

FEMA Reimbursement Contract Agreement Rider and Certification Regarding Lobbying

Introduction

By executing the Contract Agreement ("Contract"), the Kissimmee Utility Authority ("Owner") and the successful bidder ("Contractor") have agreed to the terms and conditions of this FEMA Reimbursement Contract Agreement Rider and Certification Regarding Lobbying ("Rider and Certification"), which is incorporated by reference into the Contract. Being bound by this Rider and Certification is necessary because in the event of a federally declared disaster impacting Owner's service territory, Owner may seek reimbursement from the Federal Emergency Management Agency ("FEMA") for funds expended by Owner for goods and services rendered under the Contract. To qualify for reimbursement, FEMA mandates that applicants for funds, such as Owner, implement the contractual requirements contained in this Rider and Certification. Contractor acknowledges Owner's expectation that all of its vendors comply fully with:

(1) applicable equal employment opportunity and non-discrimination local, state and federal laws and regulations, (2) the Fair Labor Standards Act wage and hour requirements, (3) the Clean Air Act, the Federal Water Pollution Control Act and any other applicable local, state and federal environmental laws and regulations, and (4) any applicable safety laws and regulations referenced below. Such compliance is required irrespective of Owner's use of FEMA provided funds. Other than the potential use of FEMA funds to respond to a federally declared disaster, no federal monies will be sought to finance the goods and services provided under the Contract. Accordingly, no lobbying of federal officials is contemplated by Contractor related to the Contract. Nothing contained in this Rider and Certification shall be construed as an agreement by Contractor to submit itself to laws or regulations or jurisdiction of any authority that would not have applicability or authority over Contractor absent Owner's application for FEMA funds to reimburse goods and services rendered under the Contract.

Section 1. FEMA Reimbursement

This is an acknowledgement that FEMA financial assistance may be used to fund this agreement. Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives. However, the Federal Government is not a party to the Contract and is not subject to any obligations or liabilities to Owner, Contractor, or any other party pertaining to any matter resulting from the contract. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to the Contract.

Section 2. Changes

Any price changes sought by Contractor must be agreed to in writing at least 30 days prior to becoming effective or as specified by Owner's purchasing policies and procedures. Any

such change, modification, change order, or constructive change must be reasonable for the completion of project scope

Section 3. Access to Records

(a) Contractor agrees to provide Owner, 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 Contractor which are directly pertinent to the Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(b) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) 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.

Section 4. Suspension and Debarment

(a) The Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its 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).

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

(c) This certification is a material representation of fact relied upon by Owner. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida Division of Emergency Management, or other State of Florida agency responsible for processing FEMA applications, and Owner, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

Section 5. 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.

Section 6. Compliance with Federal Laws, Regulations, and Executive Orders

This is an acknowledgement that FEMA financial assistance may be used to fund goods and services provided by Contractor for this Contract only. The Contractor will comply with all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.

Section 7. No Obligation of Federal Government

The Federal Government is not a party to the Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the Contract.

Section 8. 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 the Contract.

Section 9. Equal Employment Opportunity

During the performance of the Contract, Contractor agrees as follows:

- (a) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. 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. 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) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (c) If applicable, 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 Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, setting forth non-discriminatory hiring practice requirements and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) 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 account by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of Contractor's noncompliance with the nondiscrimination clauses of the Contract or with any of the said rules, regulations, or orders, the Contract may be canceled, terminated, or suspended in whole or in part by Owner, and 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.

(g) Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) 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. 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 Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Section 10. Remedies

The remedies under the Contract are those set out in the Contract Documents (as defined in the Contract).

Section 11. Termination for Cause and Convenience; Remedies

Termination for cause and convenience shall be according to the terms and conditions set forth in the Contract Documents (as defined in the Contract).

Section 12. Procurement of Recovered Materials

(a) In the performance of the Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

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

Section 13. Bird Anti-Lobbying Amendment

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

Section 14. Contract Hours and Safety Standards Act

(1) Overtime requirements. Neither the Contractor nor any 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 (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 (1) of this section, in the sum of \$10 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 (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. FEMA 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 Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Section 15. Clean Air Act

(a) 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.

(b) Contractor agrees to report each violation to Owner and understands and agrees that Owner will, in turn, report each violation as required to assure notification to the Florida Department of Environmental Protection, FEMA, and the appropriate Environmental Protection Agency Regional Office.

(c) Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

Section 16. Federal Water Pollution Control Act

(a) 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.

(b) Contractor agrees to report each violation to Owner and understands and agrees that Owner will, in turn, report each violation as required to assure notification to the Florida Department of Environmental Protection, FEMA, and the appropriate Environmental Protection Agency Regional Office.

(c) Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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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)

The undersigned, Contractor, certifies, to the best of his or her knowledge, 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 sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients 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 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

SIGNATURE PAGE TO FOLLOW

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date