

GENERAL PROVISIONS AND REQUIRED CLAUSES UNDER FEDERAL AND PUERTO RICO LAWS

OFICINA CENTRAL DE RECUPERACIÓN,
RECONSTRUCCIÓN Y RESILIENCIA
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**GENERAL PROVISIONS AND REQUIRED CLAUSES
UNDER FEDERAL AND PUERTO RICO LAWS**

Please note that the following list is not exhaustive; proposal clauses are also dependent on and may vary according to the needs for which the Request for Proposal is supposed to be performed and the Non-Federal Entity that will release the Request for Proposal.

1. Remedies (Required)

Contracts for more than the simplified acquisition threshold, currently set at \$250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II(A). Parties may seek various judicial remedies for breach of contract, including damages, specific performance, and rescission or restitution.

This requirement applies to all FEMA grant and cooperative agreement programs.

Sample language is not provided since these must be written in accordance with the non-Federal entity's own procedures in this area.

2. Termination for Cause and Convenience (Required)

All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Termination for convenience. The exercise of an NFE's right to completely or partially terminate the contractor's performance of work under a contract when it is in the NFE's interest.

Termination for cause (or "default"). The exercise of a party's right to completely or partially terminate a contract because of the other party's actual or anticipated failure to perform its contractual obligations.



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Sample language is not provided since these must be written in accordance with the non-Federal entity's own procedures in this area.

3. Age Discrimination Act of 1975. (Recommended)

The Proposer shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), as amended, and any applicable regulations.

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

4. Title VI of the Civil Rights Act of 1964. (Recommended)

The Proposer shall comply with the provisions of Title VI of the Civil Rights Act of 1964.

No person shall, 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.

5. Equal Employment Opportunity (Required)

a. Standard. Any contract that uses federal funds to pay for construction work is a "federally assisted construction contract" and must include the equal opportunity clause found in 2 C.F.R. Part 200, unless otherwise stated in 41 C.F.R. Part 60.

b. Applicability. This contract provision is required for all procurements that meet the definition of a "federally assisted construction contract."

c. Key Definitions.

(1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration,



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conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

(3) Contract: The regulation at 41 C.F.R. § 60-1.3 defines contract as "any Government contract or subcontract or any federally assisted contract or subcontract."

(4) Additional definitions pertaining to this contract provision can be found at 1 C.F.R. § 60-1.3.

d. The regulation at 41 C.F.R. Part 60-1.4(b) requires, except as otherwise provided or exempted in 41 C.F.R. Part 60, the insertion of the following contract clause:

"During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or

national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to all employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, GPR that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation,



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proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled,

terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or Respondent. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or Respondent as a result of such direction by the administering agency the contractor may request the United States to enter



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into such litigation to protect the interests of the United States." The applicant further agrees that it will be bound by the

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

The applicant agrees that it will assist and cooperate actively with the administering agency

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

The applicant further agrees that it will refrain from entering into any contract 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. Certification of Non-segregated Facilities. (Required)

By the submission of a proposal, Proposer, offeror, applicant or subcontractor certifies that Proposer does not maintain or provide for Proposer's establishments, and that Proposer does not permit employees to perform their services at any location, under Proposer's control, where segregated facilities are maintained. Proposer certifies further that



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Proposer will not maintain or provide for employees any segregated facilities at any of Proposer's establishments, and Proposer will not permit employees to perform their services at any location under Proposer's control where segregated facilities are maintained. The Proposer, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this RFP and of the resulting contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

Proposer further agrees that (except where Proposer has obtained for specific time periods) Proposer will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that Proposer will retain such certifications in Proposer's files; and that Proposer will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

7. Drug Free (Recommended)

Suggested Language:

The **Contractor** shall establish procedures and policies that promote a drug-free work environment. The Contractor must notify its employees of these policies as well as the penalties that may be imposed if any type of violation occurs. The Contractor must notify the **non-federal entity** if any of its employees are criminally convicted of any offense related to the use of drugs in the work environment. Such notification shall be made within ten (10) days of the conviction being declared.

8. Small and Minority Enterprises, Women's Commercial Enterprises and Labor Surplus Area Enterprises (Required)

The contractor shall take the necessary affirmative action to ensure that minority enterprises, women's business enterprises and enterprises in the area of surplus labor are used in subcontracting where possible. Steps include, but are not therefore not:



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- A. Include qualified small and minority enterprises and women's business enterprises on application lists,
- B. Ensure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources,
- C. Divide total needs, where economically feasible, into smaller tasks or quantities to allow for maximum participation by small and minority enterprises and women's business enterprises;
- D. Establish delivery schedules, where permitted by the requirement, that encourage the participation of small and minority businesses and women's business enterprises; and
- E. Use the services and assistance of the Small Business Administration and the Department of Commerce's Minority Business Development Agency.
- F. For contracts of \$10,000 or more, the Successful Proposer must file Form HUD 2516 (Contract and Subcontract Activity) with the Puerto Rico Department of Housing, quarterly.

The NEFs and the contractor agree to comply with mandatory rules and policies related to the Hatch Act, Public Law 94-163, as amended.

The Hatch Act applies to the political activities of certain state and local employees. State and local employees involved in or interfering with the works and provisions set forth in this agreement and/or the grants made hereunder may engage in any of the following activities: being a candidate in nonpartisan elections; attend political meetings and conventions; contribute money; campaigning in partisan elections; and holding positions in political parties. State and local employees involved in or interfering with the works and provisions set forth in this contract and/or the grants made hereunder may not perform the following activities: being a candidate in partisan elections; using official influence to interfere in elections; coercing the political contributions of subordinates in support of political parties or candidates to the office of the special counsel. operates a website that provides guidance on incubation law issues.

9. Davis Bacon Act (Does not apply to the Public Assistance)

- a. **Standard.** 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 at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II(D). In accordance with the statute, contractors must be required to pay wages to laborers and



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mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

b. Applicability. The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**

c. Requirements. If applicable, the non-federal entity must do the following:

- i. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- ii. Additionally, pursuant 2 C.F.R. Part 200, Appendix II(D), contracts subject to the Davis-Bacon Act, must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti- Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non- Federal entity must report all suspected or reported violations to FEMA.
- iii. 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").



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FEMA suggests including the following contract clause:

Compliance with the Davis-Bacon Act.

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

10. Copeland "Anti-Kickback" Act (Does not apply to the Public Assistance)

This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies.

Each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity will report all suspected or reported violations to the Federal awarding agency.

FEMA suggests including the following contract clause:

Compliance with the Copeland "Anti-Kickback" Act.

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



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c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment

11. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (Required)

Where applicable, all contracts awarded by the non-Federal entity 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). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

FEMA suggests including the following contract clause:

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 (*Overtime requirements*), 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



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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 **(write in the name of the Federal agency or the loan or grant recipient)** 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.

12. Conflict of Interest (Required)

- a. Written Standards. The NFE must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. 2 C.F.R. § 200.318(c)(1).
- b. Personal Conflicts of Interest. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a FEMA award if he or she has a real or apparent conflict of interest. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties, has a financial or other interest in or a tangible personal benefit from a firm considered for award. 2 C.F.R. § 200.318(c)(1); See also Standard Form 424D, 7; Standard Form 424B, 3.
 - i. FEMA considers a "financial interest" to be the potential for gain or loss to the employee, officer, or agent, any member of his or her immediate



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- family, his or her partner, or an organization which employs or is about to employ any of these parties as a result of the particular procurement. The prohibited financial interest may arise from ownership of certain financial instruments or investments such as stock, bonds, or real estate, or from a salary, indebtedness, job offer, or similar interest that might be affected by the particular procurement.
- ii. FEMA considers an "apparent" conflict of interest to exist where an actual conflict does not exist, but where a reasonable person with knowledge of the relevant facts would question the impartiality of the employee, officer, or agent participating in the procurement.
- c. Gifts. The officers, employees, and agents of the NFE must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, NFEs may set standards for situations in which the financial interest is the minimums, not substantial, or the gift is an unsolicited item of nominal value. 2 C.F.R. § 200.318(c)(1).
 - d. Violations. The NFE's written standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the NFE. 2 C.F.R. § 200.318(c)(1). For example, the penalty for a NFE's employee may be dismissal, and the penalty for a contractor might be the termination of the contract.
 - e. Organizational Conflicts of Interest.
 - i. Parent, Subsidiaries, and or Affiliates. If a NFE has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the NFE must maintain written standards of conduct governing organizational conflicts of interest. Organizational conflicts of interest within this context means that because of relationships with a parent company, affiliate, or subsidiary organization, the NFE is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. 2 C.F.R. § 200.318(c)(2).
 - ii. Other Contractors. An organizational conflict of interest can also arise within the context of contractors that are not related organizations. An organizational conflict of interest arises in these cases where a person, because of other activities or relationships with other persons, is unable or potentially unable to render impartial assistance of advice to the NFE, the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. Chapter V, ¶ 1.b provides more information about such organizational conflicts of interest.
 - iii. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications,



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requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such requirements. 2 C.F.R. § 200.319(a).

13. Rights to Inventions Made Under a Contract or Agreement (Does not apply to the Public Assistance)

- a. **Standard.** If the FEMA award meets the definition of "funding agreement" under 37C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II(F).
- b. **Applicability.** This requirement applies to "*funding agreements*," but it **DOES NOT apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."
- c. **Funding Agreements Definition.** The regulation at 37 C.F.R. § 401.2(a) defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

14. Clean Air Act and the Federal Water Pollution Control Act (Required)

- a. **Standard.** If applicable, contracts must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II(G).



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- b. Applicability. This requirement applies to contracts awarded by a non-federal entity of amounts in excess of \$150,000 under a federal grant.

FEMA suggests including the following contract clause:

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the **(name of applicant entering into the contract)** and understands and agrees that the **(name of the applicant entering into the contract)** will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the **(name of the applicant entering into the contract)** and understands and agrees that the **(name of the applicant entering into the contract)** will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
2. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

15. Debarment and Suspension (Required)

- a. Standard. Non-Federal entities and 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



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regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).

b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

c. Requirements.

i. These regulations restrict awards, sub-awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II(H); and 2 C.F.R. §

200.213. A contract award must not be made to parties listed in the SAM Exclusions. SAM

Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530.

ii. In general, an "excluded" party cannot receive a Federal grant award or a contract within the meaning of a "covered transaction," to include sub-awards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and sub-recipients. The key to the exclusion is whether there is a "covered transaction," which is any non-procurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although "covered transactions" do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipients.

iii. Specifically, a covered transaction includes the following contracts for goods or services:

1. The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
2. The contract requires the approval of FEMA, regardless of amount.
3. The contract is for federally-required audit services.
4. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

iv. FEMA suggests including the following contract clause:

The suggested clause incorporates an optional method of verifying that contractors are not excluded or disqualified.



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Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by **(insert name of recipient/subrecipient/applicant)**. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to **(insert name of recipient/subrecipient/applicant)**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

16. Byrd Anti-Lobbying Amendment (Required)

a. Standard. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Each tier must 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 Federal awarding agency.

b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of \$100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.



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c. FEMA suggests including the following contract clause:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

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

- d. Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

(Required Certification is on the next page)



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APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING **Certification for Contracts, Grants, Loans, and Cooperative Agreements**

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official



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17. Procurement of Recovered Materials (Required)

- a. Standard. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with *Section 6002 of the Solid Waste Disposal Act*, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II(J); and 2 C.F.R. § 200.322.
- b. Applicability. This requirement applies to all contracts awarded by a non-federal entity under FEMA grant and cooperative agreement programs.
- c. Requirements. The requirements of Section 6002 include procuring only items designated in guidelines of the 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.
- d. **FEMA suggests including the following contract clause:**
 - i. 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 timeframe providing for compliance with the contract performance schedule;
 - b. Meeting contract performance requirements; or
 - c. At a reasonable price.
 - ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
 - iii. The Contractors also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

18. Domestic Preferences for Procurements (Required)

- a. Standard. As appropriate, and to the extent consistent with law, NFEs should, to the greatest extent practicable under a federal award, 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.



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- b. Applicability. For purchases in support of FEMA declarations and awards issued on or after November 12, 2020, all FEMA recipients and subrecipients are required to include in all contracts and purchase orders for work or products a contract provision encouraging domestic preference for procurements.
- c. **FEMA suggests including the following contract clause:**
"Domestic Preference 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."

19. Access to Records (Recommended)

- a. Standard. All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS/FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award 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. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, Section 1225 of the Disaster Recovery Reform Act of 2018 prohibits FEMA from providing reimbursement to any state, local, tribal, or territorial government, or private non-profit for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.
- b. **FEMA suggests including the following contract clause:**
Access to Records.



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The following access to records requirements apply to this contract:

- (1) The Contractor agrees to provide (**insert name of state agency or local or Indian tribal government**), (**insert name of recipient**), 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 until three (3) years after final payment under the Contract.
- (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 (**write the name of the non-federal entity**) 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.

20. Changes or Modifications (Recommended)

- a. Standard. To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.
- b. Applicability. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract.

All contract changes must be within the scope of the original contract. NFEs are not restricted from making minor adjustments contemplated fairly and reasonably by the parties when they entered into the contract. "Cardinal changes," however, present a problem.



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A cardinal change is a significant modification in contract work (property or services), costs, or time that causes:

- i. A major deviation from the original purpose of the work or the intended method of achievement; or
- ii. A revision of contract work, costs, or time so extensive, significant, or cumulative that the contractor is required to perform very different work from that described in the original contract.

Generally, FEMA will view a cardinal change to a contract as a noncompetitive award and evaluate whether the NFE meets the necessary conditions for using the procurement through noncompetitive proposal method (sole sourcing). If an NFE performs a cardinal change without meeting the exceptions to competitive procurements, then the NFE is noncompliant with the federal procurement under grant rules.

Sample language is not provided since the language of the clause may differ depending on the nature of the contract and the end-item procured.

21. DHS SEAL, LOGO, AND FLAGS (Recommended)

- a. **Standard.** Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).
- b. **Applicability.** FEMA recommends that all non-Federal entities place in their contracts a provision that a 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.
- c. **FEMA suggests including the following contract clause:**
"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."

22. Compliance with Federal Law, Regulations, and Executive Orders (Recommended)

- a. **Standard.** The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.
- b. **Applicability.** FEMA recommends that all non-Federal entities place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with



all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

c. FEMA suggests including the following contract clause:

"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."

23. No Obligation by Federal Government (Recommended)

b. Standard. FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.

b. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that states that the Federal Government is not a party to the 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.

c. FEMA suggests including the following contract clause:

"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."

24. Program Fraud and False or Fraudulent Statements or Related Acts (Recommended)

a. Standard. Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

c. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.



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d. **FEMA suggests including the following contract clause:**

"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."

25. Flood Protection Act 1973 (If Applicable)

The Successful Proposer will ensure that procedures and mechanisms are in place to monitor compliance with all flood insurance requirements as found in the Flood Disaster Protection Act of 1973, 24 CFR § 570.605.

26. Lead-Based Paint (If Applicable)

The Successful Proposer must comply with the regulations regarding lead-based paint found in 24 CFR § Part 35 on prevention of lead-based paint poisoning in certain residential structures with respect to all CDBG-DR funded assisted living units.

27. Religious Activity (If Applicable)

The non-federal entity and the Successful Proposer agree to refrain from using the funds related to this Agreement for inherently religious activities prohibited by 24 CFR 570,200(j), such as worship, religious instruction, or proselytizing.

28. Section 3 of the Housing and Urban Development Act of 1968 (If Applicable)

The work to be performed under the contract resulting from this RFP may be subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

Proposer agrees to comply with HUD's regulations in 24 C.F.R. part 135, which implement section 3, as may be applicable. As evidenced by their execution of the contract resulting from the RFP, the parties to the contract shall certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

The Proposer agrees to send to each labor organization or representative of workers with which the Proposer has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Proposer's commitments under this section 3 clause, and will



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post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall

describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The Proposer agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The Proposer will not subcontract with any subcontractor where the Proposer has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.

The Proposer will certify that any vacant employment positions, including training positions, that are filled: (1) after the Proposer is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the Proposer's obligations under 24 C.F.R. part 135. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of the contract for default, and debarment or suspension from future HUD assisted contracts.

With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25U.S.C. § 450e) also applies to the work to be performed under the contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).



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For contracts exceeding \$100,000, the Proposer shall submit Form HUD 60002 (Section 3 Summary Report) to NFE on a quarterly basis, notwithstanding the annual reporting requirement set forth in that form's instructions.

29. Section 109 of the Housing and Community Development Act of 1964 (If Applicable)

The Proposer shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

30. Section 503 of the Rehabilitation Act of 1973 (If Applicable)

(applicable to contracts and subcontracts over \$10,000). The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat

qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.



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The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Department of Labor. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Non-Federal Entity or other Government officials may direct to enforce such provisions, including action for noncompliance.

31. Section 504 of the Rehabilitation Act of 1973 (If Applicable)

The Proposer shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and any applicable regulations. The Proposer agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from HUD.

32. Energy Efficiency

The Proposer agrees to comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the Government of Puerto Rico's energy conservation plan issued in compliance with this Act.

33. Hold Harmless

The Proposer agree to indemnify, defend and hold harmless the Commonwealth of Puerto Rico, **(insert name of recipient/subrecipient/applicant)**, the FEMA Administrator, or any of their authorized representatives, for damages of any type whatsoever, either property, or to persons when arising out of or related to the



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negligence or intentionally misconduct of the Contractor in the performance of the services required in the Agreement and that affect the subsidized funds.

The Proposer release, discharge, and waive any action, either legal or equitable, that might arise by reason of any action of the above entities. In accordance with the above, the Proposer agrees to be responsible for any and all claims of causes of action, including any judgment action, debt, liability costs and attorney's fees or any other request for moneys of any type arising in the execution of the Contract.

The non-federal entity will include the provisions of this clause in the Contract with the successful bidder. Also, it is recommended to include a specific Hold and Harmless Agreement between the Contractor and de non-federal entity.

Sample language of the Hold and Harmless Agreement is not provided since the terms and conditions of the agreement may differ depending on the nature of the contract.

34. Provisions Required by Law Deemed Inserted (Recommended)

Each and every provision of law and clause required by federal law, regulation, executive order, policy, procedure, directive, Federal grant award or agreement, or cooperative agreement with any Federal agency to be inserted in this RFP or the resulting contract shall be deemed to be inserted herein and the RFP and the contract shall be read and enforced as though it were included herein. If, through mistake or otherwise, any provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall be amended to make such insertion or correction.