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| **STATE OF MICHIGAN** |
| PROCUREMENT |
| STANDARD CONTRACT TERMS (SHORT FORM) |

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Vendor is deemed to have accepted these terms upon the earliest of vendor’s: written acceptance of these terms; commencement of work; receipt of payment; or submission of a bid, proposal, or other offer in response to a solicitation.

1. **General**. Vendor’s failure to deliver or comply with any of these terms, may result in damages against the Vendor and the termination of the Contract.
2. **Delivery, Title and Risk of Loss**. Vendor must pay all costs associated with packaging, freight, and shipping, and must ship all deliverables F.O.B. destination, inside delivery, unless otherwise specified in the Contract. Title and risk of loss or damage to deliverables remains with Vendor until the deliverables have been received, inspected and accepted by the State in accordance with these terms. All containers and packaging become the State’s exclusive property upon final acceptance. Vendor shall ensure that all deliverables and services (“Deliverables”) are provided to the State by the date and time specified on the Contract. If Vendor fails to provide the Deliverables in accordance with the Contract, the State may reject the delivery and terminate the Contract without any termination charges or penalties, and Vendor must pay all associated costs, including, but not limited to, expedited routing costs, return shipping charges, the procurement of the Deliverables from another source, and any storage removal, or disposal expenses. The risk of loss of rejected or non-conforming Deliverables remains with Vendor. Rejected Deliverables not removed by Vendor within 10 calendar days will be deemed abandoned by Vendor, and the State will have the right to dispose of such Deliverables as its own property. Vendor is responsible for filing, processing, and collecting all damage claims.
3. **Inspection**. The State may inspect the work and activities of Vendor, and its subcontractors, at all reasonable times and places before, during and after delivery of the Deliverables. All Deliverables are subject to final inspection and acceptance by the State notwithstanding any prior payments or inspections. Final inspection will take place within 30 calendar days of the later of the delivery date, installation, or completion of services. If any Deliverables are non-conforming or defective, the State is entitled to, at its option and at Vendor’s expense: (a) a refund; (b) a credit; or (c) correction or replacement. If Vendor fails to correct defects or replace non-conforming Deliverables within 10 calendar days, the State may, in addition to its other remedies: (i) reject such Deliverables; (ii) accept such Deliverables at a discount; or (iii) make such corrections or replace such Deliverables and charge Vendor any resulting costs incurred by the State plus an additional 10% administrative fee.
4. **Payment**. Invoices must include an itemized statement of all charges. All undisputed amounts are payable within 45 calendar days of the later of the State’s: (a) receipt of an invoice; or (b) final acceptance of the Deliverables. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Deliverables purchased under the Contract are for the State’s exclusive use. Notwithstanding the foregoing, all fees are inclusive of taxes, and Vendor is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by federal, state or local government entities on any amounts payable by the State. The State may withhold payment in whole or in part for Deliverables the State determines are defective, untimely, or otherwise non-conforming to the Contract. All amounts due and payable by the State to Vendor shall be subject to deduction or setoff by the State against any claim the State may have against Vendor whether arising out of the Contract or any other transactions with the State. The State will only disburse payments through Electronic Funds Transfer (EFT). If Vendor does not register to receive payments at <http://www.michigan.gov/SIGMAVSS>, the State is not liable for failure to provide payment.
5. **Warranties and Representations.** Vendor represents and warrants: (a) all Deliverables furnished under the Contract will conform to all specifications and industry standards, and will be free from defects, including, where applicable and without limitation, defects in material, workmanship, and title; (b) Vendor is the owner or licensee of all Deliverables it licenses, sells, or develops and Vendor has the rights necessary to convey title, ownership rights, or licensed use; (c) all Deliverables are provided free from any security interest, lien, or encumbrance and will continue in that respect; (d) the Deliverables will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (e) Vendor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Deliverables; (f) Vendor will not negate, exclude, limit, or modify in any warranty otherwise available to the State in any way; (g) the Deliverables are merchantable and fit for the State’s intended use ; (h) the Deliverables furnished will conform in all respects to samples, advertisements, and other forms of representation made to the State; (i) the Contract signatory has the authority to enter into the Contract; (j) all information furnished and representations made in connection with the Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading, and the (k) Vendor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. Vendor agrees to promptly replace or correct any Deliverables not conforming to the foregoing warranty, without expense to the State, when notified of such non-conformity by the State. A breach of this Section is a material breach of the Contract.
6. **Termination for Cause.** The State may terminate the Contract, in whole or in part, at any time for cause in the event Vendor fails to comply with any of these terms, including, without limitation, late delivery or performance, the delivery of defective or non-conforming Deliverables, or failure to provide the State with reasonable assurances of future performance. In the event of termination for cause, the State will not be liable to Vendor for any amount, and Vendor will be liable to the State for any and all damages, including but not limited to, administrative fees, court costs, attorney fees, and cover costs. Any ineffectual termination for cause is hereby deemed a termination for convenience, effective as of the same date and limited to those rights.
7. **Termination for Convenience**. The State may immediately terminate the Contract, in whole or in part, without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. Upon termination for convenience, the State will only pay for those Deliverables, not including standard stock, then in progress and which cannot be returned under these terms.
8. **Indemnification**. Vendor must defend, indemnify and hold the State, all of its instrumentalities, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Vendor (or any of Vendor’s employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or other requirements contained in the Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Vendor (or any of Vendor’s employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Vendor (or any of Vendor’s employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable). Due to constitutional prohibitions, the State will not indemnify Vendor, or its employees or affiliates, for any reason whatsoever.
9. **Confidentiality**. Vendor agrees that any information, including State Data, disclosed by the State in relation to the Contract will be used only in the performance thereof. Vendor will keep the information confidential, will not disclose it to any third party, except as authorized by the State, and will only disclose it to those within its organization who need it for performance of the Contract. Upon completion or termination of the Contract, Vendor will return all such information to the State, or make such other disposition thereof as directed or approved by the State. No item furnished under the Contract, or tools, plans, designs, or specifications for producing the same, which have been specifically designed for or by the State, will be duplicated or used by Vendor. Nothing in this provision will restrict Vendor’s right to use or disclose any information which is or becomes known to the public without breach of this provision by Vendor or is rightfully obtained without restriction from other sources.
10. **Proprietary Rights.** All materials, tools, plans, designs, specifications, equipment, and other property either furnished by the State to Vendor or paid for by the State, will remain the property of the State, but the Vendor assumes the risks of, and will be responsible for, any loss or damage, until returned in good order to the State. Such property must be safely stored and properly maintained by Vendor. Upon completion of this Contract, Vendor will return such property to the State or to any other entity as the State may direct, in the condition in which it was received, manufactured or procured by Vendor, except for reasonable wear and tear and except if such property has been incorporated into the Deliverables.
11. **State Data**. All data and information provided to Vendor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State (“State Data”) and may only be used as specifically required by the Contract; this definition is to be construed as broadly as possible. Upon request, Vendor must provide to the State, or its third-party designee, all State Data within 10 calendar days of the request and in the format requested by the State. Vendor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
12. **Intellectual Property**. Unless otherwise stated in the Contract, Vendor: (a) agrees that any computer program, software, documentation, copyrightable work, discoveries, inventions or improvements developed by Vendor resulting from supplying the Deliverables are the property of the State; and (b) hereby assigns all rights therein to the State. Vendor further agrees to provide the State with any assistance which the State may require to obtain patents or copyright registrations.
13. **Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action. Under no circumstances will the State be liable for any amounts, in whatever form, in excess of the total aggregate value set forth in the Contract.
14. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Vendor to verify compliance with the Contract. Vendor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under the Contract or any extension.
15. **Notices.** All notices and other communications required or permitted under the Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.
16. **Modifications**. The Contract may not be amended except by signed agreement between the parties (a “**Change Notice**”).
17. **Independent Contractor.** Vendor is an independent contractor and assumes all rights, obligations and liabilities set forth in the Contract. Vendor, its employees, and agents are not considered employees of the State.
18. **Subcontracting and Assignment.** Vendor may not delegate or assign any of its obligations or rights under the Contract without the prior written approval of the State.
19. **Compliance with Laws and Policies.** Vendor must comply with all applicable federal, state and local laws, rules and regulations. Vendor must also comply with all applicable State physical and IT security policies and standards, which will be made available upon request
20. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq*., the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq*., and [Executive Directive 2019-09](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90704-486781--,00.html). Vendor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person’s ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of the Contract.
21. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor, Vendor, or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
22. **Governing Law.** The Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of the Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from the PO must be resolved in Michigan Court of Claims. Vendor hereby waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Vendor must appoint agents in Michigan to receive service of process.
23. **Non-Exclusivity.** Nothing contained in the Contract is intended nor will be construed as creating any requirements contract with Vendor. The Contract does not restrict the State or its agencies from acquiring similar, equal, or like Deliverables from other sources.
24. **Force Majeure.** Neither party will be in breach of the Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Vendor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
25. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State. Vendor will provide the State, for its review, copies of all presentations or articles being submitted for publication at least 30 calendar days in advance.
26. **Website Incorporation.** The State is not bound by any content on Vendor’s website unless expressly incorporated directly into the Contract.
27. **Severability.** If any part of the Contract, or these terms, is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract terms will continue in full force and effect.
28. **Waiver.** Failure to enforce any provision of the Contract, or these terms, for any period of time will not constitute a waiver.
29. **Survival.** The provisions of these terms that impose continuing obligations, including warranties and representations, termination, indemnification, intellectual property, and confidentiality, will survive the expiration or termination of the Contract.
30. **Entire Contract.** The Contract and these terms constitute the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. No terms on any invoice, quote, purchase order, website, browse-wrap, shrink-wrap, click-wrap or other non-negotiated terms and conditions provided with any of the Deliverables (including software and hardware) or documentation, whether by Vendor, Contractor, subcontractor, or any third-party, will constitute a part or amendment of the Contract or is binding on the State or any authorized user for any purpose.
31. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

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| **Required Limits** | **Additional Requirements** |
| **Commercial General Liability Insurance** | |
| Minimum Limits:  $1,000,000 Each Occurrence Limit  $1,000,000 Personal & Advertising Injury Limit $2,000,000 General Aggregate Limit  $2,000,000 Products/Completed Operations  Deductible Maximum:  $50,000 Each Occurrence | Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04. |
| **Automobile Liability Insurance** | |
| Minimum Limits:  $1,000,000 Per Accident | Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage. |
| **Workers' Compensation Insurance** | |
| Minimum Limits:  Coverage according to applicable laws governing work activities. | Waiver of subrogation, except where waiver is prohibited by law. |
| **Employers Liability Insurance** | |
| Minimum Limits:  $500,000 Each Accident  $500,000 Each Employee by Disease  $500,000 Aggregate Disease. |  |

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or delivery order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Sectionis not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

**Federal Provisions Addendum**

This addendum applies to purchases that will be paid for in whole or in part with funds obtained from the federal government. The provisions below are required, and the language is not negotiable. If any provision below conflicts with the State’s terms and conditions, including any attachments, schedules, or exhibits to the State’s Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. **Equal Employment Opportunity**

If this Contract is a “**federally assisted construction contract**” as defined in [41 CFR Part 60-1.3](https://www.govinfo.gov/content/pkg/CFR-2019-title41-vol1/pdf/CFR-2019-title41-vol1-part60.pdf), and except as otherwise may be provided under [41 CFR Part 60](https://www.govinfo.gov/app/details/CFR-2019-title41-vol1/CFR-2019-title41-vol1-subtitleB-chap60/summary), then during performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will 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](https://www.dol.gov/ofccp/regs/statutes/eo11246.htm) 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](https://www.dol.gov/ofccp/regs/statutes/eo11246.htm) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](https://www.dol.gov/ofccp/regs/statutes/eo11246.htm) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](https://www.dol.gov/ofccp/regs/statutes/eo11246.htm) 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 portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](https://www.dol.gov/ofccp/regs/statutes/eo11246.htm) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

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

The applicant further agrees that it will refrain from entering into any contract o[r contract](https://www.law.cornell.edu/definitions/index.php?width=840&amp%3Bheight=800&amp%3Biframe=true&amp%3Bdef_id=22edf9acbb0b836eba994727b86adedf&amp%3Bterm_occur=16&amp%3Bterm_src=Title%3A41%3ASubtitle%3AB%3AChapter%3A60%3APart%3A60-1%3ASubpart%3AA%3A60-1.4) modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

1. **Davis-Bacon Act (Prevailing Wage)**

If this Contract is a **prime construction contracts** in excess of $2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act ([40 USC 3141-3148](https://www.govinfo.gov/app/details/USCODE-2018-title40/USCODE-2018-title40-subtitleII-partA-chap31-subchapIV)) as supplemented by Department of Labor regulations ([29 CFR Part 5](https://www.govinfo.gov/app/details/CFR-2019-title29-vol1/CFR-2019-title29-vol1-part5), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”), and during performance of this Contract the Contractor agrees as follows:

1. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
2. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
3. Additionally, contractors are required to pay wages not less than once a week.
4. **Copeland “Anti-Kickback” Act**

If this Contract is a contract for construction or repair work in excess of $2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland “Anti-Kickback” Act ([40 USC 3145](https://www.govinfo.gov/app/details/USCODE-2018-title40/USCODE-2018-title40-subtitleII-partA-chap31-subchapIV-sec3145)), as supplemented by Department of Labor regulations ([29 CFR Part 3](https://www.govinfo.gov/app/details/CFR-2019-title29-vol1/CFR-2019-title29-vol1-part3), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”), which prohibits the Contractor and subrecipients 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, and during performance of this Contract the Contractor agrees as follows:

1. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.
4. **Contract Work Hours and Safety Standards Act**

If the Contract is **in excess of $100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with [40 USC 3702](https://www.govinfo.gov/app/details/USCODE-2018-title40/USCODE-2018-title40-subtitleII-partA-chap37-sec3702) and [3704](https://www.govinfo.gov/app/details/USCODE-2018-title40/USCODE-2018-title40-subtitleII-partA-chap37-sec3704), as supplemented by Department of Labor regulations ([29 CFR Part 5](https://www.govinfo.gov/app/details/CFR-2019-title29-vol1/CFR-2019-title29-vol1-part5)), as applicable, and during performance of this Contract the Contractor agrees as follows:

1. Overtime requirements.No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages*.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for unpaid wages and liquidated damages.The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts*.* The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.
5. **Rights to Inventions Made Under a Contract or Agreement**

If the Contract is funded by a federal “funding agreement” as defined under [37 CFR §401.2 (a)](https://www.govinfo.gov/content/pkg/CFR-2019-title37-vol1/pdf/CFR-2019-title37-vol1-sec401-2.pdf) and the recipient or subrecipient 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 recipient or subrecipient must comply with [37 CFR Part 401](https://www.govinfo.gov/app/details/CFR-2019-title37-vol1/CFR-2019-title37-vol1-part401), “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.

1. **Clean Air Act and the Federal Water Pollution Control Act**

If this Contract is **in excess of $150,000,** the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act ([42 USC 7401-7671q](https://www.govinfo.gov/app/details/USCODE-2018-title42/USCODE-2018-title42-chap85)) and the Federal Water Pollution Control Act ([33 USC 1251-1387](https://www.govinfo.gov/app/details/USCODE-2018-title33/USCODE-2018-title33-chap26)), and during performance of this Contract the Contractor agrees as follows:

Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding 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 or the applicable federal awarding agency.

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 State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding 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 or the applicable federal awarding agency.
4. **Debarment and Suspension**

A “contract award” (see [2 CFR 180.220](https://www.govinfo.gov/app/details/CFR-2019-title2-vol1/CFR-2019-title2-vol1-sec180-220)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management](https://sam.gov/SAM/pages/public/index.jsf) (SAM), in accordance with the OMB guidelines at [2 CFR 180](https://www.govinfo.gov/app/details/CFR-2019-title2-vol1/CFR-2019-title2-vol1-part180) that implement [Executive Orders 12549](https://www.archives.gov/federal-register/codification/executive-order/12549.html) ([51 FR 6370; February 21, 1986](https://www.govinfo.gov/content/pkg/FR-1986-02-21/pdf/FR-1986-02-21.pdf)) and 12689 ([54 FR 34131; August 18, 1989](https://www.govinfo.gov/content/pkg/FR-1989-08-18/pdf/FR-1989-08-18.pdf)), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](https://www.archives.gov/federal-register/codification/executive-order/12549.html).

1. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the State. 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, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
5. **Byrd Anti-Lobbying Amendment**

Contractors who apply or bid for an award of **$100,000 or more** shall file the required certification in Exhibit 1 – Byrd Anti-Lobbying Certification below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

1. **Procurement of Recovered Materials**

Under [2 CFR 200.322](https://www.govinfo.gov/app/details/CFR-2014-title2-vol1/CFR-2014-title2-vol1-sec200-322/context), Contractorsmust comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
   1. Competitively within a timeframe providing for compliance with the contract performance schedule;
   2. Meeting contract performance requirements; or
   3. At a reasonable price.
2. Information about this requirement, along with the list of EPA- designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, [https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program.](https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program)
3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.
4. **Additional FEMA Contract Provisions.**

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

1. Access to Records. The following access to records requirements apply to this contract:
   1. The Contractor agrees to provide the State, 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.
   4. In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.
2. Changes.

See the provisions regarding modifications or change notice in the Contract Terms.

1. 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.

1. Compliance with Federal Law, Regulations, and Executive Orders

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

1. 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 State, Contractor, or any other party pertaining to any matter resulting from the Contract.”

1. Program Fraud and 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.

**Exhibit 1 - Byrd Anti-Lobbying Certification**

Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than $100,000.

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, , certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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Signature of Contractor’s Authorized Official

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Name and Title of Contractor’s Authorized Official

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date