

Attachment D
FEDERAL REGULATIONS (FEMA)

NOTICE: THIS IS A FEDERALLY FUNDED PROJECT

AWARDING AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security.

Funding, in whole or in part, for this Project is through a Public Assistance grant from FEMA therefore all provisions of 2 CFR §§ 200.317 through 200.326 under the Uniform Administrative Requirements (“Uniform Rules”) apply to this Project.

Federal Law requires that contracts relating to the Project include certain provisions of 2 CFR §§ 200.317 through 200.326 under the Uniform Administrative Requirements. Depending upon the type of work or services provided and the dollar value of the Project, some of the provisions set forth in 2 CFR §§ 200.317 through 200.326 may not apply to the Contractor or to the work or services to be provided hereunder; however, the provisions are nonetheless set forth to cause this Project to comply with Federal Law.

This Project will be in strict compliance with program requirements of the Awarding Agency and of 2 CFR §§ 200.317 through 200.326.

- (1) **Remedies.** Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold) **Reference Sections titled *Termination, City’s Right to Withhold, Disputes, and Warranties.***
- (2) **Termination for Cause and Convenience.** Termination for cause and for convenience by the recipient or sub-recipient including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000) **Reference Section titled *Termination.***
- (3) **Not to Exceed – Contract Amendments.** The Contractor shall not exceed the maximum fees, as noted in the Section titled *Compensation*, without a prior written request to the City of Cedar Rapids, Iowa and authorization by written amendment to the Contract, including a change to the Scope of **Work/Services**. The written request shall include documentation and justification for such request including a detailed cost and schedule impact to the Project. **Reference Section titled *Contract Amendments***
- (4) **Retention of all required records.** Records shall be retained for three years after recipients or sub-recipients make final payments and all other pending matters are closed. **The City’s requirement is 5 years; reference Section titled *Treatment of Documents.***
- (5) **Access to Records.**
 - a) The Contractor agrees to provide the City of Cedar Rapids, Iowa, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 - b) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - c) The Contractor agrees to provide the FEMA Administrator or authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (6) **Equal Employment Opportunity.** Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity”, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

During the performance of this contract, the Contractor agrees as follows:

- a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and

applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- c) The Contractor will send to each labor union or representative of workers with which it 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.
- d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended and supplemented, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended and supplemented, 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.
- f) 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 as amended and supplemented, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (a) through (g) 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, as amended and supplemented, 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."

(7) **Compliance with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act.**

- a) **Applicability of Davis-Bacon Act.** The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- b) All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II, ¶ D.
- c) In accordance with the statute, Contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractors must be required to pay wages not less than once a week.
- d) The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- e) In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor

regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

- f) In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act. However, for purposes of grant programs where both clauses do apply, FEMA requires the following:
- i. Contractor. The Contractor shall comply with 18 USC § 874, 40 USC § 3145 and the requirements of 29 CFR pt. 3 as may be applicable, which are incorporated by reference into this contract.
 - ii. Subcontracts. The Contractor or Subcontractor shall insert in any subcontract the clause above and other such clauses as the FEMA may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all of these contract clauses.
 - iii. 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 CFR § 512.

- (8) **Compliance with the Contract Work Hours and Safety Standards Act.** Applicable for 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 USC §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 CFR Part 5.

- a) 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.
- b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.
- c) Withholding for unpaid wages and liquidated damages. The City of Cedar Rapids, Iowa 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) of this section.
- d) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) 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 (a) through (d) of this section."

- (9) **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).** Contractors who apply or bid for an award of \$100,000 or more must file the required certification.

- (10) **Procurement of Recovered Materials.**

- a) 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.
- b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>.
The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.
- (11) **Compliance with the Clean Air Act.** Applicable for contracts of amounts in excess of \$150,000.
- a) 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.
 - b) The Contractor agrees to report each violation to the City of Cedar Rapids, Iowa and understands and agrees that the City of Cedar Rapids, Iowa will, in turn, report each violation as required to assure notification to the State of Iowa, the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - c) The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.
- (12) **Compliance with the Federal Water Pollution Control Act.** Applicable for contracts of amounts in excess of \$150,000.
- a) 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.
 - b) The Contractor agrees to report each violation to the City of Cedar Rapids, Iowa and understands and agrees that the City of Cedar Rapids, Iowa will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - c) The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.
- (13) **Suspension and Debarment.** Applicable to all FEMA grant and cooperative agreement programs.
- a) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - b) 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.
 - c) This certification is a material representation of fact relied upon by the City of Cedar Rapids, Iowa. 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 the State of Iowa and the City of Cedar Rapids, Iowa, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - d) The Contractor agrees to comply with the requirements of 2C.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 Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- (14) **No Obligation by Federal Government.** The Federal Government is not a party to this contract and is not subject to any obligation or liabilities to the non-Federal entity, Contractor or any other party pertaining to any matter resulting from the contract.
- (15) **Program Fraud and False or Fraudulent Statements or Related Acts.** The Contractor acknowledges that 31 USC Chap 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to the contract.
- (16) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).

- (17) Notice of awarding agency requirements and regulations pertaining to reporting.
- (18) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- (19) Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- (20) **Bonding Requirements.** Applicable for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold (\$150,000), the awarding agency may accept the bonding policy and requirements of the recipient (State if Iowa) or sub-recipient (City of Cedar Rapids) provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:
 - a) A bid guarantee from each Contractor equivalent to five percent (5%) of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the Contractor will, upon acceptance of its bid, execute such contractual documents as may be required within the time specified. **(In compliance with State Law, the City of Cedar Rapids will require a ten percent (10%) bid bond for construction or facility improvement contracts exceeding \$135,000.)**
 - b) A performance bond on the part of the Contractor for 100 percent (100%) of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract. **(In compliance with State Law, the City of Cedar Rapids will require a performance bond for construction or facility improvement contracts exceeding \$25,000.)**
 - c) A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. **(In compliance with State Law the City of Cedar Rapids will require a payment bond for construction or facility improvement contracts exceeding \$25,000.)**