

Storm Siren System Upgrade
Siren Equipment Procurement & Site Construction Work
Notice to Bidders and Notice of Public Hearing

Sealed bids will be received by the Marshall County Auditor's office at 1 East Main Street, Marshalltown, IA 50158, before **TIME on DATE (20 minutes before BOS meeting date below)**, 2023 for the following described public improvement:

STORM SIREN SYSTEM UPGRADE
SIREN EQUIPMENT PROCUREMENT & SITE CONSTRUCTION WORK

The Marshall County Board of Supervisors will hold a public hearing on the proposed Plans, Specifications, Form of Contract, and Estimate of Costs for the construction of said improvements at **DATE/TIME** at 1 E Main Street, Marshalltown, IA 50158. At said hearing, any interested person may appear and file objections thereto or to the cost of the improvements.

At the above time and place all bids received by the County will be opened and publicly read with the results being reported to the Marshall County Board of Supervisors at their meeting on **DATE/TIME** at which time the Board may take action on the proposals submitted or at such time as may then be fixed.

The extent of work on this project is the furnishing of all labor, equipment, and materials for the construction of improvements in Marshall County generally described as follows:

Marshall County wishes to upgrade and/or install a new storm siren system which will be used to warn the public of tornadoes or other weather threats.

Details on required elements of the project are:

10 sirens operating on high band, 3 digital controllers, control stations for two locations, and construction/installation of all these elements with an approximate cost of \$391,006.58.

The kinds of materials, the estimated quantities, and work to be done for the project on which bids will be received are as shown on the bid proposal for said project.

All work is to be done in strict compliance with the equipment manufacturers specifications, current codes and standards, and in according to the scope of work as outlined in this Request for Bids (RFB).

All bids shall be made on **a form furnished by the County** and shall be filed before the time specified above, in a sealed envelope addressed to the Marshall County Auditor, clearly stating that the envelope contains a bid on this project.

The County may award two separate contracts under this solicitation. One for the equipment and another for the site construction work.

Each bidder shall accompany its bid with bid security as defined in Iowa Code Section 26.8, as security that the successful bidder will enter into a contract for the work bid upon and will furnish after the award of contract a corporate surety bond, in a form acceptable to the County, for the faithful performance of the contract and guaranteeing payment to all persons supplying labor and/or materials in the execution of the work provided for in the contract, in an amount equal to 100% of the amount of the contract. **Additionally, the bidder must provide the County with a guarantee of maintenance of said improvement for a period of XX years from the time of acceptance by the County.** The bidder's security shall be in an amount equal to ten percent (10%) of the total amount of the bid and shall be in the form of a cashier's check or a certified check drawn on an FDIC insured bank in Iowa or on an FDIC insured bank chartered under the laws of the United States; or a certified share draft drawn on a credit union in Iowa or chartered under the laws of the United States; or a bid bond on the form provided in the contract documents with corporate surety satisfactory to the County. The bid shall contain no condition except as provided in the specifications.

If the bidder fails to execute the contract and to furnish an acceptable performance, payment, and maintenance bond or provide a Certificate of Insurance within ten (10) days after acceptance of the bid by the County, the bid security may be forfeited or cashed by the County as liquidated damages.

By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the State of Iowa.

In accordance with Iowa statutes, a resident bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country if that state or foreign country gives or requires any preference to bidders from that state or foreign country, including but not limited to any preference to bidders, the imposition of any type of labor force preference, or any other form of preferential treatment to bidders or laborers from that state or foreign country. The preference allowed shall be equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. In the instance of a resident labor force preference, a nonresident bidder shall apply the same resident labor force preference to a public improvement in this state as would be required in the construction of a public improvement by the state or foreign country in which the nonresident bidder is a resident.

Failure to submit a fully completed **Bidder Status Form** with the bid may result in the bid being deemed nonresponsive and rejected.

A sales tax exemption certificate will be available for all material purchased for incorporation in the project.

Work on said project is anticipated to commence on **DATE**. The project shall be completed by **DATE**.

Payment will be made to the contractor based on monthly estimates in amounts equal to ninety-five (95%) percent of the contract value of the work completed during the preceding calendar month, and will be based upon an estimate prepared by the Contractor on the first day of the month, subject to the approval of the **Auditor, Engineer, and Board of Supervisors**. Any such payment by the County shall in

no way be construed as an act of acceptance for any part of the work partially or totally completed. Final payment by the County will be made in accordance with Iowa statutes and the contract documents.

Bidding forms may be obtained from **XXX. Copies of Plans and Specifications and contract documents** can be obtained at the same address.

The County reserves the right to reject any and/or all bids and to waive any and/or all technicalities and/or all irregularities.

Important

Attempts to contact other parties, council members, employees, or staff with questions or in an attempt to win favoritism will mean immediate withdrawal from the pool of Bidders and your bid will be rejected.

All interested Bidders for this project are encouraged to attend a pre-bid meeting that will be held at:

Date / Time / Location

A virtual meeting option will also be made available. The link for the virtual meeting is as follows:

INSERT VIRTUAL MEETING LINK

This project is being funded using FEMA grant funds. Mandatory contract provisions shall be included in the resulting contract from this procurement. These contract provisions are identified in Attachment A.

Scope of Work:

Marshall County, hereafter referred to as the Owner, wishes to upgrade and/or install a new storm siren system which will be used to warn the public of tornadoes or other weather threats.

Details on required elements of the project are:

Procurement of the necessary equipment and installation of 10 sirens operating on high band, 3 digital controllers, control stations for two locations, and construction/installation of all these elements with an approximate cost of \$391,006.58.

The Owner intends to acquire commercial, off-the-shelf (COTS) equipment.

The County may award two separate contracts under this solicitation. One for the equipment (Division A) and another for the site construction work (Division B).

Location of sirens:

1. Ferguson: 2887 290th St., Ferguson, IA, 50078 (41.93539, -92.86652)
2. Gilman: 325th St. (between Main and Elm Streets), Gilman, IA 50106 (41.884172, -92.789757)
3. Haverhill: 105 Main Street, Haverhill, IA 50120 (41.94452, -92.96096)
4. Laurel: 10 East Market St, Laurel, IA 50141 (41.88368, -92.92170)
5. Liscomb: 114 Main St (behind building), Liscomb, IA 50148 (42.189650, -93.005257)
6. Melbourne: 613 Main St (behind building), Melbourne, IA 50162 (41.93824, -93.10223)
7. Rhodes: 502 North Marietta St (behind the building), Rhodes, IA 50234 (41.929850, -93.185141)
8. St. Anthony: 308 Main St (behind building), St. Anthony, IA 50239 (42.124619, -93.197788)
9. State Center: Alley between 2nd St SW and Main St that connects 2nd Ave NW and 1st Ave N, State Center, IA 50247 (42.016156, -93.164570)
10. Grimes Farm and Conservation Area: 2349 233rd St (by entrance to Conservation Center) Marshalltown, IA 50158 (42.02144, -92.97388)

Siren location and construction/electricity details:

Whole Marshall County Iowa Warning Siren Project –

10 - Siren Installation Sites

1. Ferguson, Iowa Location: Community Center Address: 2887 290th Street N: 41.93539 W: 92.86652 Power is coming overhead from the Community Center. Current light located at site to be moved to the new siren pole. Light is also to shine directly on the flagpole and the US Flag.
2. Gilman, Iowa Location: North Gilman Address: 325th Street (Between Main and Elm Streets) N: 41.884172 W: 92.789757 Power is overhead. City has a current American Signal Tempest 128 located on South Main Street N: 41.878932 and W: 92.786188
3. Haverhill, Iowa Location: Memorial Park Address: 105 Main Street N: 41.94452 W: 92.96096 Power is overhead, coming from a transformer across Main Street. Located at City Park.
4. Laurel, Iowa Location: Public Works Office (Site located behind the building next to an alley) Address: 10 East Market Street N: 41.88368 W: 92.92170 Power is overhead.
5. Liscomb, Iowa Location: City Hall (Site located behind the building next to an alley) Address: 114 Main Street N: 42.189650 W: 93.005257 Siren will be AC power only. City Hall has a generator attached for

backup power. Electrician who installed the current generator must be present during the siren installation. Remove current siren, located behind City Hall.

6. Melbourne, Iowa Location: Smoke Meier Park, Community Center (Site located behind the building) Address: 613 Main Street N: 41.93824 W: 93.10223 Power is overhead from a transformer.

7. Rhodes, Iowa Location: Rhodes Community Park Address: 502 North Marietta Street N: 41.929850 W: 93.185141 Power is overhead.

8. St. Anthony, Iowa Location: City Hall (Behind the building) Address: 308 Main Street N: 42.124619 W: 93.197788 Power is overhead. 55-foot pole required to allow sound to travel over buildings.

9. State Center, Iowa Location: Downtown – Across and east from the elementary school. Address: Alley between 2nd Street SW and Main Street N: 42.016156 W: 93.164570 Power is overhead. Remove current siren installed on a two-pole mount. Install new siren at the current siren (old) location.

10. Grimes Farm and Conservation Area – Unincorporated Marshall County Location: Grimes Farm and Conservation Center Address: 2349 233rd Street, Marshalltown N: 42.02144 W: 92.97388 Power is at the entrance to the park and is overhead.

Specifications:

Equipment Procurement – Division A

Mechanical Sirens

The Bidder must provide quality sirens that meet the following specifications:

1. The siren must generate sound by use of a motor to “chop” the air. Sirens that use speakers are not acceptable substitutes for the following reasons:
 - a. All the sirens in the current system are motor driven or mechanical and it is preferable that the sirens are all similar in make and are compatible with the other sirens on the current network that will be retained by the City of Marshalltown and the City of LeGrand.
 - b. Speakers are more susceptible to damage from lightning or power spikes.
 - c. Sirens that utilize speakers have many more components (amplifiers, tone generators, etc.) making them more likely to fail.
 - d. Mechanical sirens have proven to have a longer lifespan than speakers.
2. The siren must provide coverage throughout a 360° pattern, providing coverage to anyone outdoors within that area.
3. The siren must produce 130dBC at 100’ on the axis.

Mechanical Siren Controls – Battery Operated

The Bidder must provide quality siren controls that meet the following specifications:

1. The siren controls must be capable of being activated by the current method of activation used by the Owner.
2. The siren controls must report the following information back to a central control that will display this information graphically.
 - a. Status of AC power
 - b. Status of batteries
 - c. Status of cabinet doors
 - d. Status of chopper motor during last activation
 - e. Status of rotator motor during last activation
3. The siren controls must be able to make the siren perform the steady or wail functions for a period of 10 seconds to 6 minutes.
4. The siren controls must be UL listed and approved.
5. The siren controls must be housed in aluminum, stainless steel, or other maintenance-free cabinets. (Fiberglass is not acceptable)

Mechanical Siren AC Power Option-Battery Back-up

The Bidder must provide quality AC Power Options that meet the following specifications:

1. This option will allow the siren and associated controls to operate on single phase 208/220/240 commercial power.
2. This option will allow the siren to operate for an indefinite period of time exclusively on commercial power even if batteries are dead or not installed.

Mechanical Siren Solar Charging Option

The Bidder must provide the listed number of Solar Charging Options that meet the following specifications:

1. This option will allow the charging of the batteries in a battery-operated siren via solar panels.
2. This option will charge siren batteries without a commercial power source.
3. This option will work in conjunction with the above AC Power Option if both are employed.

Siren System Control / Monitoring Station

The Bidder must provide the listed number of Control / Monitoring Stations that meet the following specifications:

1. The system must have a method of activation or monitoring that is hardware based. This system must not require the use of a PC to activate or monitor any of the functions.
2. The system must have the capability of utilizing a PC and software to facilitate a graphical User Interface that is simple to use.
 - a. Provide documentation for the software.
 - b. Provide training documentation.
3. The system must be capable of gathering status of all the sirens in the system on demand or at specific times daily.
4. The system must be capable of emailing siren or system failures to designated people as they happen automatically.
5. Cost for Installation of these components will be provided by Bidder.

Control System Options

The bidder must provide the listed number of Control System Options that meet the following specifications:

1. Option to provide single button activation of sirens and community text / email notification system.
2. Option to provide single button activation of sirens and community text / email and phone notification system.
3. Option to provide network capable devices that can activate siren tones / voice messages which would warn people in schools / nursing homes and other public buildings. These devices must be capable of being activated by a single button with the sirens and must be able to report their status to the same software system used by the sirens.
4. Provide documentation on these options.

Equipment Procurement – Division A

Price and Equipment

Worksheet

Qty	Description	Comply Y/N	Cost Per Unit
	<p><u>Mechanical Sirens</u> The bidder must provide the listed number of siren that meet the following specifications:</p> <ol style="list-style-type: none"> 1. The siren must generate sound by use of a motor to “chop” the air. Sirens that use speakers are not acceptable substitutes for the following reasons: <ol style="list-style-type: none"> a. All the sirens in the current system are motor driven or mechanical and it is preferable that the sirens are all similar and are compatible with the other sirens on the current network that will be retained by the City of Marshalltown and the City of LeGrand. b. Speakers are more susceptible to damage from lightning or power spikes. c. Speaker driven sirens have many more components making them more likely to fail. d. Mechanical sirens have proven to have a longer lifespan than speakers. 2. The siren must provide coverage throughout a 360° pattern, providing coverage to anyone outdoors within that area. 3. The siren must produce 130dBC at 100’ on axis. 		
	<p><u>Mechanical Siren Controls – Battery Operated</u> The bidder must provide the listed number of siren controls that meet the following specifications:</p> <ol style="list-style-type: none"> 1. The siren controls must be capable of being activated by the current method of activation used by the Owner. 2. The siren controls must report the following information back to a central control that will display this information graphically. <ol style="list-style-type: none"> a. Status of AC power b. Status of batteries c. Status of cabinet doors d. Status of chopper motor during last activation e. Status of rotator motor during last activation 3. The siren controls must be able to make the siren perform the steady or wail functions for a period of 10 seconds to 6 minutes. 		

	<ol style="list-style-type: none"> 4. The siren controls must be UL listed and approved. 5. The siren controls must be housed in aluminum, stainless steel, or other maintenance-free cabinets. (Fiberglass is not acceptable) 		
	<p><u>Mechanical Siren AC Power Option</u> The bidder must provide the listed number of AC Power Options that meet the following specifications:</p> <ol style="list-style-type: none"> 3. This option will allow the siren and associated controls to operate on single phase 208/220/240 commercial power. 4. This option will allow the siren to operate for an indefinite period of time exclusively on commercial power even if batteries are dead or not installed. 		
	<p><u>Mechanical Siren Solar Charging Option</u> The bidder must provide the listed number of Solar Charging Options that meet the following specifications:</p> <ol style="list-style-type: none"> 1. This option will allow the charging of the batteries in a battery-operated siren via solar panels. 2. This option will charge siren batteries without a commercial power source. 3. This option will work in conjunction with the above AC Power Option if both are employed. 		
	<p><u>Siren System Control / Monitoring Station</u> The bidder must provide the listed number of Control / Monitoring Stations that meet the following specifications:</p> <ol style="list-style-type: none"> 1. The system must have a method of activation or monitoring that is hardware based. This system must not require the use of a PC to activate or monitor any of the functions. 2. The system must have the capability of utilizing a PC and software to facilitate a graphical User Interface that is simple to use. <ol style="list-style-type: none"> a. Provide documentation for the software. b. Provide training documentation. 3. The system must be capable of gathering status of all the sirens in the system on demand or at specific times daily. 4. The system must be capable of emailing siren or system failures to designated people as they happen automatically. 5. Cost for Installation of these components will be provided by Bidder. 		
	<p><u>Control System Options</u> The bidder must provide the listed number of Control System Options that meet the following specifications:</p> <ol style="list-style-type: none"> 5. Option to provide single button activation of sirens and community text / email notification system. 		

	<ol style="list-style-type: none"> 6. Option to provide single button activation of sirens and community text / email and phone notification system. 7. Option to provide network capable devices that can activate siren tones / voice messages which would warn people in schools / nursing homes and other public buildings. These devices must be capable of being activated by a single button with the sirens and must be able to report their status to the same software system used by the sirens. 8. Provide documentation on these options. 		

Siren Installation Services – Division B

The Owner has pre-selected potential locations for the sirens. It is the Bidder's responsibility to review these sites before bidding. If the Bidder recommends moving a location, a written explanation should be provided. However, the Owner must be given costs to install the sites based on the pre-selected sites.

The bidder must provide the listed number of Siren Installation Services that meet the following specifications:

1. The Bidder must provide a cost to install all siren equipment proposed above in Division A.
2. All Installation services must meet local codes.
3. All installation services must be complete and include all materials and services necessary for the system to operate properly. These services include but are not limited to the following:
 - a. Pole Installation
 - b. Traffic Control
 - c. Site Restoration
 - d. Power Trenching
 - e. Power Boring
4. Costs for services that cannot be determined at this time will be bid on a time and material basis. The Owner will use these costs in determining where sites will be placed and evaluation of the overall bid. Provide Costs for the following:
 - a. Underground Excavation of Rock – A cost per hour will be provided in the event that the initial excavation encounters rock or any other material that would prevent a siren from being installed at a site. (Bidder must provide information on what type of equipment will be used for the initial excavation. Example: Digger Derick)
5. All installations will require that any wiring, other than short runs of antenna cable, be installed in ridged galvanized steel or aluminum conduit. Short runs, under 3', of armored flexible conduit are allowed.
6. Documentation showing a typical Installation and the material used must be provided with the bid.
7. The Owner will provide a secure facility and personnel who will receive and unload the siren equipment. Poles must be unloaded by the Bidder or Truck Line, but can be stored at this facility.
8. The Owner will provide a location where equipment crating and spoil from site excavation can be disposed of.

Siren Installation Services Procurement – Division B

Price and Equipment

Worksheet

Qty	Description	Comply Y/N	Cost Per Unit
	<p><u>Siren Installation Services</u></p> <p>The Owner has pre-selected potential locations for the sirens. It is the Bidders responsibility to review these sites before bidding. If the Bidder recommends moving a location, a written explanation should be provided. However, the Owner must be given costs to install the sites based on the pre-selected sites.</p> <p>The bidder must provide the listed number of Siren Installation Services that meet the following specifications:</p> <ol style="list-style-type: none"> 1. The Bidder must provide a cost to install all siren equipment proposed above. 2. All Installation services must meet local codes. 3. All installation services must be complete and include all materials and services necessary for the system to operate properly. These services include but are not limited to the following: <ol style="list-style-type: none"> a. Pole Installation b. Traffic Control c. Site Restoration d. Power Trenching e. Power Boring 4. Costs for services that cannot be determined at this time will be bid on a time and material basis. The Owner will use these costs in determining where sites will be placed and evaluation of the overall bid. Provide Costs for the following: <ol style="list-style-type: none"> a. Underground Excavation of Rock – A cost per hour will be provided in the event that the initial excavation encounters rock or any other material that would prevent a siren from being installed at a site. (Bidder must provide information on what type of equipment will be used for the initial excavation. Example: Digger Derick) 		

	<ul style="list-style-type: none">5. All installations will require that any wiring, other than short runs of antenna cable, be installed in ridged galvanized steel or aluminum conduit. Short runs, under 3', of armored flexible conduit are allowed.6. Documentation showing a typical Installation and the material used must be provided with the bid.7. The Owner will provide secure facility and personnel who will receive and unload the siren equipment. Poles must be unloaded by the Bidder or Truck Line but can be stored at this facility.8. The Owner will provide a location where equipment crating and spoil from site excavation can be disposed of.		
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Attachments:

Attachment A – Mandatory Contract Provisions

Attachment B - Form of contract

Attachment C - Contract Provisions Guide – FEMA F1-207-21-0001

Attachment D -Marshall County Procurement Policy

FEMA Grant Purchasing References:

<https://www.fema.gov/fact-sheet/purchasing-under-fema-award-socioeconomic-contracting>

Attachment A
Mandatory Contract Provisions

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 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.

Davis Bacon Wages

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, **except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.**

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the

recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) **Withholding.** The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected,

and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of [title 18 and section 231](#) of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to [29 CFR 5.12](#).

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in [29 CFR 5.16](#), trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with

the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of [Executive Order 11246](#), as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) 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 the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in [29 CFR 5.12](#).

(8) Compliance with Davis–Bacon and Related Act requirements. All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or [29 CFR 5.12\(a\)\(1\)](#).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis–Bacon Act or [29 CFR 5.12\(a\)\(1\)](#).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#).

Compliance with the Copeland “Anti-Kickback” Act.

Contractor. The 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 contract.

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

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 C.F.R. § 5.12.

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 subrecipient) 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.

Clean Air Act

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.*

The contractor agrees to report each violation to the (insert name of non-federal entity entering into the contract) and understands and agrees that the (insert name of the non-federal entity entering into the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate [Environmental Protection Agency Regional Office](#).

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

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.*

The contractor agrees to report each violation to the (insert name of the non-federal entity entering into the contract) and understands and agrees that the (insert name of the non-federal entity entering into the contract) will, in turn, report each violation as required to assure notification to the (insert name of the pass-through entity, if applicable), Federal Emergency Management Agency (FEMA), and the appropriate [Environmental Protection Agency Regional Office](#).

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.

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 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.

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

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.

Anti-Lobbying Certification

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

Certification

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

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.

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.

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

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

The Contractor, _____, certifies or affirms the truthfulness and

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

Signature of Contractor's Authorized Official

Date

Name and Title of Contractor's Authorized Official

Date

Recovered Materials

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.

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

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

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; or
- (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.

(2) 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 subrecipient, 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.

Domestic Preference for Procurements

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

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Attachment B

Attachment C

https://www.fema.gov/sites/default/files/documents/fema_contract-provisions-guide_6-14-2021.pdf

MARSHALL COUNTY, IOWA PROCUREMENT POLICY

PURPOSE

The purpose of this procurement policy is to ensure that sound business judgement is utilized in all procurement transactions and that supplies, equipment, construction, and services are obtained efficiently and economically and in compliance with applicable federal and state law and executive orders and to ensure that all procurement transactions will be conducted in a manner that provides full and open competition. These procedures will ensure that all solicitations incorporate clear and accurate descriptions of the technical requirements for the goods or services being procured. Chapter 26 and Section 331.341 of the Iowa Code will be followed on all applicable purchases. All other appropriate sections of the Iowa Code shall also apply. Marshall County ensures compliance with the federal requirements at 2 CFR, Sections 200.318-200.327, as it applies to the procurement of all supplies, equipment, and construction and services that include any federal program funding, as well as all other appropriate sections of Iowa Code and Local Code. When federal requirements conflict with local or state requirements, the federal requirement, or most restrictive requirement will be followed.

APPLICATION

This policy applies to the procurement of all supplies, equipment, and construction and services of and for Marshall County, Iowa, that include any federal program funding. In regards to any such federal programs, all procurement will be done in accordance with 2 CFR; Part 200. Chapter 26 and Section 331.341 of the Iowa Code will be followed on all applicable purchases. All other appropriate sections of the Iowa Code shall also apply. When federal requirements conflict with local or state requirements, the federal requirement, or most restrictive requirement will be followed.

POLICY

METHODS OF PROCUREMENT

Procurement under grants shall be made by one of the following methods, as described herein: (a) small purchase procedures; (b) sealed bids (formal advertising); (c) competitive proposals; (d) noncompetitive proposals.

A. Micro-Purchase Procedures 200.320(a)

- i. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold - \$10,000 (200.67)
- ii. To the extent practicable, must distribute micro-purchases equitably among qualified suppliers

- iii. May be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable
- B. Small Purchase Procedures 200.320(b)
 - i. Are those relatively simple and informal procurement methods for securing services, supplies, or other property that does not cost more than the simplified acquisition threshold - \$250,000 (200.88)
 - ii. Price or rate quotations are to be obtained from an “adequate number” of qualified sources
- C. Sealed Bidding (formal advertising) 200.320(c)
 - i. Lowest priced, responsive, responsible, bidder WINS
 - ii. The preferred method for construction when sealed bidding is “feasible”, which is when certain conditions are present
 - iii. Bids must be solicited from an “adequate number of known suppliers”, providing them sufficient response time before date for the opening of bids
 - iv. Bids will be opened at the time and place prescribed in the invitation for bids
 - v. Must publicly advertise the invitation for bids
 - vi. Bids must be opened publicly
 - vii. Other procedural requirements at 200.320(c)(2)
- D. Competitive Proposals 200.320(d)
 - i. Used when conditions are not appropriate for the use of sealed bids
 - ii. The appropriate method when more than one source is expected to submit an offer and either a fixed-price or cost-reimbursement type contract is awarded
 - iii. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with **price** and other factors considered
 - iv. Requests for proposals **must be publicized** and identify all evaluation factors and their relative importance
 - v. Proposals must be solicited from an adequate number of qualified sources
 - vi. Must have written method for conducting technical evaluations of the proposals received and for selection of the contract
- E. Noncompetitive Proposals 200.320(f)
 - i. Procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - a. **One Source:** the item is available only from a single source
 - b. **Exigency/Emergency:** an exigency or emergency will not permit a delay resulting from competitive solicitation
 - c. **Awarding Agency Approval:** the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity
 - d. **Inadequate Competition:** after the solicitation of a number of sources, competition is determined inadequate

CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS (200.321)

- A. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;

- B. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- C. 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;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- E. 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; and
- F. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a) through (e).

§ 200.322 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 subawards 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.

§ 200.323 Procurement of recovered materials

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.

CONTRACT PRICING (200.324)

- A. The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used.
- B. Marshall County, Iowa, shall perform some form of cost/price analysis for every procurement action, including contract modifications, amendments, or change orders.

Marshall County, Iowa, shall make an independent estimate prior to receiving a bid or proposal.

- C. Marshall County, Iowa, shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. In determining a fair and reasonable profit, Marshall County, Iowa, must consider the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance and the industry profit rates in the surrounding geographical area.

PROCUREMENT RECORDS

Federal awarding agency or pass-through entity [HSEMD] review (200.325)

(a) Marshall County, Iowa, shall maintain records sufficient to detail the significant history of a procurement, including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(b) Marshall County, Iowa, must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.

(c) Marshall County, Iowa, must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (1) Marshall County, Iowa, procurement procedures or operation fails to comply with the procurement standards in this Part;
- (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(d) Marshall County, Iowa, is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this Part.

(1) Marshall County, Iowa, may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) Marshall County, Iowa, may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from Marshall County, Iowa, that it is complying with these standards. Marshall County, Iowa, must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

200.326 Bonding requirements

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

AWARDED CONTRACTS

- A. Marshall County, Iowa, will not award a contract to a party listed as debarred, suspended, or otherwise excluded in the System for Award Management (SAM). www.sam.gov (200.214)
- B. Contracts awarded shall contain the applicable contract provisions described in 2 CFR 200.327 and Appendix II to Part 200.
- C. Marshall County, Iowa, will maintain written standards of conduct covering conflicts of interest and must provide for disciplinary action to be applied for violations of such standards as defined in 2 CFR 200.318 (c) (1).

No officer, employee, or agent of the Marshall County, Iowa, shall participate in the selection, award, or administration of a contract supported by federal grant funds, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The employee, officer, or agent;
- b. Any member of his/her immediate family;
- c. His/her partner; or
- d. An organization which employs, or is about to employ any of the above; has a financial or other interest in the firm selected for award.

Marshall County, Iowa, officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or subcontractors.

To the extent permitted by federal, state, or local law or regulations, violation of these standards may cause penalties, sanctions, or other disciplinary actions to be taken against Marshall County, Iowa, officers, employees, or agents.

Prohibition on certain telecommunications and video surveillance services or equipment (200.216)

- (a) Recipients and subrecipients 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](#).

Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52. The Act strengthens Made in America Laws and will bolster America’s industrial base, protect national security, and support high-paying jobs. The Act requires that no later than May 14, 2022—180 days after the enactment of the IIJA—the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” The Act affirms, consistent with Executive Order 14005, Ensuring the Future Is Made in All of America by All of America’s Workers (“the Executive Order”), this Administration’s priority to “use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States.”

This guidance applies to all Federal financial assistance as defined in section 200.1 of title 2, Code of Federal Regulations—whether or not funded through IIJA—where funds are appropriated or otherwise made available and used for a project for infrastructure. Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, cooperative agreements, non-cash contributions or donations of property, direct assistance, loans, loan guarantees, and other types of financial assistance. The term “non-

Federal entity” includes States, local governments, territories, Indian tribes, Institutions of Higher Education (IHE), and nonprofit organizations.