

## **FEMA STANDARD PROVISIONS AND FUNDING REQUIREMENTS**

The Contract may be funded in part by the federal grant funding received by the COUNTY from the Federal Emergency Management Agency ("FEMA"), which is part of the United States Department of Homeland Security ("DHS"). Therefore, CONTRACTOR must comply with all federal laws and regulations applicable to the receipt of FEMA grants, including, but not limited to, the contractual provision set forth in Title 2 of the Code of Federal Regulations, Part 200, in connection with the CONTRACTOR's performance of the work or services covered by the Contract (the "Project"). All such federal laws and regulations shall be deemed to be inserted in the Contract and the Contract shall be read and enforced as though such federal laws and regulations were included therein.

Anything to the contrary herein notwithstanding, all FEMA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Contract. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any COUNTY request that would cause the COUNTY to be in violation of these FEMA terms and conditions or any other federal law or regulation applicable to the receipt of FEMA grants. If any provision of the Contract shall be such as to effect noncompliance with any FEMA requirement, such provision shall not be deemed to form a part thereof, but the balance of the Contract shall remain in full force and effect.

In addition, the CONTRACTOR agrees to the following specific provisions:

### **1.01 Debarment**

1. The CONTRACTOR and any prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. The COUNTY will insure the CONTRACTOR and any lower participants are not debarred by checking the governments Excluded Parties List System at SAM.gov prior to executing the Contract and/or subsequent Job Orders.

### **1.02 Cost Plus Percentage Not Allowed**

1. Notwithstanding any provisions in the agreement to the contrary, the CONTRACTOR and any prospective lower tier participant are prohibited from using cost plus percentage contracts. This includes, but is not limited to the use of percentages for change orders or mark-ups on sub-contractors or materials. Cost plus fixed fee either lump sum or unit price is authorized.

### **1.03 Additional Federal Contracting Requirements**

1. The CONTRACTOR must comply with Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41CFR chapter 60).
2. The CONTRACTOR must comply with the requirements of the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.
3. The CONTRACTOR must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits recipients of federal funding from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12101–12213).

4. The CONTRACTOR must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.
5. The CONTRACTOR must comply with Title VIII of the Civil Rights Act of 1968, which prohibits CONTRACTORS from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. § 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (see 24 C.F.R. § 100.201).
6. The CONTRACTOR must comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
7. The CONTRACTOR must comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a7) as supplemented by Department of Labor regulations (29 CFR Part 5).
  - a. This project is a public work in the State of California, funded in whole or in part with public funds. Therefore, the higher of the two applicable prevailing wage rates, federal or state, will be enforced.
8. The CONTRACTOR must comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327330) as supplemented by Department of Labor regulations (29 CFR Part 5).
9. The CONTRACTOR must provide reporting as specified in the plans, specifications and deliverables section of the Contract.
10. The COUNTY shall have patent rights with respect to any discovery or invention which arises or is developed in the course of or under such Contract.
11. The COUNTY shall have copyrights and rights respective to any data which arises or is developed in the course of or under such Contract.
12. The COUNTY, State, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
13. The CONTRACTOR must maintain records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
14. The CONTRACTOR must comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)
15. The CONTRACTOR must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent

with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

16. The CONTRACTOR must 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 (Pub. L. 94163, 89 Stat. 871).

17. The COUNTY is entitled to exercise all administrative, contractual, or other legal remedies permitted by law to enforce the CONTRACTOR's compliance with the terms of the Contract.

18. The CONTRACTOR must acknowledge its use of federal funding when issuing requests for proposals, bid invitations, and other documents describing the Project in connection with performing the Contract.

19. If the CONTRACTOR collects PII (Personally Identifiable Information) in connection with the Project, the CONTRACTOR is required to have a publicly available privacy policy that describes what PII they collect, how they use the PII, whether they share PII with third parties, and how individuals may have their PII corrected where appropriate.

20. The CONTRACTOR must comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), which is adopted at 2 C.F.R Part 3001, which requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace.

21. The CONTRACTOR must comply with the requirements of 31 U.S.C. § 3729 which sets forth that no recipient of federal payments shall submit a false claim for payment. See also 38 U.S.C. § 3801-3812 which details the administrative remedies for false claims and statements made.

22. The CONTRACTOR must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

23. The CONTRACTOR must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency ("LEP") to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation.

24. The CONTRACTOR must comply with 31 U.S.C. §1352, which provides that none of the funds provided under an award may be expended by the CONTRACTOR to pay any person to influence, or attempt 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 any Federal action concerning the award or renewal.

25. Unless otherwise provided by law, the CONTRACTOR is subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. The CONTRACTOR is subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards in 37 C.F.R. Part 401 and the standard patent rights clause in 37 C.F.R. § 401.14.

26. The CONTRACTOR must comply with U.S. Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism.

27. The CONTRACTOR must comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. § 7104). This is implemented in accordance with OMB Interim Final Guidance, Federal Register, Volume 72, No. 218, November 13, 2007. Full text of the award term is located at 2 CFR § 175.15.

28. The CONTRACTOR must comply with the Rehabilitation Act of 1973, including all sections, that prohibits discrimination on the basis of disability. The standards for deciding if employment discrimination exists under the Rehabilitation Act are the same as those used in Title I of the Americans with Disabilities Act.

29. The CONTRACTOR must maintain the currency of the information in the Universal Identifier and System of Award Management (SAM) until submission of the final financial report required under the award or until the CONTRACTOR receives final payment, whichever is later, as required by 2 C.F.R. Part 25.

30. The CONTRACTOR must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c. Among other things, the USA PATRIOT Act prescribes criminal penalties for possession of any biological agent, toxin, or delivery system of a type or in a quantity that is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose.

31. The CONTRACTOR must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.

32. The CONTRACTOR must obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

33. The CONTRACTOR must acknowledge and agree—and require any sub-CONTRACTORS, successors, transferees, and assignees to acknowledge and agree—to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Additionally:

a. the CONTRACTOR must cooperate with any compliance review or complaint investigation conducted by DHS;

b. the CONTRACTOR must give DHS access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance;

c. the CONTRACTOR must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports;

d. the CONTRACTOR must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance;

e. if, during the past three years, the CONTRACTOR has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the CONTRACTOR must provide a list of all such proceedings,

pending or completed, including outcome and copies of settlement agreements to the DHS awarding office (FEMA) and the DHS Office of Civil Rights and Civil Liberties; and

f. in the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the CONTRACTOR, or the CONTRACTOR settles a case or matter alleging such discrimination, the CONTRACTOR must forward a copy of the complaint and findings to the DHS Component and/or awarding office (FEMA).

The United States has the right to seek judicial enforcement of these obligations.