

FEDERAL CONTRACT COMPLIANCE (FEMA)

In the event performance of this Agreement will be funded in whole or in part by federal funds, the Contractor shall comply with the following provisions, as applicable:

[Federally Assisted Construction Contracts]

1. **Equal Employment Opportunity (41 C.F.R. Part 60)**. During the performance of this Agreement, the Contractor agrees as follows:

(a) 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 steps 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.

(b) 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.

(c) 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 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.

(d) 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' representative 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.

(e) 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.

(f) 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.

(g) In the event of the Contractor's noncompliance with the non-discrimination 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 further 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.

(h) The Contractor will include the foregoing provisions in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to 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 US to enter into such litigation to protect the interest of the US.

[Federally Assisted Construction Contracts in excess of \$2,000]

2. **Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148).**

(a) All transactions regarding this agreement shall be in compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) and the requirements of 29 C.F.R. Part 5 as may be applicable. The Contractor shall comply with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) and the requirements of 29 C.F.R. Part 5 as applicable.

(b) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination by the Secretary of Labor. Additionally, Contractors are required to pay wages not less than once per week.

[Federally Assisted Contract for Construction or Repair in excess of \$2,000]

3. **Copeland Anti-Kickback Act (40 U.S.C. § 3145).**

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

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

(c) A breach of the contract clauses above may be grounds for termination of the Agreement, and for debarment as provided in 29 C.F.R. § 5.12.

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

(a) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work described herein which may require the employment of laborers or mechanics shall require or permit any such employee in any workweek in which he/she is employed to work in excess of forty hours in such workweek unless such employee 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.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of a violation 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 performed under contract for the District of Columbia or a territory, to such District or territory), for liquidated damages. Such liquidated damages shall be computed with respect to each employee employed in violation of this section, in the sum of \$26 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this section.

(c) Withholding for unpaid wages and liquidated damages. The state or county 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 this section.

(d) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this section.

[Contracts awarded in excess of \$150,000 under a federal grant]

5. Clean Air Act and Federal Water Pollution Control Act.

(a) Clean Air Act (42 U.S.C. §§ 7401, et seq.). The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the FEMA, and the appropriate EPA Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal FEMA assistance.

(b) Federal Water Pollution Control Act (33 U.S.C. §§ 1251, et seq.) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the FEMA, and the appropriate EPA Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal FEMA assistance.

6. Debarment and Suspension.

(a) In the event this Agreement is a "covered transaction" as defined in 2 C.F.R. Part. 180 and Part 3000, the contractor is required to verify that the contractor, its principals or affiliates, are not excluded (as defined in 2 C.F.R. § 180.940) or disqualified (as defined in 2 C.F.R. § 180.935).

(b) If applicable, the contractor must comply with 2 C.F.R. Part. 180, subpart C and 2 C.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.

(c) This certification is a material representation of fact relied upon by the state and county. 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 the state and county, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

(d) 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 any bid or proposal is valid and throughout the period of any Agreement that may arise therefrom. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

[Contract of \$100,000 or more under a federal grant]

7. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification (**APPENDIX A, 44 C.F.R. PART 18 - CERTIFICATION REGARDING LOBBYING**). Each tier certifies to the tier above that it will not and has not use federal appropriated funds to pay any person or organization for influencing or attempting to influence an office or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certifications to the awarding agency.

8. Procurement of Recovered Materials.

(a) In the performance of this Agreement, 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. Information about this requirement, along with a list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

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

9. Procurement of Recovered Materials (2 C.F.R. § 200.323). 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 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired 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.

10. Prohibition on Covered Telecommunications Equipment/Services (2 C.F.R. § 200.216).

(a) Pursuant to Section 889, Public Law No.: 115-232 and 2 C.F.R. § 200.216, the recipient, its contractors and subcontractors may not use loan or grant funds from the federal awarding agency to: (1) 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 a system; (2) enter, extend, or renew a contract to procure or obtain 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 a system; (3) enter, 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 of a system; or (4) provide, as part of its performance of 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 of a system.

(b) This provision shall not be construed to: (a) prohibit a contractor from providing a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (b) cover 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. By necessary implication and regulation, the prohibitions also do not apply to: covered telecommunications equipment or services that are not used as a substantial or essential component of any system and are not used as critical technology of any system; or other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(c) As described in Section 889, Public Law No.: 115-232, "covered telecommunications equipment or services" means any of the following: (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (2) 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); (3) Telecommunications or video surveillance services provided by such entities or using such equipment; (4) 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; and (5) systems 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.

(d) If 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 the performance of the agreement, or contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information to the FEMA funding recipient. The Contractor shall report the following information:

Within one business day from the date of such identification or notification: Contract Number; order number(s); supplier name; supplier unique entity identifier; supplier Commercial and Government Entity (CAGE) code; brand; model; model number; item description; and any readily available information about mitigation actions undertaken or recommended.

Within 10 business days of submitting the aforementioned information: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent future use or submission of covered telecommunications equipment or services.

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

11. **Domestic Preferences for Procurements (2 C.F.R. § 200.322)**. 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 subawards including all contracts and purchase orders for work or products under this award. 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; and 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.

12. **Buy America Preferences for Procurements (2 C.F.R. Part 184)**. The Buy America Preference applies to Federal awards where funds are appropriated or otherwise made available for infrastructure projects in the United States, regardless of whether infrastructure is the primary purpose of the Federal award. Contractors and their subcontractors who bid on a public infrastructure project subject to the domestic preference requirement of the Build America, Buy America Act (BABAA) shall file the required certification unless a domestic preference requirement has been waived by the awarding federal agency. Contractors and their subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all iron, steel, manufactured products and construction materials used in the project are produced in the United States. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with the BABAA domestic preference requirements. Such disclosure shall be forwarded to the FEMA funding recipient who, in turn, will forward the disclosures to FEMA; subrecipients will forward disclosures to the pass-through entity, who will, in turn, forward the disclosures to FEMA.

13. **Access to Records.**

(a) The Contractor agrees to provide County, the Federal Emergency Management Agency Administrator, the Comptroller General of the US, or any other authorized representatives access to books, records, documents, and papers of the Contractor which are pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions.

(b) The Contractor agrees to permit 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 Agreement.

(c) In compliance with the Disaster Recovery Act of 2018, the County and Contractor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or Comptroller General of the US.

14. **DHS Seal, Logo, and Flag.** The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of the flags or any likeness of DHS agency officials without prior FEMA approval.

15. **Compliance with Federal Law, Regulations, and Executive Orders.** Contractor hereby acknowledges that all or a portion of this Agreement may be funded by Federal Emergency Management Agency (FEMA) financial assistance. Contractor shall comply with all applicable Federal laws, regulations, executive orders, and FEMA policies, procedures and directives.

16. **No Obligation.** The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, Contractor, or any other party pertaining to any matter arising out of this Agreement.

17. **Program Fraud and False or Fraudulent Statements or Related Acts.** Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to this Agreement.

18. **Rights to Inventions.** If the federal award meets the definition of a "funding agreement" under 37 C.F.R. § 401.2(a) and the recipient wishes to enter into contract with a small business firm or non-profit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under the "funding agreement," the recipient must comply with the requirements of 37 C.F.R. Part 401 and any implementing regulations issued by FEMA.

19. **Copyright and Data Rights.** Contractor grants to the County 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 County or acquire 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 or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audio-visual works, sound or video recordings, or architectural works. Upon or before the completion of this contract, Contractor will deliver to the County data first produced in the performance of this contract and data required by this contract but not first produced in the performance of this contract in formats acceptable by the County.

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

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

Signature of Contractor's Authorized Official

Name/Title

Date

CERTIFICATION REGARDING BUILD AMERICA, BUY AMERICA ACT

Pursuant to the provisions of the Build America, Buy America Act (BABAA) Public Law 117-58 and 2 C.F.R. Part 184, the undersigned certifies, to the best of his or her knowledge and belief, that:

The iron, steel, manufactured products, and construction materials incorporated into the infrastructure project in the performance of this contract are in full compliance with the requirements of the Build America, Buy America Act (BABAA), including the following:

- (1) In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) In the case of manufactured products:
 - (i) The product was manufactured in the United States; and
 - (ii) The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product.
- (3) In the case of construction materials, all manufacturing processes for the construction material occurred in the United States.

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

Signature of Contractor's Authorized Official

Name/Title

Date