

IV. CONTRACT EXECUTION

IV. CONTRACT EXECUTION



PROCUREMENT **TOOLBOX**

TYPES OF CONTRACTS

Not only is the way you procure important, the resulting type of contract you use is also important. There are five (5) types of contracts allowed by Federal regulations and three (3) commonly used contract types to avoid.

CONTRACTS TO USE	
LUMP SUM	Contract for work within a prescribed boundary with a <i>clearly</i> defined scope of work and a total price .
UNIT PRICE	Work done on an item-by-item basis, with cost determined per unit – e.g., box, cubic yard, etc.
COST PLUS FIXED FEE	Total known cost with a defined fixed fee <i>added</i> to the price.
TIME + MATERIALS (T + M)	<p>Must make a written determination that no other type of contract is suitable. Must contain a <i>not-to-exceed</i> (ceiling) clause. Payment based on hourly rate schedule and cost of materials.</p> <ul style="list-style-type: none"> • Maintain <i>high</i> degree of oversight. • Contracts used for Debris Removal (Category A) and Emergency Protective Measures (Category B) can not exceed 70 hours continuous of actual work immediately following the emergency or disaster incident.
INTERGOVERNMENTAL AGREEMENTS	<p>Subrecipients (Applicants) are <i>encouraged</i> to enter into State and local intergovernmental agreements for procurement or use of common goods and services.</p> <p>Visit LA eCat's website to search State contracts: https://wwwcfprd.doa.louisiana.gov/osp/lapac/ecat/dsp_eCatSearchLagov.cfm</p>
CONTRACTS TO AVOID	
PIGGYBACK	<p>Piggybacks are generally ineligible.</p> <p>There is a <i>very rare</i> exception that allows the use of this type of contract. This should <i>only</i> be done in consultation with the GOHSEP Legal Team.</p>
COST-PLUS-PERCENTAGE-OF-COSTS	Strictly prohibited.
PERCENTAGE-OF-CONSTRUCTION-COST	Strictly prohibited.



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REQUIRED CONTRACT PROVISIONS

Governing regulations for procurement are dependent upon the type of grant received.

For disaster-related grants, such as funding for Public Assistance (PA) the effective date is dependent on the issuance of the *Presidential Declaration*. For nondisaster grants, such as funding for Hazard Mitigation (HM) and Preparedness, the effective date is dependent on the date the grant award is issued.

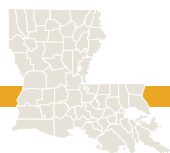
All **FEMA-funded Contracts** must include the following Contract provisions:

CONTRACT PROVISION	GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>BEFORE</i> 12/26/2014		GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>ON OR AFTER</i> 12/26/2014	APPLICATION
	44 CFR	2 CFR	2 CFR 200	
Equal Employment Opportunity (EEO)	13.36(i)(3)	-	-	All construction Contracts awarded in excess \$10,000.
	-	215 Appendix A(1)	-	All Contracts.
	-	-	Appendix II(C)	All construction Contracts.
Compliance with Reporting Requirements	13.36(i)(7)	215.51 - 52	200.32 - 329	Contracts and/or grants must include the Subrecipient (Applicant) responsibility to provide the required reports, i.e. program performance, financial and progress reports.
Byrd Anti-Lobbying Amendment	-	215 Appendix A(7)	Appendix II(I)	Contractors that apply or bid for a Contract must certify that it will not and has not used any Federal funds to influence an employee or member of Congress in obtaining any Federal award.
Access to Records	13.36(i)(10)	215.53	200.336	Allows the Federal government, the Recipient (Grantee) or Subrecipient (Applicant) access to a Contractor's records. Subrecipient (Applicant) must include provision in Contract stating this requirement by the Contractor.
Retention of Records	13.36(i)(11)	215.53	200.333	Where applicable, Contract clause requiring the Subrecipient (Applicant) to retain all records for <i>at least</i> three (3) years from the date of the State's final expenditure report closing the disaster and a Contractor to retain records for three (3) years after the termination date of the Contract (OCC PA Field Manual page 95 referring to responsibility of Contractor). The State is subject to Audit under the <i>Stafford Act</i> for up to three (3) years after the closure of the entire disaster grant.
Energy Efficiency	13.36(i)(13)	215.44(a)(3)(vi)	-	Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan (LA RS 40:1730.49).




PROCUREMENT TOOLBOX

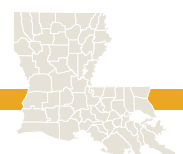
CONTRACT PROVISION	GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>BEFORE</i> 12/26/2014		GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>ON OR AFTER</i> 12/26/2014	APPLICATION
	44 CFR	2 CFR	2 CFR 200	
Prohibition of Awards to Debarred + Suspended Parties	13.35	215 Appendix A(8)	Appendix II(H)	Subrecipient (Applicant) must require and Contractor must make a declaration that the Contractor, its principles or affiliates (Subcontractors), are currently not disqualified as a result of debarment or suspension. The two (2) places you should check are: <ul style="list-style-type: none"> • lsibc.louisiana.gov • SAM.gov
Procurement of Recovered Materials	13.36(i)(12)	215.16	Appendix II(J) See 200.322	This does not apply to Tribes and private nonprofits (PNPs). It only applies to local and State government entities and their Contractors if work involves the use of materials.
Bonding Requirements	13.36(h)	215.48(c)	200.325	Contracts for construction or facilities improvement in excess of the simplified acquisition threshold (SAT). The bonding requirements include: <ul style="list-style-type: none"> • Bid guarantee • Performance bond and • Payment bond.
<i>Copeland Anti-Kickback Act</i>	13.36(i)(4)	-	Appendix II(D)	All construction or repair Contracts.
	-	215 Appendix A(2)	Appendix II(D)	All construction or repair Contracts in excess of \$2,000 .
Termination for Cause + Convenience	13.36(i)(2)	215.48(b)	Appendix II(B)	Applies to all Contracts in excess of \$10,000 .
Administrative + Legal Remedies for Violation or Breach of Contract	13.36(i)(1)	215.48(a)	Appendix II(A)	All Contracts <i>greater</i> than the SAT.
<i>Contract Work Hours + Safety Standards Act</i>	13.36(i)(6)	215 Appendix A(4)	-	Construction Contracts <i>greater than</i> \$2,000 and for other Contracts <i>greater than</i> \$2,500 where mechanics and laborers are employed.
	-	-	Appendix II(E)	All construction Contracts <i>greater than</i> \$100,000 where mechanics and laborers are employed.
<i>Clean Air Act + Clean Water Act</i>	13.36(i)(12)	215 Appendix A(6)	-	Applies to all Contracts <i>greater than or equal to</i> \$100,000 .
	-	-	Appendix II(G)	Applies to all Contracts <i>greater than or equal to</i> \$150,000 .



When **applicable**, Contracts are **required** to include certain provisions as stated **below**:

CONTRACT PROVISION	GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>BEFORE</i> 12/26/2014		GRANT AWARDS OR PRESIDENTIAL DECLARATION <i>ON OR AFTER</i> 12/26/2014	APPLICATION
	44 CFR	2 CFR	2 CFR 200	
Compliance with Regulations Pertaining to Patent Rights (Inventions) + Copyrights + Rights to Data	13.36(i)(8)(9)	215.36 Appendix A(5)	Appendix II(F)	The PA Program does not authorize any experimental, developmental or research work that would give rise to patents, inventions, copyrights or data. Therefore, there is NO REQUIREMENT for such clauses (OCC PA Field Manual page 94).
 Building Better Neighborhoods <i>Davis-Bacon Act</i>	13.36(i)(5)	215 Appendix A(3)	Appendix II(D)	FEMA DOES NOT require compliance with this Act therefore no clauses are required. However, if the disaster is large enough Community Development Block Grant (CDBG) dollars may be granted by Congress to assist the State in recovery – it may include funding to repay State and local cost share. If this is the case, Davis-Bacon should be included in the Contract.

For even more assistance with Contract execution see the **PROCUREMENT CHECKLIST** in the **RESOURCES Section** and **CHECKLIST FOR REVIEWING PROCUREMENTS UNDER GRANTS BY NON-FEDERAL ENTITIES** (STATES, LOCAL AND TRIBAL GOVERNMENTS, INSTITUTIONS FOR HIGH EDUCATION, HOSPITALS, AND PRIVATE NON-PROFIT ORGANIZATIONS) – **CFR PT. 200** in the **APPENDIX Section** of this publication.



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EXAMPLE CONTRACT WITH FEMA REQUIRED CLAUSES

This contract is based on the contract recommended by the Office of State Procurement and may be used as a framework for contracting after a full and open procurement process takes place. This contract contains the required FEMA contract provisions.



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STATE OF LOUISIANA

PARISH OF _____

TRIBE OF _____

Contract

Be it known, that effective upon date of last signature below,

[AGENCY / PARISH / CITY / TOWN / TRIBE] hereinafter referred to as SUBRECIPIENT (Applicant)

and

[CONTRACTOR's name and legal address including zip code] hereinafter sometimes referred to as "CONTRACTOR" do hereby enter into Contract under the following terms and conditions.

Scope of Service

CONTRACTOR hereby agrees to furnish the following services: [INSERT OR ATTACH]

PERFORMANCE REQUIREMENTS

Per your own policies and as agreed upon.

PERFORMANCE MEASUREMENT / EVALUATION

Per your own policies and as agreed upon.

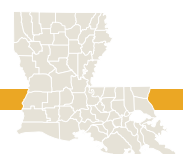
Contract Modifications

No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required by law. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.

Changes to the Contract include any change in a) compensation; b) beginning/ending date of the Contract; c) scope of work; and/or d) CONTRACTOR change through the assignment of Contract process. Any such changes, once approved, will result in the issuance of an amendment to the Contract.

Headings

Descriptive headings in this Contract are for convenience only and shall not affect the construction of this Contract or meaning of contractual language.



Payment Terms

The CONTRACTOR shall invoice the SUBRECIPIENT (Applicant) directly and payment shall be made by the SUBRECIPIENT (Applicant) directly to the CONTRACTOR in accordance with the payment terms agreed to in this Contract.

Per your own policies and as agreed upon.

Late Payments

Per your own policies and as agreed upon.

Deliverables

CONTRACTOR will deliver the item(s) or service(s) as described below (or per the attached) per the following schedule. As agreed upon.

[INSERT SCHEDULE]

Taxes

CONTRACTOR agrees that all applicable taxes are included in the schedule pricing, if applicable.

Termination

Per your own policies and as agreed upon.

TERMINATION OF THIS CONTRACT FOR CAUSE

The SUBRECIPIENT (Applicant) may terminate this Contract for cause based upon the failure of CONTRACTOR to comply with the terms and/or conditions of the Contract, or failure to fulfill its performance obligations pursuant to this Contract, provided that the SUBRECIPIENT (Applicant) shall give the CONTRACTOR written notice specifying the CONTRACTOR's failure. If within **30 days** after receipt of such notice, the CONTRACTOR shall not have corrected such failure or, in the case of failure which cannot be corrected in **30 days**, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the SUBRECIPIENT (Applicant) may, at its option, place the CONTRACTOR in default and the Contract shall terminate on the date specified in such notice.

The CONTRACTOR may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the SUBRECIPIENT (Applicant) to comply with the terms and conditions of this Contract, provided that the CONTRACTOR shall give the SUBRECIPIENT (Applicant) written notice specifying the SUBRECIPIENT's (Applicant's) failure and a reasonable opportunity for the SUBRECIPIENT (Applicant) to cure the defect.

TERMINATION OF THIS CONTRACT FOR CONVENIENCE

The SUBRECIPIENT (Applicant) may terminate this Contract at any time by giving thirty (30) days written notice to the CONTRACTOR of such termination or negotiating with the CONTRACTOR an effective date.

The CONTRACTOR shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.



Ownership

All records, reports, documents, or other material related to this Contract and/or obtained or prepared by CONTRACTOR in connection with the performance of the services contracted for herein shall become the property of SUBRECIPIENT (Applicant), and shall, upon request, be returned by CONTRACTOR to SUBRECIPIENT (Applicant), at CONTRACTOR's expense, at termination or expiration of this Contract.

All records, reports, documents and other material delivered or transmitted to CONTRACTOR by the SUBRECIPIENT (Applicant) shall remain the property of the SUBRECIPIENT (Applicant), and shall be returned by CONTRACTOR to the SUBRECIPIENT (Applicant) at CONTRACTOR's expense, at termination or expiration of this Contract.

Use of SUBRECIPIENT'S (Applicant's) Facilities

Any property of the SUBRECIPIENT (Applicant) furnished to the CONTRACTOR shall, unless otherwise provided herein, or approved by the SUBRECIPIENT (Applicant), be used only for the performance of this Contract.

The CONTRACTOR shall be responsible for any loss or damage to property of the SUBRECIPIENT (Applicant) which results from willful misconduct or lack of good faith on the part of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices, to ensure that the property will be returned to the SUBRECIPIENT (Applicant) in like condition, except for normal wear and tear, to that in which it was furnished to the CONTRACTOR. Upon the happening of loss, or destruction of, or damage to property of the SUBRECIPIENT (Applicant), the CONTRACTOR shall notify the SUBRECIPIENT (Applicant) thereof and shall take all reasonable steps to protect that property from further damage.

The CONTRACTOR shall surrender to the SUBRECIPIENT (Applicant) all property of the SUBRECIPIENT (Applicant) prior to settlement upon completion, termination, or cancellation of this Contract. All reference to the CONTRACTOR under this section shall include any of its employees, agents, or subcontractors.

Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified or deleted except by the written consent of both parties.

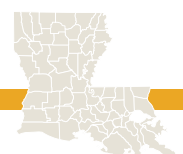
Warranties

Per your own policies and as agreed upon.

CONTRACTOR warrants that all services shall be performed in a workmanlike manner, and according to its current description (including any completion criteria) contained in the scope of work.

CONTRACTOR further warrants that it has the right to provide and or license its product to the SUBRECIPIENT (Applicant) and that it will operate in accordance with this Contract. In the event of a material failure of CONTRACTOR's product to function and operate, and / or failure by the CONTRACTOR to perform its obligations, in accordance with the terms and conditions of the Contract that results in the termination of the Contract for cause by the SUBRECIPIENT (Applicant), the SUBRECIPIENT (Applicant) will not be obligated to compensate the CONTRACTOR of any costs incurred by CONTRACTOR.

Extent of Warranty: THESE WARRANTIES REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE



Indemnification + Limitation of Liability

Per your own policies and as agreed upon.

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this Contract.

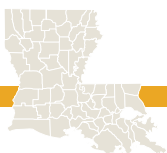
CONTRACTOR shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the SUBRECIPIENT (Applicant) from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by CONTRACTOR, its agents, employees, partners or subcontractors in the performance of this Contract, **without limitation**; provided, however, that the CONTRACTOR shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the SUBRECIPIENT (Applicant).

CONTRACTOR will indemnify, defend and hold the SUBRECIPIENT (Applicant) harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against the SUBRECIPIENT (Applicant) in any action for infringement of a United States Letter Patent with respect to the Products, Materials, or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the SUBRECIPIENT (Applicant) shall give the CONTRACTOR: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at CONTRACTOR's sole expense, and (iii) assistance in the defense of any such action at the expense of CONTRACTOR. Where a dispute or claim arises relative to a real or anticipated infringement, the SUBRECIPIENT (Applicant) may require CONTRACTOR, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The CONTRACTOR shall not be obligated to indemnify that portion of a claim or dispute based upon: (i) SUBRECIPIENT's (Applicant's) unauthorized modification or alteration of a Product, Material, or Service; (ii) SUBRECIPIENT (Applicant)'s use of the Product, Material, or Service in combination with other products, materials, or services not furnished by CONTRACTOR; (iii) SUBRECIPIENT's (Applicant's) use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if CONTRACTOR believes that it may be enjoined, CONTRACTOR shall have the right, at its own expense and sole discretion as the SUBRECIPIENT's (Applicant's) exclusive remedy to take action no later than six (6) months after the issuance of an injunction in the following order of precedence: (i) to procure for the SUBRECIPIENT (Applicant) the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the SUBRECIPIENT (Applicant) up to the dollar amount of the Contract. Any injunction that is issued against the SUBRECIPIENT (Applicant) which prevents the SUBRECIPIENT (Applicant) from utilizing the CONTRACTOR's product in excess of six (6) months and for which the CONTRACTOR has not obtained for the SUBRECIPIENT (Applicant) or provided to the SUBRECIPIENT (Applicant) one (1) of the alternatives set forth in the foregoing sentence is cause for the SUBRECIPIENT (Applicant) to terminate the Contract. In the event of such termination, the SUBRECIPIENT (Applicant) will not be obligated to compensate the CONTRACTOR for any costs incurred by the CONTRACTOR.

For all other claims against the CONTRACTOR where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, CONTRACTOR's liability **for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges for services rendered by the CONTRACTOR under the Contract.** Unless otherwise specifically enumerated herein mutually agreed between the parties,



neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the CONTRACTOR is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The SUBRECIPIENT (Applicant) may, in addition to other remedies available to them at law or equity and upon notice to the CONTRACTOR, retain such monies from amounts due CONTRACTOR, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

Insurance + Bonds

As applicable.

INSURANCE

CONTRACTOR will be required to provide the SUBRECIPIENT (Applicant) with Certificates of adequate insurance indicating coverage required. The CONTRACTOR shall maintain the insurance for the full term of this Contract. Failure to comply shall be grounds for termination of this Contract.

PERFORMANCE BOND

CONTRACTOR shall provide a Performance Bond (Surety Bond) in the amount of _____ **dollars (\$_____)** to insure the successful performance under the terms and conditions of this Contract. The performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Services list of approved bonding companies which is published annually in the Federal Register, or by a Louisiana domiciled insurance company with at least an A-rating in the latest printing of the *A.M. Best's Key Rating Guide* to write individual bonds up to 10 percent of policyholder's surplus as shown in the *A.M. Best's Key Rating Guide* or by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds.

No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an A-rating by *A.M. Best* up to a limit of 10 percent of policyholders' surplus as shown by *A.M. Best*; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Louisiana Department of Insurance.

In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Louisiana.

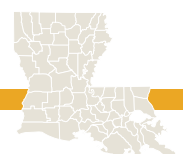
The CONTRACTOR shall maintain the performance bond for the full term of this Contract. Failure to comply shall be grounds for termination of this Contract.

Licenses + Permits

CONTRACTOR shall secure and maintain all licenses and permits, and pay inspection fees required to do the work required to complete this Contract, if applicable.

Severability

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end the terms and conditions of this Contract are declared severable.



Subcontractors

The CONTRACTOR may enter into Subcontracts with third parties for the performance of any part of the CONTRACTOR's duties and obligations. In no event shall the existence of a Subcontract operate to release or reduce the liability of the CONTRACTOR to the SUBRECIPIENT (Applicant) for any breach in the performance of the CONTRACTOR's duties. The CONTRACTOR will be the single point of contact for all subcontractor work.

Substitution of Personnel

If, during the term of this Contract, the CONTRACTOR or subcontractor cannot provide the personnel as proposed and requests a substitution, that substitution shall meet or exceed the requirements stated herein. A detailed resume of qualifications and justification is to be submitted to the SUBRECIPIENT (Applicant) for approval prior to any personnel substitution. It shall be acknowledged by the CONTRACTOR that every reasonable attempt shall be made to assign the personnel listed in the CONTRACTOR's proposal.

The SUBRECIPIENT (Applicant) shall reserve the right to require removal and replacement of any Contract personnel whose performance it considers unacceptable.

As agreed upon.

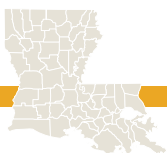
Assignment

CONTRACTOR shall not assign any interest in this Contract by assignment, transfer, or novation, without prior written consent of the SUBRECIPIENT (Applicant). This provision shall not be construed to prohibit the CONTRACTOR from assigning his bank, trust company, or other financial institution any money due or to become due from approved Contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the SUBRECIPIENT (Applicant).

Confidentiality

The following provision will apply unless the SUBRECIPIENT (Applicant) statement of work specifically indicates that all information exchanged will be non-confidential:

All financial, statistical, personal, technical and other data and information relating to the SUBRECIPIENT's (Applicant's) operations which are designated confidential by the SUBRECIPIENT (Applicant) and made available to the CONTRACTOR in order to carry out this Contract, shall be protected by the CONTRACTOR from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the SUBRECIPIENT (Applicant). The identification of all such confidential data and information as well as the SUBRECIPIENT's (Applicant's) procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the SUBRECIPIENT (Applicant) in writing to the CONTRACTOR. If the methods and procedures employed by the CONTRACTOR for the protection of the CONTRACTOR's data and information are deemed by the SUBRECIPIENT (Applicant) to be adequate for the protection of the SUBRECIPIENT's (Applicant's) confidential information, such methods and procedures may be used, with the written consent of the SUBRECIPIENT (Applicant), to carry out the intent of this paragraph. The CONTRACTOR shall not be required under the provisions of the paragraph to keep confidential any data or information, which is or becomes publicly available, is already rightfully in the CONTRACTOR's possession, is independently developed by the CONTRACTOR outside the scope of the Contract, or is rightfully obtained from third parties.



Contract Controversies

Per your own policies.

Remedies.

Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, Contractual, or legal remedies in instances where CONTRACTORS violate or breach Contract terms, and provide for such sanctions and penalties as appropriate. See 2 CFR Part 200, Appendix II, ¶ A.

Right to Audit Per Your Own Policies

The State Legislative auditor, DHS-OIG, FEMA and Federal auditors and GOHSEP or State internal auditors shall have the option to audit all accounts directly pertaining to the Contract for a period of **three (3) years** from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose.

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

1. The CONTRACTOR agrees to provide GOHSEP, SUBRECIPIENT (Applicant), 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.

Contractor's Certification of No Federal Suspension or Debarment

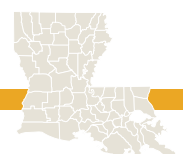
CONTRACTOR has a continuing obligation to disclose any suspensions or debarment by any government entity, including but not limited to General Services Administration (GSA). Failure to disclose may constitute grounds for suspension and/or termination of this Contract and debarment from future Contracts.

Contractor's Cooperation / Closeout

The CONTRACTOR has the duty to fully cooperate with the SUBRECIPIENT (Applicant) and provide any and all requested information, documentation, etc. to the SUBRECIPIENT (Applicant) when requested. This applies even if this Contract is terminated and/or a lawsuit is filed. Specifically, the CONTRACTOR shall not limit or impede the SUBRECIPIENT'S (Applicant's) right to audit or to withhold SUBRECIPIENT (Applicant) owned documents.

Term of Contract

This Contract is effective upon approval and will end no later than <length of term specified in the RFP, unless otherwise terminated in accordance with the Termination provision of this Contract. The SUBRECIPIENT (Applicant) has the option, upon



acceptance by the CONTRACTOR, to extend for _____.

[EXTENSION LANGUAGE AS SPECIFIED IN THE RFP]

Per your own policies and as agreed upon.

Commencement of Work

No work shall be performed by CONTRACTOR and the SUBRECIPIENT (Applicant) shall not be bound until such time as this Contract is fully executed between the SUBRECIPIENT (Applicant) and the CONTRACTOR and all required approvals are obtained.

E-Verify

CONTRACTOR acknowledges and agrees to comply with Federal law pertaining to E-Verify in the performance of services under this Contract.

Compliance with Civil Rights Laws

During the performance of this Contract, the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The CONTRACTOR will comply with all provisions of *Executive Order 11246 of September 24, 1965*, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The CONTRACTOR will furnish all information and reports required by *Executive Order 11246 of September 24, 1965*, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering SUBRECIPIENT (Applicant) and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in *Executive Order 11246 of September 24, 1965*, and such other sanctions as may be imposed and remedies invoked as provided in *Executive Order 11246 of September 24, 1965*, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.



- The CONTRACTOR will include the portion of the sentence immediately preceding paragraph one (1) and the provisions of paragraphs one (1) through seven (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of *Executive Order 11246 of September 24, 1965*, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering SUBRECIPIENT (Applicant) 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 SUBRECIPIENT (Applicant) the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

Record Retention

The CONTRACTOR shall maintain all records in relation to this Contract for a period of at least **three (3) years** after final payment.

Clean Air Act

[The following provides a sample Contract clause concerning compliance for Contracts of amounts in excess of \$150,000.]

- 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.
- The CONTRACTOR agrees to report each violation to the SUBRECIPIENT (Applicant) and understands and agrees that the SUBRECIPIENT (Applicant) will, in turn, report each violation as required to assure notification to GOHSEP, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- 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.

Energy Policy + Conservation Act

The CONTRACTOR hereby recognizes the 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* (P.L. 94-163).

Clean Water Act

The CONTRACTOR hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the *Clean Water Act* which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the Environmental Protection Agency (EPA) *List of Violating Facilities*.

FEDERAL WATER POLLUTION CONTROL ACT

- 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.
- The CONTRACTOR agrees to report each violation to the SUBRECIPIENT (Applicant) and understands and agrees that the SUBRECIPIENT (Applicant) will, in turn, report each violation as required to assure notification to the GOHSEP, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
- 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.



Anti-Lobbying + Debarment Act

The CONTRACTOR will be expected to comply with Federal statutes required in the *Anti-Lobbying Act* and the *Debarment Act*.

The CONTRACTOR hereby agrees to adhere to the mandate dictated by the *Copeland "Anti-Kickback" Act* which provides that each CONTRACTOR or subgrantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

SUSPENSION + DEBARMENT

1. This Contract is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 3000. As such the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 CFR § 180.995), or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).
2. The CONTRACTOR must comply with 2 CFR Part 180, subpart C and 2 CFR Part 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 CONTRACTOR. If it is later determined that the CONTRACTOR did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, in addition to remedies available to GOHSEP serving as Recipient and name of 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 CFR Part 180, subpart C and 2 CFR Part 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.

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 SUBRECIPIENT (Applicant), 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.

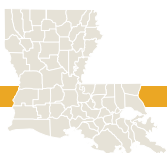
Governing Law

Per your own policies and as agreed upon

(For example- State of LA, Venue in __JDC).

Procurement of Recovered Materials

1. In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –
 - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii. Meeting contract performance requirements; or
 - iii. At a reasonable price.
2. Information about this requirement, along with the list of EPA-designate items, is available at EPA's *Comprehensive Procurement Guidelines* web site, epa.gov/smm/comprehensive-procurement-guideline-cpg-program.



DHS Seal + Logo + 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.

Compliance with Federal Law + Regulations + Executive Orders

This is an acknowledgment that FEMA financial assistance will be used to fund the Contract only. The CONTRACTOR will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.

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.

Program Fraud + False or Fraudulent Statements or Related Acts

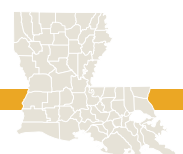
The CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR's actions pertaining to this Contract.

Complete Contract

This is the complete Contract between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this Contract. This Contract is entered into with neither party relying on any statement or representation made by the other party not embodied in this Contract and there are no other agreements or understanding changing or modifying the terms. This Contract shall become effective upon final statutory approval.

Order of Precedence

The *Request for Proposals* (RFP), [dated _____] and the CONTRACTOR's Proposal [dated _____], are attached hereto and incorporated into this Contract as though fully set forth herein. In the event of an inconsistency between this Contract, the RFP and/or the CONTRACTOR's Proposal, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence first to this Contract, then to the RFP and finally, the CONTRACTOR's Proposal.



THUS DONE AND SIGNED AT _____ on this ____ day of ____, 20__, and, IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:

CONTRACTOR SIGNATURE:

By: _____

Title: _____

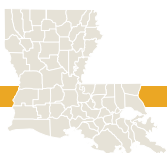
THUS DONE AND SIGNED AT _____, Louisiana on this _____ day of ____, 20__, and, IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:

SUBRECIPIENT (APPLICANT) SIGNATURE:

By: _____

Title _____



EXAMPLE FEMA REQUIRED CLAUSES ADDENDUM

All SUBRECIPIENT contracts must contain the applicable contract clauses described in Appendix II to the *Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards)*, which are set forth in this document.

Please be aware that this is SAMPLE language ONLY and that the SUBRECIPIENT alone is responsible for ensuring that all language included in their contracts meets the requirements of 2 CFR 200.326 and 2 CFR Part 200, Appendix II.



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STATE OF LOUISIANA

PARISH OF _____

TRIBE OF _____

Termination for Cause

The SUBRECIPIENT (Applicant) may terminate this Contract for cause based upon the failure of Contractor to comply with the terms and/or conditions of the Contract, or failure to fulfill its performance obligations pursuant to this Contract, provided that the SUBRECIPIENT (Applicant) shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the SUBRECIPIENT (Applicant) may, at its option, place the Contractor in default and the Contract shall terminate on the date specified in such notice.

The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the SUBRECIPIENT (Applicant) to comply with the terms and conditions of this Contract, provided that the Contractor shall give the SUBRECIPIENT (Applicant) written notice specifying the SUBRECIPIENT's (Applicant's) failure and a reasonable opportunity for the SUBRECIPIENT (Applicant) to cure the defect.

Termination for Convenience

The SUBRECIPIENT (Applicant) may terminate this Contract at any time by giving thirty (30) days written notice to the Contractor of such termination or negotiating with the Contractor an effective date.

The Contractor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

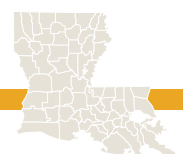
Ownership

All records, reports, documents, or other material related to this Contract and/or obtained or prepared by Contractor in connection with the performance of the services Contracted for herein shall become the property of SUBRECIPIENT (Applicant) and shall, upon request, be returned by Contractor to SUBRECIPIENT (Applicant), at Contractor's expense, at termination or expiration of this Contract.

All records, reports, documents and other material delivered or transmitted to Contractor by the SUBRECIPIENT (Applicant) shall remain the property of the SUBRECIPIENT (Applicant), and shall be returned by Contractor to the SUBRECIPIENT (Applicant) at Contractor's expense, at termination or expiration of this Contract.

Performance Bond

Contractor shall provide a Performance Bond (Surety Bond) in the amount of [_____ dollars (\$_____)] to insure the successful performance under the terms and conditions of this Contract. The performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Services list of approved bonding companies which is published annually in the Federal Register, or by a Louisiana domiciled insurance company with at least an A-rating in the latest printing of the *A.M. Best's Key Rating Guide* to write individual bonds up to 10 percent of policyholder's surplus as shown in the *A.M. Best's Key Rating Guide* or by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds.



No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an A-rating by *A.M. Best* up to a limit of 10 percent of policyholders' surplus as shown by *A.M. Best*; companies authorized by this paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Louisiana Department of Insurance.

In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the State of Louisiana.

The Contractor shall maintain the performance bond for the full term of this Contract. Failure to comply shall be grounds for termination of this Contract.

Contract Conveniences

Per your own policies

Remedies.

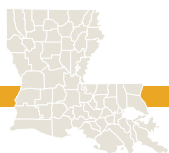
Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where Contractors violate or breach Contract terms, and provide for such sanctions and penalties as appropriate. See 2 CFR Part 200, Appendix II, A.

Right to Audit

The State Legislative auditor, DHS-OIG, FEMA and Federal auditors and GOHSEP or State internal auditors shall have the option to audit all accounts directly pertaining to the Contract for a period of **three (3) years** from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose.

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

1. The CONTRACTOR agrees to provide GOHSEP, SUBRECIPIENT (Applicant), 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.



Contractor's Certification of No Federal Suspension or Debarment

Contractor has a continuing obligation to disclose any suspensions or debarment by any government entity, including but not limited to General Services Administration (GSA). Failure to disclose may constitute grounds for suspension and/or termination of this Contract and debarment from future Contracts.

Compliance with Civil Rights Laws

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

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The CONTRACTOR will comply with all provisions of *Executive Order 11246 of September 24, 1965*, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The CONTRACTOR will furnish all information and reports required by *Executive Order 11246 of September 24, 1965*, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering SUBRECIPIENT (Applicant) and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in *Executive Order 11246 of September 24, 1965*, and such other sanctions as may be imposed and remedies invoked as provided in *Executive Order 11246 of September 24, 1965*, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The CONTRACTOR will include the portion of the sentence immediately preceding paragraph one (1) and the provisions of paragraphs one (1) through seven (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of *Executive Order 11246 of September 24, 1965*, so that



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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 SUBRECIPIENT (Applicant) and understands and agrees that the SUBRECIPIENT (Applicant) will, in turn, report each violation as required to assure notification to GOHSEP, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
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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 SUBRECIPIENT (Applicant) and understands and agrees that the SUBRECIPIENT (Applicant) will, in turn, report each violation as required to assure notification to the GOHSEP, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.
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SUSPENSION + DEBARMENT

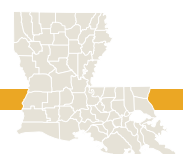
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BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

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Procurement of Recovered Materials

1. In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –
 - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii. Meeting contract performance requirements; or
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2. Information about this requirement, along with the list of EPA-designate items, is available at EPA's *Comprehensive Procurement Guidelines* web site, epa.gov/smm/comprehensive-procurement-guideline-cpg-program.



DHS Seal + Logo + 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.

Compliance With Federal Executive Orders

This is an acknowledgment that FEMA financial assistance will be used to fund the Contract only. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

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.

