

# **REQUEST FOR QUALIFICATIONS**

**Town of Melbourne Beach, Florida**

**CONSULTING SERVICES FOR CIVIL, UTILITY  
AND STORMWATER ENGINEERING, SURVEY,  
GEOTECHNICAL  
AND ARCHITECTURAL SERVICES**



**Date: March 7, 2025**

**INVITATION TO  
BID  
REQUEST FOR QUALIFICATIONS  
TOWN OF Melbourne Beach,  
FLORIDA  
CONSULTING SERVICES FOR CIVIL, UTILITY AND STORMWATER  
ENGINEERING,  
SURVEY, GEOTECHNICAL AND ARCHITECTURAL  
SERVICES**

Pursuant to Section 287.055, Florida Statutes, the Town of Melbourne Beach (Town) invites qualified firms to submit statements of their qualifications to provide engineering and consulting services to the Town in response to this Request for Qualifications (RFQ).

Proposals for the Request for Qualifications for Consulting Services for Civil, Utility and Stormwater Engineering, Survey, Geotechnical and Architectural Services for the Town of Melbourne Beach, Florida, will be received at the Town Manager's office, located at 507 Ocean Avenue, Melbourne Beach, Florida, **until 3:00 P.M. on Friday April 4, 2025**. Bids received after the above time and date will be returned unopened.

There will be a pre-proposal meeting at **2:00 P.M. on Friday, March 28, 2025**. The meeting will be held in the Community Center, 507 Ocean Avenue, Melbourne Beach, FL 32951.

**SCOPE OF SERVICES:** *The scope of work may include, but is not limited to the following services: testing, evaluation, planning, design, permitting, bidding assistance, construction contract administration, and construction phase services including inspection. Other services may include grant assistance, biological/environmental assessment and other services deemed necessary by the Town. Individual work assignments will be assigned as they arise through negotiated Task Orders.*

Copies of the Request for Qualifications may be obtained from Town Hall, located at 507 Ocean Avenue, Melbourne Beach, Florida or on our website under Departments/ Town Manager. The Town Manager, Elizabeth Mascaro, can be contacted by telephone at (321) 724-5860 and email at [townmanager@melbournebeachfl.org](mailto:townmanager@melbournebeachfl.org). Any addenda to these documents will be issued via electronic mail. Direct all questions in writing to the Town Manager.

Proposals shall  
be:

1. Submitted in the required format listed in the RFQ.
2. Submitted in an envelope marked "**Request for Qualifications, CONSULTING SERVICES FOR CIVIL, UTILITY AND STORMWATER ENGINEERING, SURVEY, GEOTECHNICAL AND ARCHITECTURAL SERVICES, for the Town of Melbourne Beach, Florida**". In addition, the bidders name and address shall be shown on the outside of the envelope. Facsimile submittals will not be accepted.
3. Proposals should be mailed or hand delivered to the Town of Melbourne Beach Director, Attention: Elizabeth Mascaro - Town Manager, 507 Ocean Avenue, Melbourne Beach, Florida 32951

The Town of Melbourne Beach is not responsible for the U.S. Mail or private couriers regarding mail being delivered by the specified time so that a submittal can be considered. Proposals by telephone, telegraph, or FAX will not be accepted.

The Town of Melbourne Beach reserves the right to waive informalities deemed to be in the best interests of the Town and to reject any or all bids.

TOWN OF MELBOURNE BEACH

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## **SECTION 1**

### **INTRODUCTION**

The Town of Melbourne Beach (hereinafter referred to as "Town") is requesting Statements of Qualifications to contract for Consulting Services for CIVIL, UTILITY AND STORMWATER ENGINEERING, SURVEY, GEOTECHNICAL AND ARCHITECTURAL SERVICES. This solicitation shall be part of the Consultants Competitive Negotiation Act process as mandated in F.S.287.055.

**RFQ DUE DATE & TIME: Friday, April 4, 2025 AT 3:00 P.M.** Qualifications packages shall be mailed or hand-delivered to Town Hall, located at 507 Ocean Avenue, Melbourne Beach, FL 32951. Packages are to be received **NO LATER THAN 3:00 P.M.** Packages received after the specified time and date will not be accepted. The Town will not be responsible for mail delays, late or incorrect deliveries. The time as determined by the computer located at the Front Office located at 507 Ocean Avenue, Melbourne beach, FL shall be the official authority for determining late responses.

All RFQ information and required attachments must be executed and submitted in a sealed envelope. Respondent shall mark envelope "**Request for Qualifications, CONSULTING SERVICES FOR CIVIL, UTILITY AND STORMWATER ENGINEERING, SURVEY, GEOTECHNICAL AND ARCHITECTURAL SERVICES, for the Town of Melbourne Beach, Florida**". Respondent's name and return address must be clearly identified on the outside of the envelope.

These documents constitute the complete set of terms and conditions, specification requirements, and forms. Any additional information should be attached to this format or the respondent may be disqualified.

Respondents shall submit four (4) complete sets (one (1) original (marked "ORIGINAL"), and three (3) copies) of their response, complete with all supporting documentation. Responses submitted by facsimile or electronically will NOT be accepted. Responses, which do not comply with these requirements, may be rejected at the option of the Town. It is the respondent's responsibility to ensure that Proposal submittals are in accordance with all addendums issued. Failure of any respondent to receive any such addendum or interpretation shall not relieve such respondent from its terms and requirements. Addendums will be issued by the Town via email.

Responses not submitted in the format set forth herein shall be rejected unless otherwise explained in the response documents.

For information concerning procedure for responding to this Request for Qualifications (RFQ), contact Elizabeth Mascaro, Town Manager at (321) 724-5860. Such contact is to be for clarification purposes only. Material changes, if any, to the scope of services or respondent procedures will only be transmitted by written addendum.

All questions about the meaning or intent of the RFQ Documents shall be submitted in writing and directed to the Town of Melbourne Beach, 507 Ocean Avenue, Melbourne Beach, FL 32951, Attention: Elizabeth Mascaro, Town Manager. Questions may also be sent by e-mail [at townmanager@melbournebeachfl.org](mailto:townmanager@melbournebeachfl.org). Questions received less than five (5) calendar days prior to the

due date for the responses will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect and may not be relied upon by respondent in submitting their response.

### **STANDARD TERMS & CONDITIONS**

**ACCEPTANCE AND REJECTION** - The Town reserves the right to accept or reject any and all responses and to accept the response which best serves the interest of the Town of Melbourne Beach. The Town may award sections individually or collectively, whichever is in its best interest, unless the respondent only intends to respond for the contract in its entirety.

**ASSIGNMENT** - Neither the contract nor payment due may be assigned.

**AWARD** - Award shall be made to the consultant that demonstrates technical capability while most closely meeting the Town's needs according to the criteria designated in the solicitation.

**CONFLICT OF INTEREST** - The respondent certifies that this response has not been arrived at collusively or otherwise in violation of federal, state or local laws. Any purchase order, check requisition or contract from which any agent, officer or employee of the Town or any relative thereof, will realize a financial gain, directly or indirectly, shall be void, except that before the execution of a purchase order, check requisition or contract, the Commission shall have the authority to waive compliance with this section when it finds such action to be in the best interest of the Town.

**DEVIATION FROM SPECIFICATION** - Any deviation from specifications must be clearly stated, explained in detail and accepted by the Town in writing. Otherwise, items offered are expected to be in strict compliance with specifications and the successful response shall be held accordingly.

**DISCRIMINATION STATEMENT:** An entity or affiliate placed on the Discriminatory Vendor List may not submit a response for a contract to provide goods or services to a public entity, may not submit a response on a contract with a public entity for the construction or repair of a public building or perform any public work, may not submit Proposals for leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under any contract with any public entity, and may not transact business with any public entity.

**ECONOMY OF PREPARATION:** The responses should be prepared simply and economically, providing a straightforward, concise description of the respondent's qualifications and ability to fulfill the requirements of the RFQ.

**INFORMALITIES** - The Town of Melbourne Beach reserves the right to both waive any minor informality in responses and to determine, in its sole discretion, whether or not informality is minor.

**INFORMATION AND LITERATURE** - Respondents are to furnish all information and literature requested. Failure to do so may be cause for rejection.

**INTERPRETATIONS** - Any questions concerning conditions and specifications shall be directed to the attention of Elizabeth Mascaro, Town Manager. Interpretations that may affect the eventual outcome of this RFQ will be furnished in writing to all prospective potential respondents. No interpretation shall be considered binding unless provided in writing by the Town of Melbourne Beach.

**NON-DISCRIMINATION** - The successful respondent will comply with all federal and state requirements concerning fair employment and will not discriminate by reason of race, color, age, religion, sex, national origin or physical handicap.

**PATENTS AND COPYRIGHTS** - The respondent will agree to hold harmless the Town of Melbourne Beach, its officers, agents and employees from liability of any kind, including cost and expenses, with respect to any claim, action, cost or judgment for patent or copyright infringements.

**PAYMENTS** - Upon acceptance of work by using the Finance Department of the Town, employees and others, the Town shall make payment to the Contractor in accordance with the Florida Prompt Payment Act, Section 218.70, Florida Statutes.

**PUBLIC ENTITY CRIMES** - A person or affiliate who has been placed on the Convicted Vendor List following a conviction for a public entity crime may not submit a response on a contract to provide any goods or services to a public entity, may not submit a response on a contract with a public entity for the construction or repair of a public building or perform any public work, may not submit a response for leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the Convicted Vendor List.

**PUBLIC RECORDS:** Florida law provides that municipal records shall at all times be open for personal inspection by any person. Section 119.01 F.S., The Public Records Law. Information and materials received by the Town in connection with an RFQ response shall be deemed to be public records subject to public inspection upon award, recommendation for award, or 10 days after opening, whichever occurs first. However, certain exemptions to the public records law are statutorily provided for in Section 119.07, F.S. If the respondent believes any of the information contained in his or her response is exempt from the Public Records Law, then the respondent must in his or her response, specifically identify the material, which is deemed to be exempt and cite the legal authority for the exemption, otherwise, the Town will treat all materials received as public records.

**TERMINATION FOR CAUSE:** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the provisions of this Agreement, the Town may, upon written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement, or with such part or parts of the Agreement as to which there has been default, and may hold the Contractor liable for any damages caused to the Town by reason of such default and termination. In the event of such termination, any completed services performed by the Contractor under this Agreement shall, at the option of the Town, become the Town's property and the contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the Town. The Contractor, however, shall not be relieved of liability to the Town for damages sustained by the Town by reason of any breach of the Agreement by the Contractor, and the Town may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the Town from the Contractor can be determined.

**TERMINATION FOR CONVENIENCE:** The Town reserves the right, in its best interest as determined by the Town, in its sole discretion, to cancel the contract by giving written notice to the Contractor thirty (30)-days prior to the effective date of such cancellation.

TIME FOR CONSIDERATIONS - Proposals will be irrevocable after the time and date set for the opening of Proposals and for a period of ninety (90)-days thereafter.

TRADE SECRETS - Respondents should not send trade secrets. If, however, trade secrets are claimed by any respondent, they will not be considered as trade secrets until the Town is presented with the alleged secrets together with proof that they are legally trade secrets. The Town will then determine whether it agrees and consents that, they are in fact trade secrets. If a respondent fails to submit a claim of trade secrets to the Town before obtaining the Town's agreement, any subsequently claimed trade secrets will be treated as public records and will be provided to any person or entity making a public records request for the information (F.S. 119.01).

### **SPECIAL CONDITIONS**

ADDENDUM AND AMENDMENTS TO REQUEST FOR QUALIFICATIONS: If it becomes necessary to revise or amend any part of this Request for Qualifications, the Town will furnish the revision by written Addendum to all prospective respondents who are recorded with the Town as having received an original Request for Qualifications.

INDEMNIFICATION STATEMENT – By submitting a response document signed by an authorized agent of the respondent, respondent acknowledges and accepts the terms and conditions of the following Indemnification Statement in the event of contract award:

"For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor shall indemnify, hold harmless and defend the Town of Melbourne Beach, its officers, agents, officials, representatives and employees (hereinafter the "Town") against any and all liability, loss, cost, damages, expenses, claim or actions, of whatever type, including but not limited to attorney's fees and suit costs, for trial and appeal, which the Town may hereafter sustain, incur or be required to pay, arising out of, wholly or in part, or due to any act or omission of Contractor, its agent(s), vendors, contractors, subcontractor(s), representatives, servants, or employees in the execution, performance or nonperformance or failure to adequately perform contractor's obligations pursuant to this contract."

LIMITATION OF LIABILITY STATEMENT – By submitting a response document signed by an authorized agent of the respondent, respondent acknowledges and accepts the terms and conditions of the following Limited Liability Statement in the event of contract award:

"The TOWN desires to enter into this Agreement only if in so doing the TOWN can place a limit on the TOWN's liability for any cause of action arising out of the Agreement, so that the TOWN's liability for any breach never exceeds the sum of \$100. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CONTRACTOR expresses its willingness to enter into this Agreement with the knowledge that the CONTRACTOR's recovery from the TOWN to any action or claim arising from the Agreement is limited to a maximum amount of \$100 less the amount of all funds actually paid by the TOWN to CONTRACTOR pursuant to this Agreement. Accordingly, and notwithstanding any other term or condition of this Agreement that may suggest otherwise, CONTRACTOR agrees that the TOWN shall not be liable to CONTRACTOR for damages in the amount in excess of \$100, which amount shall be reduced by the amount actually paid by the TOWN to CONTRACTOR pursuant to this Agreement, for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended either to be a waiver of the limitation placed upon the TOWN's liability as set forth in Section 768.28 Florida Statutes, or to extend the TOWN's liability beyond the limits established in said Section 768.28 Florida Statutes;



and no claim or award against the TOWN shall include attorney's fees, investigative costs, expert fees, suit costs or pre-judgment interest."

**PROPOSER EXPENSES** - No out-of-scope services shall be provided in the absence of prior, written authorization in the form of a written supplemental agreement and issuance of an appropriate amendment to the contract. The Town will not pay a retainer or similar fee. The Town is not responsible for any expenses that respondent may incur in preparing and submitting responses called for in this request. The Town will not pay for any out-of-pocket expenses, such as word processing; photocopying; postage; per diem; travel expenses; and the like, incurred by the respondent. The Town will not be liable for any costs incurred by the respondent in connection with any interviews/presentations (i.e., travel, accommodations, etc.).

**REQUEST FOR ADDITIONAL INFORMATION/CLARIFICATION:** The respondent shall furnish such additional information/clarification as the Town may reasonably require. This includes, but is not limited to, information that indicates financial resources as well as the ability to provide and maintain the services requested. The Town reserves the right to make investigations of the qualifications of the respondent as it deems appropriate including, but not limited to, a background investigation of service personnel to be conducted by the Town of Melbourne Beach Police Department or its designees.

**REQUEST FOR MODIFICATION:** The Town reserves the right to negotiate a final agreement with the top-ranked respondent(s) to meet the needs of the Town.

**TERMS:** The initial contract period shall be for FIVE (5) years and will begin as of the date on the Notice of Award. The terms will allow for renewals of the agreement of both parties. Contract renewal(s) may be based upon satisfactory performance and funding as made available by the Town through its regular budgeting process on an annual basis.

### **STANDARD INSURANCE REQUIREMENTS**

The Certificate of Insurance should be made to the Town of Melbourne Beach, 507 Ocean Avenue, Melbourne Beach, FL 32951 and should reference the operation and name the Town as an additional insured.

Prior to renewal, non-renewal, cancellation, or change or modification of any insurance policy, at least 30 days advance written notice shall be given to the Town of Melbourne Beach.

**All** Certificates of Insurance shall be approved by the Town **prior** to the commencement of any work. Minimum coverage with limits and provisions are as follows:

#### **COMMERCIAL GENERAL LIABILITY INSURANCE:**

It is required that individuals and firms contracting with the Town of Melbourne Beach, maintain Commercial General Liability insurance with a minimum per occurrence limit of not less than \$1,000,000 and with a deductible not greater than \$1,000. It is further required that the Town of Melbourne Beach be named as an additional insured to the contractor's CGL policy, and that proof of same in the form of a certificate of insurance be submitted before work is begun.

#### **AUTOMOBILE LIABILITY INSURANCE:**

It is required that individuals and firms contracting with the Town of Melbourne Beach who own licensed

motor vehicles that will be utilized in connection with any Town contract or job maintain automobile liability insurance and submit proof of same in the form of a certificate of insurance before work is begun. It is further required that individuals and firms contracting with the Town of Melbourne Beach who lease, rent, or borrow licensed motor vehicles that will be utilized in connection with any Town contract or job be required to maintain non-owned or hired automobile liability insurance and submit proof of same in the form of a certificate of insurance before work is begun.

#### **PROFESSIONAL LIABILITY INSURANCE:**

Professionals and professional corporations, associations, and firms who contract with the Town of Melbourne Beach to provide professional services are required to maintain Professional Liability Insurance and submit proof of same in the form of a certificate of insurance before work is begun.

#### **WORKERS' COMPENSATION INSURANCE:**

It is required that firms employing four or more people who contract with the Town of Melbourne Beach maintain Workers' Compensation Insurance at the statutory limits and employer liability insurance and submit proof of same in the form of a certificate of insurance before work is begun.

It is required that firms employing less than four people who contract with the Town of Melbourne Beach comply with the exemption and notice provisions of F.S. 440 and maintain employer liability insurance and submit proof of same in the form of a certificate of insurance before work is begun.

However, if you are a corporate officer of a corporation that is actively engaged in the construction industry, or a sole proprietor or partner who is actively engaged in the construction industry, then your exemption will not apply to any work performed at a commercial building project valued at \$250,000 or greater and you must secure workers' compensation coverage in accordance with F.S. 440.38 and these general conditions and submit proof of same in the form of a certificate of insurance before work is begun.

## **SECTION II**

### **1. GENERAL INFORMATION**

The Town of Melbourne Beach is requesting Statements of Qualifications from qualified consulting firms in the state of Florida. This solicitation shall be part of the Consultants Competitive Negotiation Act process as mandated in F.S.287.055. The Town reserves the right to enter into contract with more than one firm in different categories of work and to classify the type of work awarded to selected consultant(s).

### **2. SCOPE OF SERVICES**

The scope of work may include, but is not limited to the following services: testing, evaluation, planning, design, permitting, bidding assistance, construction contract administration, and construction phase services including inspection. Individual work assignments will be assigned as they arise through negotiated Task Orders.

The firms will be expected to incorporate innovations and best practices relative to environmental sensitivity in all projects. Evaluation criteria may be based on typical availability to expedite tasking, abilities concerning effective quality control, construction management, error management, and value

engineering. Other criteria for selection may include previous experience, location & references, and ability to meet deadlines.

Additional related services may also be requested by the Town of Melbourne Beach. Authorization to perform tasks will be given on an individual task order basis in accordance with Town of Melbourne Beach Purchasing guidelines and budgetary restraints.

### 3. MINIMUM RESPONDENT QUALIFICATIONS

A copy of the Statements of Qualification requirements will be available beginning **March 5, 2025** from the office of the Town Manager located at 507 Ocean Avenue, Melbourne Beach, FL 32951.

One (1) Marked as "**Original**" qualification package and three (3) copies must be submitted.

The Town reserves the right to reject any or all Statements of Qualification or any portion thereof, with or without cause, to waive technical errors and informalities, and to accept the firm, which, in its judgment will best serve the Town.

Qualified firms wishing to respond to this RFQ must provide all services described in this document, whether directly or through sub-consultants. The Town reserves the right to approve or disapprove any sub-consultants. This does not, however, limit the use of qualified sub-consultants.

The successful respondent will appoint one of its employees as the key contact for approval by the Town's Project Manager.

It is the Town's belief that the service required is adequately described herein. Therefore, any negotiated contract or Task Order, which may result from this RFQ, must include the entire effort required of the respondent to provide the service described. Specifically, no additional fees shall be allowed for any additional services performed for any reasons whatsoever except those directly attributable to the Town's errors or omissions. A provision to this effect shall be included in any negotiated contract.

### SECTION III

#### PROPOSAL SUBMITTALS

For the response to be considered, one (1) original **marked "ORIGINAL"**, and three (3) copies of the proposal must be received by the Town of Melbourne Beach on or before **3:00 P.M. Wednesday, April 2, 2025**.

Respondents must include the following information and should use the following format when compiling their responses. Sections should be tabbed and labeled; pages should be sequentially numbered at the bottom of the page.

**Title Page (1 page maximum):** Title Page shall show the Request for Qualification subject and title; "**Request for Qualifications, CONSULTING SERVICES FOR CIVIL, UTILITY AND STORMWATER ENGINEERING, SURVEY, GEOTECHNICAL AND ARCHITECTURAL SERVICES, for the Town of Melbourne Beach, Florida**"; the firm's name; the name, address, telephone number and email address of a contact person; and the date of the proposal.

**Cover Letter (2 pages maximum):** The response shall contain a cover letter signed by a person who is authorized to commit the offeror to perform the work included in the RFQ and should identify all materials and enclosures being forwarded in response to the RFQ. **The cover letter shall clearly indicate**

**which category (or categories) of work for which the firm wishes to be considered.**

**Table of Contents (1 page maximum):** The Table of Contents shall provide a listing of all major topics, their associated section number, and starting page.

**Executive Summary:** The Executive Summary section of the proposal shall be limited to two (2) typewritten pages. The purpose of the Executive Summary is to provide a description of the offeror's ability to meet the requirements of the RFQ.

**General Information:** The General Information section of the proposal shall be limited to two (2) typewritten pages. The purpose of the General Information section is to provide a brief discussion of Proposers business history and current purpose/function in the marketplace.

**Summary of Qualifications:** The Summary of Qualifications section of the proposal shall be limited to two (2) typewritten pages **per category, which the consultant wishes to be considered.** Indicate the Proposers background in providing these services to governmental entities. Provide a listing of comparable client references that are using the Proposers professional services, (i.e., client name, address, telephone number, contact person and length of time service was provided). Indicate specifically the members of the firm who will have primary responsibility for the Town's contract. Also, indicate all key individuals and their tasks and/or areas of expertise. Innovative approaches to projects should be highlighted. **Each category should be tabbed for ease of evaluation.**

**Resumes and Attachments (5 pages maximum):** Resumes and additional information which the offeror feels will assist in the evaluation should be included.

## SECTION IV

### **REQUEST FOR QUALIFICATION TIME LINE**

The anticipated schedule for this RFQ is as follows: Ranking based on written submittals will be made within thirty (30)-days of submittal of the qualification package. If Oral interviews are required, Interviews will be scheduled within sixty (60)-days of submittal of written qualifications and final ranking within thirty (30) days of oral interview dates.

### **EVALUATION PROCEDURE**

All responses will be subject to a review and evaluation process. It is the intent of the Town that all consultants responding to this RFQ who meet the requirements shall be ranked in accordance with the criteria established in these documents. The Town will consider all responsive and responsible responses received in its evaluation and award process. The Town will appoint a committee to evaluate the submittals.

The Town's evaluation criteria will include consideration of, but will not be limited to the following:

- 1) Responsiveness of the consultant related to the Scope of Work;
- 2) The ability, capability and skill of the consultant to perform the contract;
- 3) The quality, availability and adaptability of the supplies or contractual services to the particular use required;
- 4) The ability of the proposer to provide future service for the use of the subject of the contract;
- 5) The sufficiency of the financial resources and ability of the consultant's personnel to perform the contract or service;

- 6) Whether the consultant has performed similar contracts within the time specified, without delay or interference;
- 7) The character, integrity, reputation, judgment, experience and efficiency of the consultant;
- 8) The quality of performance of previous contracts;
- 9) The previous and existing compliance by the proposer with laws and ordinances relating to the scope of services;
- 10) Responsiveness of client references;
- 11) Location as it relates to the ability of the consultant to provide requested services;
- 12) Such other information as may be secured deemed applicable by the Town.

## **CRITERIA**

Firms meeting the mandatory criteria will have their proposals evaluated and scored for qualifications in categories, which they have been requested to be considered. The following represent the principal selection criteria which will be considered during the evaluation process.

### 1) Mandatory Elements

- a) The firm is independent and licensed to practice in Florida.
- b) The firm has no conflict of interest with regard to any other work performed by the firm for the Town of Melbourne Beach.

### 2) Experience and Qualifications

- a) Has the firm successfully completed work for the Town in the past?
- b) Location of firm's office and personnel
- c) How well has the firm demonstrated experience completing similar projects on time and within budget?
- d) How successful is the general history of the firm regarding timely and successful completion of projects?
- e) Do the individuals assigned to the project have experience on similar projects?
- f) Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the project requires?
- g) How knowledgeable are the offeror's personnel of the local area; and how many individuals have worked in the area previously?
- h) How extensive is, the applicable education and experience of the personnel designated to work on the project?
- i) Has the firm provided innovative solutions on previous projects?

During the evaluation process, top-ranked firms may be asked to participate in oral interviews. Such interviews will provide firms with an opportunity to answer any questions the Town may have on a firm's proposal. Not all firms may be asked to participate in such interviews.

## **SELECTION PROCESS**

In general, the Town wishes to avoid the expense to the Town and to proposers of unnecessary presentations. Therefore, the Town will make every reasonable effort to achieve the ranking using written submittals alone. If no single top-ranked firm(s) can be clearly identified by review of the written submittals alone, then the evaluator(s) shall request to schedule the top ranked firm(s) for interviews (up



# EXHIBIT "A"

## FEMA Required and Recommended Contract Provisions

### 2 C.F.R. s 200.326 Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. §200.326.

All recipients of federally funded grants or use federal assistance to support procurements must comply with the applicable provisions of the Federal procurement standards 2 CFR Part 200. As a result, firms awarded federally funded contracts by the Town of Melbourne Beach, must comply with the following contract provisions set forth herein, unless a particular award term or condition specifically states otherwise. These terms and conditions are hereby incorporated into any resulting contract.

Definition: *Firm/Contractor* means any company, corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, governmental body or similar legal entity.

1. **Remedies.**

Contracts for more than the federal simplified acquisition threshold (SAT), the dollar amount below which an NFE may purchase property or services using small purchase methods, currently set at \$250,000 for procurements made on or after June 20, 2018, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and must provide for sanctions and penalties as appropriate.

2. **Termination for Cause and Convenience.**

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. See 2 C.F.R. Part 200, Appendix II, i B.

3. **Equal Employment Opportunity.**

Per 41 C.F.R. Part 60-1.4(b) all suppliers, respondents sub-respondents and consultants, shall include 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, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 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 (7) 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 the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the



supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract 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.”

- 4.) Contract Work Hours and Safety Standards Act.** All contractors, suppliers, Respondents, sub-respondents, consultants, and sub-consultants must comply with the *Contract Work Hours and Safety Standards Act* (40 U.S.C. 3701–3708) and where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

Where applicable, all contracts awarded by the NFE of more than \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with statutory requirements on work hours and safety standards as stated under 40 U.S.C. § 3702 and 40 U.S.C. § 3704. Relevant definitions are at 40 U.S.C. § 3701 and 29 C.F.R. § 5.2.

Required Language:

“Compliance with the Contract Work Hours and Safety Standards Act.

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (insert name of grant recipient or sub 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.”

Additional Recommended Language:

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

“Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. (2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.”

5) Clean Air Act and the Federal Water Pollution Control Act. All contractors, suppliers, Respondents, sub-respondents, consultants, and sub-consultants must comply with 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—when contract amounts exceed \$150,000 and agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387).

a. Compliance language for contracts of amounts in excess of \$150,000:

"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 the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), 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 state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), 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."

6. **Debarment and Suspension.** All contractors, suppliers, Respondents, sub-respondents, consultants, and sub-consultants are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, and 2 C.F.R. Part 180. 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 or activities.

This requirement applies to all FEMA grant and cooperative agreement programs. The debarment and suspension clause is required for all contracts and subcontracts for \$25,000 or more, all contracts that require the consent of an official of a federal agency, and all contracts for federally required audit services. NFEs, even for procurements under \$25,000, must also comply with the regulation requiring non state entities to only award contracts to responsible vendors.

"Suspension and Debarment:

This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 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).

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

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

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 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."

7. **Byrd Anti-Lobbying Amendment.** All contractors, suppliers, Respondents, sub-respondents, consultants, and sub-consultants must comply with the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Suppliers, Respondents, sub-respondents, consultants, and sub-consultants 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 an 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.

APPENDIX A. 44 C.F.R. PART 18 -CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000). See Required Forms Section 7.

8. **Procurement of Recovered Materials.** All contractors, suppliers, Respondents, and sub Respondents, consultants, sub-consultants 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. This required contract provision applies to all procurements over \$10,000 made by a state agency or an agency of a political subdivision of a state and its contractors.

“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:

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.”

9. **Prohibition on Contracting for Covered Telecommunications Equipment or Services**

2 C.F.R. 200.216 prohibits non-federal entities receiving federal grant funds from entering into a contract (or extend or renew a contract) to procure or obtain equipment, services, or system that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system from the Chinese manufacturers Huawei and ZTE.

Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), prohibit the obligation or expending of federal award funds on certain telecommunication products or from certain entities for national security reasons. Effective August 13, 2020, FEMA recipients and sub recipients, as well as their contractors and subcontractors, may not obligate or expend any FEMA award funds to:

- a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or
- c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

“Prohibition on Contracting for Covered Telecommunications Equipment or Services

- (a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in

FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause.

(b) Prohibitions.

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

(c) Exceptions.

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

(d) Reporting requirement.

- (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information

in paragraph (d)(2) of this clause to the recipient or sub recipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

- (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts.

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

## 10. **Domestic Preferences for Procurements**

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

1. **Access to Records.** In general all official project records and documents must be maintained during the operation of this project and for a period of five years following close out. The City of Mount Dora, 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 of the Administering Agency which are pertinent to the execution of the Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, 'of XXVI (2013).

The following contract language should be used:

“The Contractor agrees to provide (insert non-federal entity), (insert name of pass-through entity, if applicable), 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.

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.

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.

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the (insert 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.”

2. **Additional FEMA Requirements.**

The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts.

a. **Changes**

“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. 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. The language of the clause may differ depending on the nature of the contract and the end-item procured.”

3. **Compliance with Federal Law, Regulations, And Executive Orders and Acknowledgement of Federal Funding**

Contractor acknowledges 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.

4. **No Obligation by Federal Government**

This is an acknowledgement 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.

5. **Program Fraud and False or Fraudulent Statements or Related Acts**

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

6. **Affirmative Socioeconomic Steps**

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

7. **Copyright and Data Rights**

“License and Delivery of Works Subject to Copyright and Data Rights -

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

8. **DHS Seal, Logo, and Flags.**

a. All non-Federal entities must 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. See DHS Standard Terms and Conditions, v 3.0, r: XXV (2013).

b. The following provides a contract clause regarding DHS Seal, Logo, and Flags:

"The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre approval."

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**EXHIBIT "B"**  
**FEMA Required and Recommended Contract**  
**Provisions**

2 C.F.R. Part 200, Appendix II, Required Contract Clauses

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## APPENDIX II TO CFR 200 –

### Contract Provisions For Non-Federal Entity Contracts Under Federal Awards And Other Required Clauses

APPENDIX II TO CFR 200 – Contract Provisions For Non-Federal Entity Contracts Under Federal Awards. In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

A. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, 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.

B. 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 affected and the basis for settlement.

C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

D. 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”). In accordance with the statute, contractors must be 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. In addition, contractors must be required to pay wages not less than once a week. 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. The contracts 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 (29 CFR 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 Act provides that each contractor or sub-recipient 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 the Federal awarding agency.

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

F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub recipient must comply with the requirements of 37 CFR 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 the awarding agency.

G. 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 sub grants 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 (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 the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). 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).

H. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM 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.

I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must 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 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 non-Federal award.

J. 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. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 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 during 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.

K. Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and sub recipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115- 232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also § 200.471.

L. Domestic preferences for procurements

(a) As appropriate and to the extent consistent with law, the non-Federal entity 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 (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all sub awards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) “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.

- (2) "Manufactured products" means 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.

## **American Rescue Plan Act Required Contract Clauses**

### **A. EQUAL EMPLOYMENT OPPORTUNITY**

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 employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

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

(5) The contractor will comply with all provisions of Executive Order 11246 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 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 vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and sub-contractors 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.

## B. INCREASING SEAT BELT USE IN THE UNITED STATES

It is encouraged that the contractor adopts and enforces on the job seat belt policies and programs when operating company owned, rented or personal owned vehicles. The contractor is encouraged to include this clause in subcontract that is issued.

## C. REDUCING TEXT MESSAGING WHILE DRIVING

It is encouraged that the contractor adopts and enforces policies and programs that ban text messaging

while driving or operating company owned, rented or personal owned vehicles. The contractor is encouraged to include this clause in subcontract that is issued.

#### D. ACCESS TO RECORDS

- (1) The contractor agrees to provide the Town of Melbourne Beach, State of Florida, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The contractor agrees to provide the Town of Melbourne Beach, State of Florida, the Comptroller General of the United States, or any of their authorized representative's access to construction or other work sites pertaining to the work being completed under the contract.

#### E. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

If subcontractors are let, the contractor shall take all affirmative steps listed below in the procurement of subcontractors:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- (5) Using the services and assistance, as appropriate, of such organizations as the small business administration and the minority business development agency of the Department of Commerce.

#### F. CHANGES

The Town, without invalidating this Contract, may order changes in the Work within the general scope of this Contract consisting of additions, deletions, or other revisions, the Contract price and time being adjusted accordingly. All such changes in the Work shall be authorized by a written Addendum to this Contract, and shall be executed under the applicable conditions of the Contract. If the Contractor plans to make a claim for an increase in the Contract price or an extension in the Contract Schedule/Term, he shall first give the Town written notice thereof, such notice shall be given within ten (10) calendar days after the occurrence of the event giving rise to such a claim. The Contractor shall give this written notice to the Town, and a written approval secured from the Procurement Manager, before proceeding to execute the Work, except in an emergency endangering life or property, in which case the Contractor shall immediately proceed. No claim for extra work will be considered valid by the Town unless first submitted in writing.

#### G. ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

- (1) Contractor ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, As amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to

discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

(2) Contractor acknowledges that Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Contractor understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury’s implementing regulations. Accordingly, Contractor shall initiate reasonable steps, or comply with the Department of the Treasury’s directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Contractor understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient’s programs, services, and activities.

(3) Contractor agrees to consider the need for language services for LEP persons when Contractor develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

(4) Contractor acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Contractor and Contractor’s successors, transferees, and assignees for the period in which such assistance is provided.

(5) The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

#### H. COPELAND ANTI-KICKBACK ACT

(1) The contractor hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the following clause:  
i. “Contractor. The contractor shall comply with 18 U.S.C. Statute 874, 40 U.S.C. Statute 3145, and the requirements of 29 CFR pt. 3 as may be applicable, which are incorporated by reference into this contract.”

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause in (1)I above and such other clauses as the Secretary 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 the contract clauses.



(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR Section 5.12.

I. FEDERAL DRUG FREE WORKPLACE Contractor agrees to comply with the drug-free workplace requirements for federal Contractors pursuant to 41 U.S.C.A. § 8102.

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