City. The Contractor shall provide, upon request of the City and/or no later than project closeout, a release of liens demonstrating that all subcontractors to the Contractor have been fully paid. The Contract will provide any other additional information as may be necessary to adequately document the conduct of the operations for the City and/or government. Final project reconciliation must be approved by the City.

8.2 Certifications

The Contractor will adhere to the process for certification of personnel and vehicles established by the Federal Emergency Management Agency, to include the following:

8.2.1 Certification of Vehicles and Load Capacity

- a. Contractor shall ensure that all equipment is certified in accordance with most current federal procedures.

- b. After a disaster, the City, or its designated representative, will begin the equipment certification at a pre-designated site, or at staging areas established by the City.
- c. All Contractor and subcontractor trucks shall have valid registrations, insurance and meet basic operational criteria: tailgates or equivalent containment devices, tarps, etc., as well as all applicable motor vehicle safety requirements. Drivers shall possess valid licenses.

8.2.2 Certification of Personnel

The Contractor will certify to the City that all Contractor and subcontractor personnel have received required and adequate training in relevant operations. Upon request of the City, the Contractor will provide documentation certifying the adequacy of the training, experience and capabilities of all Contractor and subcontractor personnel, to include but not be limited to the following:

- 8.2.2.1 Senior management personnel of the Contractor assigned to implement work authorizations pursuant to the Contract will participate, upon request, in training and briefing sessions held by representatives of Monroe County and/or the City.
- 8.2.2.2 Senior, supervisory personnel of the Contractor and all subcontractors thereto will have received training in monitoring of debris removal, the operational concepts established by the Monroe County Countywide Debris Management Plan, and the implementation of the National Incident Management System.
- 8.2.2.3 Personnel assigned by the Contractor as responsible for data management, invoicing and other documentation duties will be trained in the data management concepts and approaches to be used by the City.
- 8.2.2.4 Vehicle and equipment operators will be fully licensed and certified and insured, as required by applicable local, State and Federal statutes and regulations.
- 8.2.2.5 Upon their deployment for field operations, all Contractor and subcontractor personnel will be briefed or trained appropriately in their duties, responsibilities, and the procedures to be utilized throughout the monitoring of debris removal process, including safety procedures, and accident reporting procedures

8.3 Additional Supporting Documentation

Contractor shall submit sufficient reports and/or documentation for any other services provided by Contractor as may be required by the City and/or other governmental entity to support requests for debris project reimbursement from external funding sources.

8.4 Report Maintenance

The Contractor will be subject to audit by federal, state and local agencies pursuant to the Contract. The Contractor will maintain all reports, records, debris reporting tickets and Contract correspondence for a period of not less than five (5) years in accordance with applicable state statutes.

Article 9. General Legal Provisions

9.1 Agreement Period

The duration of the agreement shall be five (5) years commencing from the effective date of this Agreement.

9.2 Termination

This agreement may be terminated at any time, with or without cause, by the CITY upon thirty (30) days written notice to CONTRACTOR. No further work will be performed by CONTRACTOR upon receipt of this notice unless specifically authorized by the Director of Utilities of the City of Key West. Upon termination, the CONTRACTOR will be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the AGREEMENT. The CITY will not pay for anticipatory profits

9.3 Suspension, Delay, or Interruption of Work

The CITY may suspend, delay, or Interrupt the services of the CONTRACTOR for the convenience of the CITY. In the event of such suspension, delay; or interruption, or any other act or neglect of CITY or CITY's subcontractors, CITY will pay CONTRACTOR for work performed to date. In the event delays to the project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

9.4 Third Party Beneficiaries

This Agreement gives no rights or benefits to anyone other than the CITY and CONTRACTOR and has no third-party beneficiaries. CONTRACTOR's services are defined solely by this proposed scope of services, and not by any other contract or agreement that may be associated with the services.

9.5 Indemnification

To the fullest extent permitted by law, the CONTRACTOR expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents and employees *(herein called the "indemnitees-) from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR, its Subcontractors or persons employed or utilized by them in the performance of the Contract. Claim by indemnitees for indemnification shall be limited to the amount of CONTRACTOR'S insurance or \$1 million per occurrence,

whichever is greater. The parties acknowledge that the amount of the indemnity required hereunder bears a reasonable commercial relationship to the Contract and it is part of the project specifications or the bid documents, if any. The indemnification obligations under the Contract shall not be restricted in any way by any limitation on the amount or type of damages, compensation, Or benefits payable by or for the CONTRACTOR under Workers' Compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the CONTRACTOR or of any third party to whom CONTRACTOR may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of the work.

9.6 Insurance/Evidence of insurability

CONTRACTOR is to secure, pay for, and file with the City of Key West, prior to commencing any work under the Contract, all certificates for Workers' Compensation, Public Liability, and Property Damage Liability Insurance and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amounts indicated. Notwithstanding any other provision of the Contract, the CONTRACTOR shall provide the minimum limits of liability insurance coverages as follows:

Auto Liability	\$1,000,000	Combined Single Limit
General Liability	\$2,000,000	Aggregate (Per Project)
	\$2,000,000	Products Aggregate
	\$1,000,000	Any One Occurrence
	\$1,000,000	Personal Injury
	\$ 300,000	Fire Damage/Legal
Additional Umbrella Liability	\$2,000,000	Occurrence/Aggregate

CONTRACTOR shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as "Additional Insured" on PRIMARY and NON CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its Equivalent, (COMBINATION OF CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations is acceptable) INCLUDING A "Waiver of Subrogation" clause in favor of City of Key West on *all* policies. CONTRACTOR will maintain the General Liability and Umbrella Liability insurance coverages summarized above with coverage continuing in full force including the "additional insured" endorsement until at least 3 years beyond completion and delivery of the work contracted herein.

Notwithstanding any other provision of. the Contract, the CONTRACTOR shall maintain complete Workers' Compensation coverage for each and every employee, principal, officer, representative, or agent of the CONTRACTOR who is performing any labor, services, or material under the Contract. Further, CONTRACTOR shall additionally maintain the following minimum limits of coverage:

Bodily Injury Each Accident	\$1,000,000
Bodily Injury by Disease Each. Employee	\$1,000,000
Bodily Injury by Disease Policy Limit	\$1,000,000

If the work is being done on or near a navigable waterway, CONTRACTOR's Workers' Compensation policy shall be endorsed to provide USL&H Act (WC 00 01 06 A) and Jones Act (WC 00 02 01 A) coverage if specified by the *City* of Key West. CONTRACTOR shall provide the City of Key West with a Certificate of Insurance verifying compliance with the workman's compensation coverage as set forth herein and shall provide as often as required by the City of Key West such certification which shall also show the insurance company, policy number, effective and expiration date, and the limits of workman's compensation coverage under each policy.

CONTRACTOR's Insurance policies shall be endorsed to give 30 days' written notice to the City of Key West in the event of cancellation or material change, using form CG 02 24, or its equivalent.

Certificates of Insurance submitted to the City of Key West will not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation/material change notice endorsements, and waivers of subrogation. Copies of USL&H Act and Jones Act endorsements will also be required if necessary.

CONTRACTOR will comply with any and all safety regulations required by any agency or regulatory body including but not limited to OSHA. CONTRACTOR will notify City of Key West immediately of any accident or injury to anyone that occurs on the jobsite and is related to any of the work being performed by the CONTRACTOR.

9.12 Assignment

CONTRACTOR shall not assign all or any part of this Agreement without the prior consent of the CITY by Resolution of the Key West City Commission.

9.13 Jurisdiction

The law of the state of Florida and Monroe County will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

9.14 Severability and Survival

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

9.15 Dispute Resolution

The parties will use their best efforts to resolve amicably any dispute, including the use of alternative dispute resolution options. Unless otherwise agreed in writing, the CONTRACTOR shall continue the Work and maintain the approved schedules during any arbitration proceedings. If the CONTRACTOR continues to perform, CITY shall continue to make payments in accordance with this Agreement.

Article 10. Schedules, and Signatures

This AGREEMENT, including its Schedules, constitutes the entire AGREEMENT, supersedes **all** prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

IN WITNESS WHEREOF, the parties execute below:

THE CITY OF KEY WEST, FLORIDA

EXHIBIT "A"
PROPOSAL

ATTACHEMENT "A"
HOURLY PER DIEM RATES