

Additional Terms Relating to Purchases with Federal Grant Awards

1. FEDERAL GRANT FUNDING

This procurement may be funded in whole or part with federal grant funds.

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. 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may result in immediate termination of the bid award effective as of the date on which the license or certification is no longer in effect;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 bid awardee, 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 bid awardee 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 bid awardee in default of its obligation under the bid award:
 - i. the bid awardee fails to deliver or has delivered nonconforming goods or services or fails to perform, to the City's satisfaction, any material requirement of the bid or is in violation of a material provision of the bid award, including, but without limitation, the express warranties made by the bid awardee;
 - ii. the City determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;
 - iii. the bid awardee fails to make substantial and timely progress toward performance of the bid requirements;

- iv. the bid awardee becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the bid awardee terminates or suspends its business; or the City reasonably believes that the bid awardee has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
 - v. the bid awardee has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the bid award;
 - vi. the bid awardee has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion.
- c) Notice of Default- If there is a default event caused by the bid awardee; the City shall provide written notice to the bid awardee requesting that the breach or noncompliance be remedied within the period of time specified in the City's written notice to the bid awardee. If the breach or noncompliance is not remedied within the period of time specified in the written notice, City may:
- i. Immediately terminate the bid award without additional written notice; and/or
 - 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 bid awardee, 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 bid awardee. Following termination upon notice, the bid awardee 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 bid awardee 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 bid awardee'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 Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, 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; and
 - iii. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
 - 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 bid awardee 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 bid awardee;
- iii. Comply with the City's instructions for the timely transfer of any active files and work product by the bid awardee 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 bid awardee.

5. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE REQUIREMENT

- a) Bid awardee (or "contractor") shall comply with all Federal, State and local laws concerning nondiscrimination.
- b) During the performance of this contract, the bid awardee 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:
 - ii. 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 by the contracting officer setting forth the provisions of this nondiscrimination clause.
 - iii. 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.
 - iv. 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.
 - v. 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.

- vi. 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.
- vii. 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.
- viii. 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.
- ix. 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.

6. ENERGY POLICY AND CONSERVATION ACT STATEMENT

Bid awardee 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

Bid awardee 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. Bid awardee will immediately notify the City of the receipt of any communication indicating that any of bid awardee's facilities are under consideration to be listed on the EPA List of Violating Facilities.

8. DAVIS-BACON ACT

Bid awardee 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’’).

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). (All contracts and subgrants for construction or repair.)

10. 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) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief that:
 - i. No 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 on his or her behalf 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;
 - ii. If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) 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 on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
 - iii. He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$150,000 shall certify and disclose accordingly.
 - iv. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person making expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

11. 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.

12. 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. (Contracts in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5)).

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. REQUIREMENTS

All contractual requirements of the NRDA Restoration Program Funds are to be included in the contract as required including, but not limited to the following provisions:

1. Required Federal-Aid Contract Provisions
2. The Beason-Hammon Contract Clause
3. Termination for cause/breach of contract clause
4. Termination for convenience clause
5. Audits and inspection, access to records, and three-year records retention clause
6. Title VI, Civil Rights Act of 1964 clause
7. Conflict of Interest clause
8. Section 504 Rehabilitation Act of 1973 clause
9. Age Discrimination Act of 1975 clause
10. Executive Order 11246 and E.O. clause