

## **Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

The following provisions shall be applicable to the Contract and shall supersede any conflicting provisions contained elsewhere in the Contract.

**A. BREACHES AND DISPUTE RESOLUTION.** For all purchases in excess of the simplified acquisition threshold, currently \$150,000, the following provisions shall apply:

(1) Disputes and Remedies - Disputes arising in the performance of this Contract which are not resolved by the Contractor and the City's project manager or contractor manager, shall be referred, in writing, to the authorized representative of the City Mayor for a decision. If there is a disagreement among the parties regarding the decision of the City Mayor's representative, then either party may submit any claim, counterclaim, dispute and other matters in question between the City and the Contractor arising out of or relating to this Contract or its breach to a court of competent jurisdiction within The City of Miami Beach.

(2) Performance During Dispute - Unless otherwise directed by the City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

(3) Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

### **B. TERMINATION FOR CONVENIENCE**

The City, at its sole discretion, reserves the right to terminate this Contract without cause upon thirty (30) days written notice. Upon receipt of such notice, the Contractor shall not incur any additional costs under this Contract. The City shall be liable only for reasonable costs incurred by the Contractor prior to notice of termination. The City shall be the sole judge of "reasonable costs."

### **C. DEFAULT; REMEDIES; TERMINATION FOR CAUSE**

The City reserves the right to terminate this Contract, in part or in whole, or place the Contractor on probation, or to avail itself of all other remedies available at law and equity, inclusive injunctive relief and specific performance, in the event the Contractor fails to perform in accordance with the terms and conditions stated herein. Following breach of the Contract by the Contractor, the City shall provide written notice specifying the breach to the Contractor and advising the Contractor that the breach must be cured immediately or this Agreement may be terminated by the City. The City reserves the right to avail itself of any and all remedies available at law or at equity, including claims for damages and injunctive relief. The City further reserves the right to suspend or debar the Contractor in accordance with the appropriate City ordinances, resolutions and/or administrative/implementing orders. The vendor will be notified by letter of the City's intent to terminate if, following the initial notice of breach, the Contractor fails to timely or adequately and to the satisfaction of the City cure said breach. In the event of termination for default, the City may procure the required goods and/or services from any source and use any method deemed in its best interest. All re-procurement costs shall be borne by the terminated Contractor.

#### **D. EQUAL EMPLOYMENT OPPORTUNITY**

(1) In connection with the performance of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, ancestry, marital status, pregnancy, sexual orientation, veteran's status, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, age, disability, ancestry, marital status, pregnancy, sexual orientation, veteran's status, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by MDC setting forth the provisions of this Equal Opportunity clause.

(2) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(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 Equal Opportunity 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.

(8) The Contractor will include the provisions of this Equal Opportunity clause 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 of Contractor's vendors and subcontractors. The Contractor will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions, including sanctions for noncompliance.

**E. DAVIS-BACON ACT, AS AMENDED** (40 U.S.C. § 3141-3148) and **COPELAND “ANTI-KICKBACK” ACT** (18 USC § 40 U.S.C. 3145). The Davis-Bacon Act and the Copeland Anti-Kickback Act only apply 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. They do not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program. Accordingly, if applicable to this Contract:

(1) All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

a) In accordance with the statute, and if applicable, the Contractor must pay all laborers and mechanics employed or working upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor pursuant to 29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) at rates not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The City will attach a copy of the current prevailing wage determination issued by the Department of Labor to this form.

b) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of 29 CFR §5.5; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4).

c) Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of 29 CFR § 5.5) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) 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.

Contractors and Subcontractors are 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 Contractor or subcontractor shall insert in any subcontracts the clause in these subparagraphs (G)(1) and (2), and also a clause requiring the subcontractors to include this clause in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with this clause. A breach of this clause 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.

**F. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT OF 1962, 40 U.S.C. §§ 3702 AND 3704.**

If applicable, the Contractor and all of its subcontractors shall comply with the Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. §§ 3702 and 3704, requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a workweek. In the event of any violation of the preceding clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the City 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 herein, 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. The City 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 herein. The Contractor or subcontractor shall insert in any subcontracts this clause set forth in subsection (F) herein also a clause requiring the subcontractors to include this clause 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 herein.

**G. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AWARD.**

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the City 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 City must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**H. THE CLEAN AIR ACT OF 1955, as amended, 42 U.S.C. §§7401-7671q and the FEDERAL WATER POLLUTION CONTROL ACT, as amended, 33 U.S.C. §§ 1251- 1387.**

- (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. and issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251 et. seq.
- (2) The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the City, 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.

**I. ENERGY CONSERVATION.**

Contractor agrees to comply with 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 U.S.C. Section 6321 et seq.) and (42 U.S.C. 6201).

## **J. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION.**

(1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). 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. This certification is a material representation of fact relied upon by the City. 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 City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and shall include a provision requiring such compliance in its lower tier covered transactions.

(2) By signing and submitting this form, the Contractor shall also execute and provide the City with, and require all lower tiered contractors to also execute, the certification set out in "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower tier Covered Transaction" attached hereto. The Contractor shall require all lower tier participants to agree that they: a. shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the City; and ii. they will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion", and the certification form, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. The Contractor may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. The Contractor may decide the method and frequency by which it determines the eligibility of its principals. The Contractor may, but is not required to check the Non-procurement List issued by U.S. General Service Administration. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of the Contractor and any other participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

If the Contractor or any other lower tier participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the City may pursue available remedies including suspension and/or debarment.

## **K. BYRD ANTI-LOBBYING CERTIFICATION AND DISCLOSURE STATEMENTS.**

Contractors who apply or bid for or have received 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.

#### **L. RECYCLED PRODUCTS/RECOVERED MATERIALS**

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. § 6962), including but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. All goods and/or services to be purchased as a result of any award under this Contract shall be in accordance with all applicable governmental standards, including, but not limited to those issued by the Occupational Safety and Health Administration (OSHA), the National Institute of Safety Hazards (NIOSH), and the National Fire Protection Association (NFPA). It shall be the responsibility of the Contractor and vendors to be regularly informed to conform to any changes in standards issued by any regulatory agencies that govern the commodities or services applicable to this solicitation, during the term of any contract resulting from this solicitation. In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired:

- (1) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (2) Meeting Contract performance requirements; or (3) At a reasonable price.

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/regulatory-background-comprehensive-procurement-guideline-program-cpg>.

#### **M. CONTRACTING WITH SMALL AND MINORITY BUSINESS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS, C.F.R. § 200.321(G).**

Pursuant to C.F.R. 200.321 (g), the City will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (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) above.

**N. ACCESS TO RECORDS.** In addition to the provisions contained in the Contract, the following access to records requirements apply to this Contract:

- (1) The Contractor agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract.

**O. PROGRAM FRAUD AND FALSE OF FRAUDULENT STATEMENTS OF RELATED ACTS.** The Contractor hereby acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to the Contract.

**P. DHS SEAL, LOGO, AND FLAGS.** The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**Q. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS.** This is an acknowledgement that FEMA financial assistance may 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.

**R. NO OBLIGATION BY FEDERAL GOVERNMENT**

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

**S. CHANGES**

The Contract may be modified by mutual consent, in writing through the issuance of a modification to the Contract.

**T. INDEMNIFICATION**

For any work performed on Federally funded projects, the Contractor agrees to indemnify and hold harmless the Federal Government, its employees and/or contractors, the County, its employees and/or contractors, and the City and its employees and/or contractors from liability to third parties for claims asserted under the contract.

**U. E-VERIFY.** The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.