



PUBLIC NOTICE

REQUEST FOR PROPOSALS

Sealed proposals will be received, opened, and read aloud in public session for **DEBRIS MONITORING, DISASTER MANAGEMENT, AND RECOVERY SERVICES** for the **CITY OF ORANGE BEACH, ALABAMA**, at **11:30 A.M. on Thursday, June 30, 2022**, at the City Hall Municipal Complex located at 4099 Orange Beach Blvd., Highway 161, Orange Beach, Alabama. Qualified contractors are invited to bid.

Proposal specifications may be obtained from Orange Beach City Hall, 4099 Orange Beach Blvd., Orange Beach, Alabama, Monday through Friday from 8:00 a.m. until 5:00 p.m., or downloaded from the City's website at www.orangebeachal.gov.

Sealed proposals may be mailed or delivered directly to the City of Orange Beach prior to the public opening. All sealed proposals must be clearly and legibly marked "SEALED PROPOSAL," the proposer's name, the project name, and the opening date and time. Contact Renee Eberly at (251) 981-6806 or reberly@orangebeachal.gov with any questions.

Sealed proposals must be mailed to the following address:

City of Orange Beach
Attention: City Clerk
P.O. Box 458
Orange Beach, Alabama 36561

Or hand delivered to:

City of Orange Beach
Attention: City Clerk
4099 Orange Beach Blvd.
Orange Beach, Alabama 36561

Be advised that overnight delivery by express or courier to Orange Beach is not guaranteed. Faxed proposals will not be accepted.

The most responsive, responsible proposal will be accepted with key consideration based upon best value and benefit to the public. The City of Orange Beach reserves the right to reject any and all proposals, to waive any irregularity in the proposals received, and to accept or reject any items of the proposal for the benefit of the public. No conditional proposals will be accepted. No proposal may be withdrawn for a period of sixty (60) days after the scheduled closing date and time for the receipt of proposals.

THE CITY OF ORANGE BEACH, ALABAMA



REQUEST FOR PROPOSALS
Requisition No. 2022-0631

- REQUEST FOR PROPOSAL DATE: **June 3, 2022**
- PROPOSAL TITLE: **Debris Monitoring, Disaster Management & Recovery Services**
- PLACE OF PROPOSAL OPENING: **City of Orange Beach, City Hall, 4099 Orange Beach Blvd.**
- PROPOSAL MUST BE RECEIVED BEFORE: **June 30, 2022 at 11:30 A.M. (Central)**
- PROPOSALS WILL BE PUBLICLY OPENED: **June 30, 2022 at 11:30 A.M. (Central)**

Sealed proposals will be received by the City of Orange Beach at the Office of the City Clerk located at Orange Beach City Hall until the above time and date at which time they will be opened as soon thereafter as practicable.

NOTE: For this proposal to be considered responsive, all information in this section should be supplied, as appropriate, or the entire proposal may be disqualified. Proposal response must be in ink or typed with original signature. No errors will be corrected after proposals are opened. No prices shall include State or Federal Exercise Taxes; tax exemption certificates furnished upon request. The City of Orange Beach reserves the right to accept or reject all proposals or any portion thereof.

ALL PROPOSALS MUST BE RETURNED AS FOLLOWS:

All proposers must use the proposal form and show on the envelope "SEALED PROPOSAL," the proposer's name, the project name, and the opening date and time. Each proposal must be in a separate envelope.

U.S. Postal Service
City of Orange Beach
Attention: City Clerk
P.O. Box 458
Orange Beach, Alabama 36561

Courier (UPS, FedEx, etc.)
City of Orange Beach
Attention: City Clerk
4099 Orange Beach Blvd.
Orange Beach, Alabama 36561

1. For the purchase or lease of personal property only, a resident person, firm or corporation, whose bid is no more than five percent (5%) greater than the lowest bid, may be the successful bidder and the contract may be awarded to such resident responsible bidder. A resident bidder is defined by the City Council of Orange Beach as any business located within Baldwin County.
2. Contact Nicole Woerner, Coastal Resources Deputy Director at 251-981-1180/nwoerner@orangebeachal.gov for questions concerning the technical specifications.
3. Contact Renee Eberly, City Clerk/Procurement Officer at 251-981-6806/reberly@orangebeachal.gov for questions concerning technical specifications or general bid procedures.

All questions that require an addendum should be emailed no later than 5:00 P.M. on June 22, 2022. Addenda will be posted on the City's website at: www.orangebeachal.gov. The City is not responsible for any oral instructions.

PROPOSAL SPECIFICATIONS

A. Project Description

The City of Orange Beach, Alabama, is soliciting sealed proposals from qualified firms to establish a contract with the best qualified firm for monitoring the removal of debris generated by a disaster event, disaster management, and recovery services. The contract will be awarded prior to the occurrence of a disaster event and be implemented at the discretion of the City at the time of any disaster event during contract period.

B. Contract Term

It is the intent of the City to enter into an initial term of two (2) years with a renewal clause for two (2) additional one (1) year terms.

C. Scope of Work

The City requires debris monitoring, disaster management, recovery, and consulting services to support the oversight and management of debris recovery contractors. As such the Contractor should be capable of providing a range of related other services as needed and ordered by the City. The following specifications serve as a guideline only and shall not be viewed as a comprehensive outline of work to be performed.

1. Disaster Debris Monitoring Services

The Contractor will be expected to provide disaster debris monitoring services to include debris generated from the public rights-of-way, drainage areas/canals, waterways and other public, eligible, or designated areas. Specific services may include:

- a) Coordinating daily briefings, work progress, staffing, and other key items with the City.
- b) Selection and permitting of Temporary Debris Storage and Reduction Site (TDSRS) locations and any other permitting/regulatory issues as necessary.
- c) Scheduling work for all team members and contractors on a daily basis.
- d) Hiring, scheduling, and managing field staff.
- e) Monitoring recovery contractor operations and making/implementing recommendations to improve efficiency and speed up recovery work.
- f) Assisting the City with responding to public concerns and comments.
- g) Certifying contractor vehicles for debris removal using methodology and documentation practices appropriate for contract monitoring.
- h) Digitization of source documentation (such as load tickets).
- i) Developing daily operational reports to keep the City informed of work progress.
- j) Development of maps, GIS applications, etc., as necessary.
- k) Comprehensive review, reconciliation, and validation of debris removal contractor(s) invoices prior to submission to the City for processing.
- l) Project Worksheet and other pertinent report preparation required for reimbursement by FEMA, AEMA, FHWA, and any other applicable agency for disaster recovery efforts by City staff and designated debris removal contractors.
- m) Cost recovery of eligible funds currently not obligated or potentially de-obligated by appropriate funding agencies. Separate pricing structures for this service may be included in the firm's proposal.
- n) Final report and appeal preparation and assistance.

2. Emergency Management Planning and Training

If requested by the City, the Consultant shall provide:

- a) Development or modification of a debris management plan, including identification of an adequate number of Temporary Debris Storage and Reduction Site (TDSRS) locations. Staff training as necessary.
 - b) Procurement assistance for debris removal contractors and other services as requested.
 - c) Project management to include the formulation and management of permanent work projects, task force management, and participation on Mayor and City Council Boards and Panels.
 - d) Technical support and assistance in developing public information.
 - e) Other training and assistance as requested by the City.
 - f) Other reports and data as required by the City.
 - g) Other emergency management and consulting services identified and required by the City.
3. Public Assistance Consulting Services
As directed by the City, the Contractor shall provide:
- a) Identification of eligible emergency and permanent work (Category A-G).
 - b) Assistance in attaining Immediate Needs Funding.
 - c) Prioritization of recovery workload.
 - d) Loss measurement and categorization.
 - e) Insurance evaluation, documentation adjustment, and settlement services.
 - f) Project Worksheet generation and review.
 - g) FEMA, FHWA, and NRCS reimbursement support.
 - h) Staff augmentation with experienced Public Assistance Coordinators and Project Officers.
 - i) Interim inspections, final inspections, supplemental Project Worksheet generation, and final review.
 - j) Appeal services and negotiations.
 - k) Final review of all emergency and permanent work performed.
4. Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for a minimum of three (3) years after completion of the contract. City shall have access to all records, documents, and information collected and/or maintained by the Contractor and its Subcontractors in the course of contract administration. This information shall be made accessible at the Contractor's place of business to the City, including the Finance Department and/or its designees, for the purposes of inspection, reproduction, and/or audit without restriction.
5. The laws of the State of Alabama apply to any purchase made under this Request for Proposals. Contractor shall comply with all local, state, and federal directives, orders, and laws as applicable to this proposal and subsequent contract(s) including but not limited to Equal Employment Opportunity (EEO), Minority Business Enterprise (MBE), and Occupational Safety and Health Act (OSHA) as applicable to the contract. Proposers certify by submission of a proposal that they have not and will not use Federal funds to pay any person or organization to influence or attempt to influence and 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 USC Section 1352.
6. Contractor is responsible to complete this scope of work, including all labor, parts, materials, tools, supervision, and equipment necessary to complete the Work.
7. The specific items included as part of this scope of work are listed for emphasis only and are not intended to limit the scope of work in any way.

8. The Work of this contract is hereby further clarified and defined. In accordance with the nature of this contract, this clarification does not relieve the Contractor from providing all elements necessary to complete the debris monitoring, disaster management, recovery, and consulting services to support the oversight and management of debris recovery contractors. It is the Contractor's responsibility, based on their expertise and knowledge of the work, to include all items, materials, and procedures necessary to complete the execution of the work that, although not shown, can be reasonably inferred to be a part of the work.
9. Contractor's price includes:
 - a) All taxes associated with this scope of work;
 - b) All salaried and field personnel required to complete the work;
 - c) All permits and/or licenses required for this work; and
 - d) Contractor acknowledges that multiple mobilizations may be required and has accounted for all costs in the cost proposal. Reasonable travel, per diem, and other direct project costs (e.g. load tickets, communications, equipment rental, etc.) will be billed to the City at cost without markup.

D. Coordination of Work

After contract award, the Contractor shall coordinate the work schedule with the City Staff Contact. Any modifications to the scope of work or schedule shall be first approved by the City Staff Contact

E. Insurance Requirements

Contractor agrees, at its sole expense, to maintain on a primary and non-contributory basis during the life of this Contract, or the performance of Work hereunder, insurance coverages, limits, and endorsements as set out below. Coverage of all insurance shall be from acceptably strong companies with a minimum rating of A+/AA in Best's Insurance Guide, or lacking that, must be approved by the Owner. Contractor agrees to obtain Commercial General Liability, Business Auto Liability, Worker's Compensation, Professional Errors and Omissions, and Commercial Umbrella/Excess Liability before starting the work. Contractor also agrees to undertake the obligation to insure that all subcontractors abide by these same insurance requirements.

The Contractor agrees the insurance requirements herein as well as City's review or acknowledgment is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Contract.

Commercial General Liability

Contractor agrees to maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence, \$2,000,000 Annual Aggregate. Contractor agrees its coverage will not contain any restrictive endorsement(s) excluding or limiting Product/Completed Operations, Independent Contractors, Broad Form Property Damage, X-C-U Coverage, Contractual Liability, or Cross Liability.

Business Automobile Liability

Contractor agrees to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned, and Hired Automobiles.

Worker's Compensation & Employer's Liability

Regardless of any "minimum requirements" of the State of Alabama, Contractor shall obtain Worker's Compensation insurance covering **all** workers involved in the Work. (Note: Elective exemptions or coverage through an employee leasing arrangement will violate this requirement.) Subcontractor shall also obtain Employer's Liability insurance with minimum limits of \$500,000 Each Accident, \$500,000 Disease Policy Limit, and \$500,000 Each Employee.

Professional Errors and Omissions

Contractor shall also obtain coverage limits of \$1,000,000 each claim and policy aggregate, an Extended Discovery period to apply for at least two (2) years after Contractor's work is accepted by the City of Orange

Beach, and a deductible not to exceed \$10,000, for which the Contractor will remain solely responsible for, shall apply. "Claims-Made" policies shall carry a retroactive date prior to the effected date of this project. In the event the policy is cancelled, non-renewed, switched to an Occurrence Form, or any other circumstance that triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this project, then Contractor shall purchase a SERP with a minimum reporting period of not less than two (2) years. The requirement to purchase a SERP shall not relieve the Contractor of the obligation to provide replacement coverage.

Commercial Umbrella/Excess Liability

Contractor agrees to maintain either a Commercial Umbrella or Excess Liability at a limit of liability not less than \$1,000,000 Each Occurrence, \$1,000,000 Aggregate. The Contractor agrees to endorse the City as an "Additional Insured" on the Commercial Umbrella/Excess Liability, unless the Commercial Umbrella/Excess Liability provides coverage on a pure/true follow-form basis, or the City is automatically defined as an Additional Protected Person.

Additional Insured Endorsements

The Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability with the following Additional Insured endorsement, or similar endorsement providing equal or broader Additional Insured coverage than:

- CG2010 10 01 – Additional Insured; Owners, Lessees, or Contractors, OR
- CG2010 07 04 – Additional Insured; Owners, Lessees, or Contractors; Scheduled Person or Organization endorsement

The name of the organization endorsed as Additional Insured for all endorsements shall read "City of Orange Beach."

Waiver of Subrogation

Contractor agrees by entering into this written Contract to a Waiver of Subrogation in favor of the City. If a policy prohibits waiving subrogation rights without an endorsement, the Contractor agrees to endorse it with a Waiver of Transfer of Rights of Recovery against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy which voids coverage if subrogation is waived.

Right to Revise or Reject

The City reserves the right to revise any insurance requirement based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work/specifications affecting the applicability of coverage. Additionally, the City reserves the right, but not the obligation, to review and reject and insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage, due to its poor financial condition or failure to operate legally in the State of Alabama. In such events, City shall provide Contractor written notice of such revisions or rejections.

No Representation of Coverage Adequacy

The coverages, limits, or endorsements required herein protect the primary interests of the City, and the Contractor agrees in no way should these coverages, limits, or endorsements required be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposures, whether as a result of the Project or otherwise.

Certificate of Insurance

Contractor agrees to provide City a Certificate of Insurance evidencing the above coverages. If the Contractor receives a non-renewal or cancellation or other material change notice from an insurance carrier affording coverage required herein, Contractor agrees to notify the City immediately with specifics as to which coverage is no longer in compliance. The City shall have the right, but not the obligation, of prohibiting Contractor from entering the Work site until a new Certificate of Insurance is provided to the City evidencing the replacement coverage. The Contractor agrees the City reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to the City. If the Contractor fails to maintain the insurance as set forth herein, the Contractor agrees the City shall have the right, but not the obligation, to purchase

replacement insurance, which the Contractor agrees to reimburse any premiums or expenses incurred by the City.

The Contractor agrees the Certificate(s) of Insurance shall:

1. Clearly indicate the City has been endorsed on the Commercial Umbrella/Excess Liability and Commercial General Liability policy as an Additional Insured. Clearly indicate the project name and project number.
2. Clearly indicated Certificate Holder(s) as follows:

Original to: City of Orange Beach
Attn: City Clerk
P.O. Box 458
Orange Beach, AL 36561
Fax (251) 981-6981

F. Disposal of Materials

Any waste and excess materials shall be disposed of by the Contractor in a safe manner conforming to all Federal and State Occupational and Environmental Laws and Regulations including, but not limited to, the Occupational Safety and Health Act (OSHA), the Clean Air Act (CAA), the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Toxic Substances Control Act (TSCA), and the Alabama Department of Environmental Management (ADEM) Regulations.

PROPOSAL REQUIREMENTS

Firms or companies desiring to provide services, as described in the Scope of Work shall submit **one (1) original and one (1) USB flash drive** of proposal specifications and pricing no later than the time and date specified in the Request for Proposals.

Each proposal submitted **MUST** include the following sections arranged in the following order:

Section A: Contractor Information

This section is to contain the completed "Contractor Information Form" included in these documents.

Section B: References

Provide a minimum of three references from past projects to include name of agency, agency contact name and number, brief project description, and any letters of recommendation.

Section C: Qualifications of the Firm

Firm qualifications must include the following:

1. Recent experience demonstrating current monitoring capability and current expertise in debris removal, solid waste and hazardous waste management and disposal.
2. Documented knowledge and experience coordinating with Federal, State and Local emergency agencies.
3. Experience representing Local governments with various state and federal funding source sources and reimbursement processes, including the Federal Emergency Management Agency (FEMA), Alabama Emergency Management Agency (AEMA), Federal Highway Administration (FHWA) and/or Natural Resource Conservation Service (NRCS).
4. Experience with special disaster recovery program management services including private property/ROW work, waterways/wetland clean-up and reimbursement, sand recovery, screening and beach remediation, leaning tree and hanging limb removal, hazardous material removal, vessel and vehicle recovery, asbestos abatement, data management, hauler invoice reconciliation and contracting, and FEMA reporting and appeals assistance.
5. Provide at minimum five (5) references for which the firm has performed services within the last five (5) years that are similar to the requirements in the Scope of Services. Three (3) of the references shall be from a local government for hurricane debris monitoring experience. Provide the reference contact name, address, e-mail, telephone numbers and date of contract.

Section D: Qualifications of the Staff

Provide an organizational chart and summary of staff qualifications. Key project staff (management staff including, but not limited to: project manager, collection and disposal operations managers, FEMA reimbursement specialist, FEMA public assistance, etc.) must be full time employees of the proposing firm and have experience in the following:

1. Experience demonstrating current capacity and current expertise in debris removal, solid waste and hazardous waste management and disposal. The proposer must demonstrate experience managing debris monitoring for at least three (3) governmental entities involving a minimum of 1,000,000 cubic yards of debris. Recent debris monitoring of hurricane events is required.
2. Documented knowledge and experience with Federal, State, and Local emergency agencies, state and federal programs, funding sources, and reimbursement processes. Proposer must demonstrate experience

with project worksheet preparation, procurement of contractors, hauler invoice reconciliation, and appeals/reimbursement support.

Section E: Technical Approach

Provide a description of the proposer’s approach to the project, to include startup procedures/requirements, debris estimating methodology, analysis of debris recovery operations, and management of debris recovery contractors, billing/invoicing, and reporting procedures to FEMA and the City. Provide a copy of the proposer’s internal training program.

Section F: Pricing Sheet

This section is to contain the completed “Pricing Sheet” included in these documents. This “Pricing Sheet” is intended to provide quick comparative information regarding the cost for this project to City personnel. The cost proposal will be evaluated by the hourly rates submitted on the Pricing Sheet. Reasonable travel, per diem, and other direct project costs (e.g. load tickets, communications, equipment rental, etc.) will be billed to the City at cost without markup.

SECTION A: CONTRACTOR INFORMATION FORM

Contractor Name: _____
Contact Name: _____
Title: _____
Street Address: _____
City, State, Zip: _____
Phone: _____
Email: _____

The proposer acknowledges receipt of the following addenda covering revisions to the proposal documents, and states that the costs, if any, of such revisions have been included in the base proposal and other prices quoted herein:

Addendum No. _____	Dated: _____
Addendum No. _____	Dated: _____
Addendum No. _____	Dated: _____
Addendum No. _____	Dated: _____

Note: If no addenda have been received, write in "none."

I have reviewed all of the general information and specifications in the RFP, have inspected the work site, have contacted the City regarding any needed clarifications, and submit this proposal with a full understanding of the specifications.

If selected by the City as the Contractor, I agree to abide by the terms and conditions specified in this RFP. I herein affirm that I have not been in any agreement or collusion among bidders in restraint of competition to bid at a fixed price or to refrain from bidding otherwise. By signing this contract, the company represents and agrees that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.

Company Officer Name: _____
Title: _____
Signature: _____
Date: _____
Phone: _____

SECTION E: PRICING SHEET

The hourly labor rates shall include all applicable overhead and profit. All non-labor related project costs (including travel, lodging, per diem, communications, supplies, rental equipment, and other direct project expenses) will be billed to the City at cost without mark-up.

POSITIONS: Disaster Debris Monitoring	HOURLY RATES
1. Project Manager	\$ _____
2. Operations Managers	\$ _____
3. Schedulers/Expeditors	\$ _____
4. GIS Analyst	\$ _____
5. Field Supervisors	\$ _____
6. Debris Site/Tower Monitors	\$ _____
7. Load Ticket Data Entry Clerks	\$ _____
8. Billing/Invoice Analysts	\$ _____
9. Project Assistants	\$ _____
10. Field Coordinators (Crew Monitors)	\$ _____
11. Project Coordinators	\$ _____
12. Environmental Specialist	\$ _____
13. Project Inspectors (Citizen Drop-off Site Monitors)	\$ _____

POSITIONS: Public Assistance Consulting	HOURLY RATES
14. Project Manager	\$ _____
15. Emergency Management Consultant	\$ _____
16. Emergency Management Specialist	\$ _____
17. Emergency Management Analyst	\$ _____
18. Office/Clerical	\$ _____

OTHER REQUIRED POSITIONS:

Proposer may include other positions, with hourly rates, as needed.

19. _____	\$ _____
20. _____	\$ _____

SPECIAL TERMS & CONDITIONS

A. Coordination

All work must be coordinated with and authorized by the City of Orange Beach.

Project Contact:

Nicole Woerner, Coastal Resources Deputy Director, 251-981-1180, nwoerner@orangebeachal.gov

B. Selection Criteria

City of Orange Beach staff will evaluate the proposals based on the following criteria:

- Firm qualifications (25%)
- References (20%)
- Staff qualifications (20%)
- Technical approach (20%)
- Cost proposal (15%)

Total (100%)

C. Selection Process

Each proposal received will be reviewed in accordance with the criteria stated above. One or more proposals (finalists) will be selected for further consideration. Those selected as finalists may be interviewed and allowed to present detailed information regarding the submitted proposal(s). No interview is guaranteed. Upon completion of the interviews, the successful Proposer will be selected.

City staff will then develop an Agreement with the successful Proposer and will present the Agreement to the Orange Beach City Council for approval. An award is made on execution of the written Agreement by all parties. Only the City is authorized to issue news releases relating to this RFP, its evaluation, award, and/or performance of the Agreement. In the event the City and the Contractor cannot agree on terms of an Agreement, then Agreement negotiations with the next most appropriate finalist will be made.

GENERAL TERMS & CONDITIONS

- 1.0 Any proposal that is not received by the City Clerk prior to the deadline date and time set forth will not be considered.
- 2.0 Offers by telephone, e-mail, or fax will not be accepted.
- 3.0 The City reserves the right to: (1) accept or reject any and all proposals, and to waive any technicalities or irregularities involving any proposal; (2) negotiate Agreement terms with the Proposer(s); (3) disregard all nonconforming, non-responsive or conditional proposals; and (4) reject the responses that do not meet the City's satisfaction.
 - 3.1 The City reserves the right to accept any proposal it deems to be in its best interest.
 - 3.2 The City may choose not to make any award, to award all components to one contractor, or to combine contractors and services as it sees fit.
 - 3.3 The City is not obligated to accept the lowest bid or the most technologically advanced proposal.
- 4.0 During the evaluation process, the City reserves the right to request additional information or clarifications from those submitting proposals, and to allow corrections of errors and/or omissions.
- 5.0 Submission of a proposal indicates acceptance by the Proposer submitting the proposal of the terms, conditions, and specifications contained in this RFP.
- 6.0 The City will not pay for any information herein requested, nor is it liable for any costs incurred by those submitting proposals. The City reserves the right to select the Proposer that will best meet the needs of the City. Proposers and/or proposals that do not meet the stated requirements will be considered in noncompliance and will be disqualified unless the City waives such noncompliance.
- 7.0 No proposal may be withdrawn for a period of sixty (60) days after the deadline set for receipt of proposals.
- 8.0 All Proposers shall acknowledge receipt of any addenda to this RFP. Failure to acknowledge receipt of any addenda may render the proposal to be non-responsive. Changes to this RFP shall be issued only by the City in writing.
- 9.0 Under penalty of perjury, the Proposer certifies by signature on the Contractor Information Form:
 - 9.1 The Proposer has not paid nor agreed to pay any person, other than a bona fide employee, a fee or a brokerage resulting from the award of the Agreement. The City may, by written notice to a Proposer, cancel any award under this RFP if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise were offered or given to any representative of the City with a view toward securing an order or other favorable treatment with respect to this RFP; and
 - 9.2 The proposal has been arrived at by the Proposer independently and has been submitted without collusion with any other vendor of materials, supplies, equipment, or services for the type described in the RFP; and
 - 9.3 The contents of this proposal have not been communicated by the Proposer; or to his/her best knowledge and belief by any of his/her employees or agents to any person not an employee or agent of the Proposer.
- 10.0 This RFP, any addenda distributed by the City, and the Contractor's response to the RFP shall become part of the contractual obligation and incorporated by reference into the ensuing Agreement(s). The requirements of the RFP shall take precedence over any conflicting language that may be present in any Agreement between the City and the Contractor.
- 11.0 All proposals become property of the City and will not be returned to the Proposer.

- 12.0 Each proposal and any clarifications to that proposal shall be signed by an officer of the Proposer or a designated agent empowered to bind the Proposer in an Agreement.
- 13.0 The Proposer is responsible for proposing their best, most competitive pricing in the initial proposal, as opportunity to negotiate or resubmit pricing may not be offered at a later time.**
- 14.0 The City is exempt from taxes. No charge will be allowed for federal, state, or municipal sales and excise taxes.
- 15.0 Contractor agrees to defend, indemnify, and hold harmless the City and its agents and/or employees from any and all claims, settlements, and judgments, including but not limited to those for personal injury, bodily injury, property damage, and/or death arising solely out of Contractor's or any of its agents, servants, and/or employees' negligent acts, and/or failure to act in the performance of this Agreement. Neither acceptance of the completed work nor payment therefore shall release Contractor of its obligation under this paragraph.
- 16.0 Neither party will be held responsible for nonperformance or delay caused by acts of God, natural disasters, vandalism, war, or other conditions beyond its control. Contractor shall be held accountable for manufacturer's delays in providing equipment or services proposed under this Agreement.
- 17.0 This Agreement may be amended, at any time, by mutual consent of the parties. Any amendment must be in writing and signed by authorized representatives.
- 18.0 The entire Agreement between the City and Contractor shall supersede any other verbal or written agreements. The Agreement shall include, in order of precedence, the following: the City's RFP including any addenda, Contractor's response, terms and conditions negotiated before Agreement signing, any other contractual documents.
- 19.0 The City may terminate this Agreement at its convenience by giving the other party thirty (30) days written notice. Any termination shall not relieve the City of its obligations to pay Contractor for satisfactory deliverables through the effective date of termination.
- 20.0 In cases of default by the Contractor, the City shall provide Contractor with a letter defining the area(s) where performance requirements have not been met. The Contractor shall have thirty (30) days in which to meet the Agreement requirements. If the requirements have not been met after thirty (30) days, the City has the right to cancel the Agreement without penalty. If the Agreement is cancelled due to the Contractor's failure to perform, the City shall pay the Contractor only for materials delivered and/or work performed up to cancellation. The City reserves the right to retain other parties to complete the work required under the Agreement.
- 21.0 Contractor shall be responsible for the performance of its employees, agents, and subcontractors.
- 22.0 The successful Proposer will be required to obtain a City of Orange Beach Business License if operating within the City Limits. All applicable State Laws, Municipal Ordinances, and the Rules and Regulations of all authorities have jurisdiction and shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.
- 23.0 In cases of default of the contractor, the City may procure the Work from other sources and hold the contractor responsible for any excess cost occasioned thereby.
- 24.0 The Contractor may submit an Application for Payment for provided labor and materials in accordance with the accepted Unit Prices. Payment shall be made to the Contractor within thirty (30) days of receipt and approval of Application for Payment.



REQUIREMENTS FOR CONTRACTS AND PURCHASES

Effective January 1, 2012 under the “Beason-Hammon Alabama Taxpayer and Citizen Protection Act,” Act No. 2011-535, Alabama Code (1975) Section 31-13-1, Et Seq., before entering into a contract with the City to:

1. Perform a service;
2. Perform work;
3. Provide a product;
4. Accept a grant; and/or
5. Accept an initiative

The State of Alabama requires the business entity to sign a notarized affidavit agreeing:

1. Not to knowingly employ, hire for employment, or continue to employ, any unauthorized aliens in the State of Alabama;
2. To enroll in the E-Verify Program, to verify the immigration status of every employee required to be re-verified through that system and to provide documentation of its enrollment; and
3. To require its subcontractors to comply with the above requirements.

Before any contract can be let, purchase can be made, or payment can be issued by the City of Orange Beach after January 1, 2012, the Affidavit on the reverse side of this document must be completed, notarized, and returned to our offices.

Note: Proof of enrollment in the E-Verify Program must accompany the Affidavit, unless you do not have or hire any employees.

Questions about this process may be directed to Renee Eberly, City Clerk/Procurement Officer, at (251) 981-6806 or via e-mail at reberly@orangebeachal.gov.

COMPLETED AFFIDAVIT MUST BE RETURNED IN SEALED BID.

AFFIDAVIT OF CONTRACTOR OR DIRECT VENDOR

State of _____

County of _____

Before me, a notary public, personally appeared _____ (print name) who, being duly sworn, says as follows:

As a condition for the award of any contract, grant, or incentive by the City of Orange Beach, Alabama, I hereby attest that in my capacity as _____ (state position) for _____ (state business entity/employer/contractor name) that said business entity/employer/contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.

I further attest that said business entity/employer/contractor is enrolled in the E-Verify program.

(Attach documentation establishing that business entity/employer/contractor is enrolled in the E-Verify Program.)

Signature of Affiant

Sworn to and subscribed before me this _____ day of _____, 20_____.

I certify that the affiant is known (or made known) to me to be the identical party he or she claims to be.

Signature and Seal of Notary Public

My Commission Expires: _____

ADDITIONAL TERMS RELATING TO FEDERAL CONTRACT PROVISIONS

1. FEDERAL GRANT FUNDING

This procurement may be funded in whole or part with federal grant funds and is therefore contracts will meet the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II.

2. LOCAL VENDOR PREFERENCE

No local vendor preference will be considered or granted in evaluating bids which are funded in whole or part by federal grant awards.

3. NON-DEBARMENT CERTIFICATION

Bidder certifies that the bidder and/or any of its subcontractors or principals have not been debarred, suspended, or declared ineligible by any agency of the Federal government or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch. I Subpart 9.4.

4. REMEDY FOR NON-PERFORMANCE / TERMINATION OF CONTRACT

a. Immediate Termination

This bid award is subject to the appropriation and availability of City funding. The bid award will terminate immediately and absolutely if the City determines that adequate funds are not appropriated or granted, or funds are de-appropriated such that the City cannot fulfill its obligations under the bid, which determination is at the City's sole discretion and shall be conclusive. Further, the City may terminate the bid award for any one or more of the following reasons effective immediately without advance notice:

- i) In the event the bidder or bid awardee ("Contractor") is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the bid award effective as of the date on which the license or certification is no longer in effect;
- ii) The City determines that the actions, or failure to act, of the Contractor, its agents, employees, or subcontractors have caused, or reasonably could cause, life, health, or safety to be jeopardized; and/or
- iii) The City determines that the Contractor furnished any statement, representation, or certification in connection with the bidding or bid award process which is materially false, deceptive, incorrect, or incomplete.

b. Termination for Cause

The occurrence of any one or more of the following events shall constitute cause for the City to declare the Contractor in default of its obligation under the bid award:

c. Notice of Default

If there is a default event caused by the Contractor, the City shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the City's written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the City may:

- i) Immediately terminate the bid award without additional written notice;
- ii) Procure substitute goods or services from another source and charge the difference between the bid award price and the substitute price to the defaulting Contractor; and/or
- iii) Enforce the terms and conditions of the bid award and seek any legal or equitable remedies.

d. Termination upon Notice

Following thirty (30) days' written notice, the City may terminate the bid award in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for goods and services provided under the bid to the City up to and including date of termination.

e. Payment Limitation in Event of Termination

In the event of termination of the bid award for any reason by the City, the City shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually rendered up to and including the date of termination of the bid award and for which the City is obligated to pay pursuant to the bid award. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the City in the event of termination.

f. Owner May Terminate for Convenience

Upon seven days written notice to the Contractor, the City may, without cause and without prejudice to any other right or remedy of the City, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

- i) Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
- ii) Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
- iii) Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal; and
- iv) Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

g. Termination Duties

Upon receipt of notice of termination or upon request of the City, the Contractor shall:

- i) Cease work under the bid award and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the bid award, including, without limitation, results accomplished, conclusions resulting there from, and any other matters the City may require;
- ii) Immediately cease using and return to the City any personal property or materials, whether tangible or intangible, provided by the City to the Contractor;
- iii) Comply with the City's instructions for the timely transfer of any active files and work product by the Contractor under the bid award;
- iv) Cooperate in good faith with the City, its employees, agents, and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and
- v) Immediately return to the City any payments made by the City for goods and services that were not delivered or rendered by the Contractor.

5. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE REQUIREMENT

- a. Contractor shall comply with all Federal, State and local laws concerning nondiscrimination.
- b. During the performance of this contract, the Contractor agrees as follows:
 - i) 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, 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.
 - ii) 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.
 - iii) 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.
 - iv) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - v) 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.
 - vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - vii) In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such 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 in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- viii) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- ix) 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.
- x) 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.
- xi) The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

6. ENERGY POLICY AND CONSERVATION ACT STATEMENT

Contractor will comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163, 89 Stat.871).

7. CLEAN AIR ACT / FEDERAL WATER POLLUTION CONTROL ACT

Contractor will comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. (Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act.) Bidder certifies that none of the facilities it uses to produce goods provided under the contract are on the Environmental Protection Authority (EPA) List of Violating Facilities. Contractor will immediately notify the City of the receipt of any communication indicating that any of Contractor's facilities are under consideration to be listed on the EPA List of Violating Facilities.

8. DAVIS-BACON ACT

Contractor will comply with the Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). If applicable per the standard described above, the NFE must include the provisions at 29 C.F.R. § 5.5(a)(1)-(10) in full into all applicable contracts, and all applicable contractors must include these provisions in full in any subcontracts.

9. COPELAND “ANTI-KICKBACK” ACT

The Contractor will comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

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.”

10. BEASON-HAMMON CLAUSE

By signing this contract, grant, or other agreement, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), where applicable. Compliance with the Contract Work Hours and Safety Standards Act:

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$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 (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The City of Orange Beach shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1 where an additional contract provision is required:

Further Compliance with the Contract Work Hours and Safety Standards Act

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

12. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

This contract provision outlines the rules governing the ownership of inventions created using federal funds. If the FEMA award meets the definition of funding agreement and the NFE enters into any contract involving substitution of parties, assignment or performance of experimental, developmental, or research work under that funding agreement, then the NFE must comply with the requirements of 37 C.F.R. Part 401 and any implementing regulations issued by FEMA.

13. ENERGY POLICY AND CONSERVATION ACT

If applicable, the Contractor shall comply with 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 (42 U.S.C. 6201).

14. DEBARMENT AND SUSPENSION

All contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

15. PROCUREMENT OF RECOVERED MATERIALS

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—

- a. Competitively within a time frame providing for compliance with the contract performance schedule;
- b. Meeting contract performance requirements; or
- c. At a reasonable price.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

16. ACCESS TO RECORDS

The following access to records requirements apply to this contract:

- (1) The Contractor agrees to provide the City of Orange Beach, AL, Alabama Emergency Management Agency, 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 City of Orange Beach 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.

17. 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.

18. 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.

19. AFFIRMATIVE SOCIOECONOMIC STEPS

If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

20. COPYRIGHT AND DATA RIGHTS

License and Delivery of Works Subject to Copyright and Data Rights

The Contractor grants to the City of Orange Beach, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the City of Orange Beach or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the City of Orange Beach data first produced in the performance of this contract and data required by the contract

but not first produced in the performance of this contract in formats acceptable by the City of Orange Beach.

21. 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.

22. DOMESTIC PREFERENCES FOR PROCUREMENTS

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”

23. 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.

24. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

- a. Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—
- b. Prohibitions.
 - 1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 - 2. Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - (iv) Provide, as part of its performance of this contract, subcontract, or other contractual

instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

c. Exceptions.

1. This clause does not prohibit contractors from providing—
 - (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
2. By necessary implication and regulation, the prohibitions also do not apply to:
 - (i) Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
 - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

d. Reporting requirement.

1. In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
2. The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
 - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

- e. Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.”

25. ANTI-LOBBYING CERTIFICATION

- a. 2 CFR 200 – Appendix II, "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards" is hereby incorporated by reference into this certification.
- b. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally 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 federal awarding agency.

- c. Contractors must sign and submit the following certification to the NFE with each bid or offer exceeding \$100,000:

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

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.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date