

**I. MATAGORDA COUNTY  
INVITATION TO BID  
INSTRUCTIONS & TERMS OF CONTRACT**

|               |             |              |       |     |
|---------------|-------------|--------------|-------|-----|
| OPENING DATE: | BID NUMBER: | DATE ISSUED: | PAGE: | OF: |
| 11-7-19       | 19-0003     | 9-30-19      | 1     | 25  |

By order of the Commissioners Court of Matagorda County, Texas sealed bids will be received for:

**2020 ROAD CONSTRUCTION WITH EQUIPMENT**

Sealed bids shall be submitted to:

Matagorda County Auditors Office  
County Matagorda Office Building  
2200 7th Street, Room 208  
Bay City, Texas 77414

**NOT LATER THAN: 2:00 P.M. THURSDAY, NOVEMBER 7, 2019**

ALL BIDS RECEIVED MUST BE IN THE COUNTY AUDITORS OFFICE BY TIME STATED ABOVE.

THE COMMISSIONERS COURT RESERVES THE RIGHT TO ACCEPT ANY BID DEEMED ADVANTAGEOUS TO MATAGORDA COUNTY OR TO REJECT ANY AND ALL BIDS.

IT IS THE INTENT OF THESE SPECIFICATIONS TO ADEQUATELY DESCRIBE THE ITEM AS REQUIRED BY CERTAIN MATAGORDA COUNTY FACILITIES IN SUFFICIENT DETAIL TO SECURE COMPETENT BID. IT IS NOT THE INTENTION OF THESE SPECIFICATIONS TO ELIMINATE ANY BIDDER AND SHOULD SUCH WORDS APPEAR, THE BIDDER WOULD MAKE SPECIAL MENTION OF THIS FACT IN HIS BID.

CLEARLY **MARK** ALL SEALED BID ENVELOPES WITH BID NUMBER AND/OR TITLE,  
BIDS **MUST** BE SUBMITTED ON COUNTY BID FORM.

\_\_\_\_\_  
LEGAL NAME OF CONTRACTING COMPANY

|                                     |                |                  |
|-------------------------------------|----------------|------------------|
| _____<br>CONTACT PERSONS TYPED NAME | _____<br>TITLE | _____<br>PHONE # |
|-------------------------------------|----------------|------------------|

|                                   |                         |                   |
|-----------------------------------|-------------------------|-------------------|
| _____<br>COMPLETE MAILING ADDRESS | _____<br>CITY AND STATE | _____<br>ZIP CODE |
|-----------------------------------|-------------------------|-------------------|

|                    |               |
|--------------------|---------------|
| _____<br>SIGNATURE | _____<br>DATE |
|--------------------|---------------|

|                              |                |
|------------------------------|----------------|
| _____<br>SIGNER'S TYPED NAME | _____<br>TITLE |
|------------------------------|----------------|

\_\_\_\_\_  
EMAIL ADDRESS

2020  
ROAD CONST.  
W/EQUIPMENT

## II. GENERAL CONDITIONS

Matagorda County will receive bids up to **2:00 p.m. Thursday, November 7, 2019. BIDS MUST BE SEALED AND MARKED** with bid number and/or title, on the outside of the envelope and be submitted on this form. The entire bid package, including the signature page must be returned with bid.

The Agreement that results from this bid award may be subject to interlocal agreements with other Matagorda County Special Districts. These entities are governed by their own Directors or Commissioners and any negotiable item(s) shall be determined by their governing board. Each entity shall be responsible for contacting the Contractor/Hauler.

Commissioners shall have the right to reject, at any time, any material that is undesirable or is not suitable for to perform job requested by the Commissioner.

This contract shall be in effect from date of contract award until date of next award, which should be approximately 1 year.

Matagorda County reserves the right to reject all bids.

Terms are net payment at regular county payment dates upon rendering of invoices and provided all conditions of this bid have been met. Matagorda County reserves the right to withhold 10% of payment until completion of project when the project exceeds \$50,000.00.

## INSURANCE REQUIREMENTS

The Contractor/Hauler shall not commence work under this contract until all insurance required of the Contractor/Hauler by this agreement has been documented with a Certificate of Insurance. Such insurance is to be provided at the expense of the Contractor/Hauler and shall remain in force until all work under this contract is completed and has been accepted by the County Commissioners'. In the event an insurance policy required by this contract expires during the performance of this contract, the Contractor/Hauler shall provide confirmation that coverage will be continued without interruption. This confirmation must be provided prior to the date that the insurance coverage was to have otherwise expired.

The Contractor/Hauler shall include all subcontractors as insured under its policies or shall furnish separate certificates of insurance and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements under this contract.

Nothing contained in the insurance requirements shall be construed as limiting the extent of Contractors/Haulers responsibility for payment of damages resulting from operations under this contract.

Any failure of the Contractor/Hauler to comply with the reporting provisions of the insurance policies shall not affect the coverage provided to Matagorda County.

The insurance provided by the Contractor/Hauler shall be primary as respects Matagorda County. Any insurance maintained by the County shall be excess of the Contractor's/Hauler's insurance and shall not contribute to it. Further, the Contractor's/Hauler's insurance must include a waiver of subrogation in favor of the County. The Contractor's/Hauler's insurance shall not have deductibles of self-insured retentions in excess of \$25,000 per occurrence.

The Contractor/Hauler must provide confirmation of Commercial General Liability insurance from an insurer licensed to do business in Texas that is financially sound. The insurance should be written with limits of at least \$500,000 per occurrence and an aggregate limit of at least \$1,000,000. The insurance must include coverage for bodily injury, property damage, contractual liability, products and completed operations, and personal injury. The Contractor's/Hauler's insurance policy must include Matagorda County, its officials and employees as additional insured's for occurrences arising out of the performance of this contract. The confirmation should indicate that this specific contract (or "all written agreements") is an "insured contract" for purposes of contractual liability insurance. The Contractor/Hauler must promptly notify the County Commissioners if the total incurred losses (as determined by the insurer) reaches 50% or more of the aggregate limit. The County Commissioners should be provided with 30 days advance notice of material changes in coverage or termination of coverage.

The Contractor/Hauler subcontractors and their employees are not to be considered as an "employee" of the County and will not be covered by the County's workers' compensation insurance. The Contractor/Hauler must provide confirmation of Workers' Compensation and Employer's Liability insurance from an insurer that is licensed to do business in Texas if the Contractor/Hauler is subject to the Workers' Compensation Statute. The Workers' Compensation insurance should be written with statutory limits of liability. The Employer's Liability insurance should be written with limits of at least \$500,000 each employee for occupational disease. The County Commissioners should be provided with 30 days advance notice of material changes in coverage or termination of coverage.

The Contractor/Hauler must provide confirmation of Commercial Automobile Liability insurance from an insurer that is licensed to do business in Texas. The insurance should be written with bodily injury and property damage limits of at least \$500,000 combined and should apply in regard to any automobile, including owned, non-owned, hired and borrowed automobiles. The County Commissioners should be provided with a 30 day advance notice of material changes in coverage or termination of coverage.

The Contractor/Hauler must indemnify, hold harmless and defend Matagorda County and its officials and employees for all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description (including attorney's fees) that are presented, brought or recovered against Matagorda County and/or its officials and employees which arise out of an occurrence in connection with the services performed under this contract, except for liability stemming from the County's sole negligence.

Matagorda County reserves the right to require the Contractor/Hauler to provide complete, certified copies of all required policies at any time.

### III. BID CONDITIONS AND SPECIFICATIONS

1. Prices for each item listed shall include equipment used to execute job (see page 5 Bid Form for prices).
2. Upon initial contact, accepted bidder shall advise at that time if required delivery schedule can be met. Cooperation and coordination between Commissioners and bidder is essential to make contract work. Commissioner has right to stop construction at anytime due to weather, road conditions and machinery breakdowns.
3. A unit price adjustment will be allowed on Monday of each week after bids are accepted, on changes to the open market posted price of West Texas Intermediate Crude as identified in the Houston Chronicle or the Victoria Advocate under Light sweet crude. The baseline price shall be the price posted on November 4, 2019.
4. The allowable percent change shall be calculated by taking the difference between the baseline price and the price posted as identified above and dividing the results by the baseline price. This will give you the allowable percent change. The allowable percent change will be rounded to the one-hundredth of one-percent. Multiply the baseline price by the percent change allowed. This results in the allowable percent change increase or decrease.
5. Bidder must be able to furnish bid item under terms of these specifications if bidder is awarded bid.
6. Invoices **must** list quantities of service or product at unit bid price (sq. yd, ton or gallon).
7. Bid Document shall consist of the following:
  - I. Invitation to Bid
  - II. General Conditions
  - III. Bid Conditions and Specifications
  - IV. Bid Form
  - V. Contract
  - VI. Required Contract Clauses
  - VII. Certificate of Interested Parties Texas Ethics Commission (Form 1295)

#### IV. BID FORM

### MATAGORDA COUNTY ROAD CONSTRUCTION W/EQUIPMENT INCLUDED

#### PRICES

1. Blade Mixing (per sq. yd.) \$ \_\_\_\_\_

2. Finish Blade (per sq. yd) \$ \_\_\_\_\_

3. Hot Mix, Laid w/equip. & labor \$ \_\_\_\_\_  
(per ton)

|   | FREIGHT &<br>MATERIAL /APPLICATION | <u>TOTAL</u> |
|---|------------------------------------|--------------|
| 4. Seal Coat w/ Coverstone<br>(per sq. yd)            | \$ _____ / _____                   | _____        |
| 5. Seal Coat w/o Coverstone<br>(per sq. yd)           | \$ _____ / _____                   | _____        |
| 6. One Coarse w/ Coverstone<br>W/Primer (per sq.yd)   | \$ _____ / _____                   | _____        |
| 7. One Coarse w/o Coverstone<br>W/Primer (per sq. yd) | \$ _____ / _____                   | _____        |
| 8. Two Coarse w/ Coverstone<br>W/Primer (per sq. yd)  | \$ _____ / _____                   | _____        |
| 9. Two Coarse w/o Coverstone<br>W/Primer (per sq. yd) | \$ _____ / _____                   | _____        |
| 10. AC-5 Applied (per gallon)                         | \$ _____ / _____                   | _____        |
| 11. MC30-Applied (per gallon)                         | \$ _____ / _____                   | _____        |
| 12. Prime Oil -Applied (per gal.)                     | \$ _____ / _____                   | _____        |

# EQUIPMENT USED BY ROAD CONSTRUCTION CONTRACTOR

|                   | <u>Model &amp; Type</u> | <u>Price/Per Hr</u> |                             | <u>Model &amp; Type</u> | <u>Price/Per Hr</u> |
|-------------------|-------------------------|---------------------|-----------------------------|-------------------------|---------------------|
| <b>Roller</b>     | _____                   | \$ _____            | <b>Reclaimer/Stabilizer</b> | _____                   | \$ _____            |
|                   | _____                   | \$ _____            |                             | _____                   | \$ _____            |
|                   | _____                   | \$ _____            |                             | _____                   | \$ _____            |
|                   | _____                   | \$ _____            |                             |                         |                     |
|                   | _____                   | \$ _____            | <b>Maintainer</b>           | _____                   | \$ _____            |
|                   | _____                   | \$ _____            |                             | _____                   | \$ _____            |
| <b>Water Pump</b> | _____                   | \$ _____            |                             | _____                   | \$ _____            |
|                   | _____                   | \$ _____            |                             |                         |                     |
|                   | _____                   | \$ _____            |                             |                         |                     |

|                                 | <u>Model &amp; Type</u> | <u>Price/Per Hr</u> |                                       | <u>Model &amp; Type</u> | <u>Price/Per Hr</u> |
|---------------------------------|-------------------------|---------------------|---------------------------------------|-------------------------|---------------------|
| <b>Water Truck</b>              | _____                   | \$ _____            | <b>14 C.Y. Dump Truck</b>             | _____                   | \$ _____            |
| <b>Front End Loader</b>         | _____                   | \$ _____            | <b>Labor</b>                          | _____                   | \$ _____            |
| <b>Chip Spreader</b>            | _____                   | \$ _____            | <b>Rotary Broom</b>                   | _____                   | \$ _____            |
| <b>Hot-Mix Lay Down Machine</b> | _____                   | \$ _____            | <b>Haul Truck w/ Low -Boy Trailer</b> | _____                   | \$ _____            |
| <b>Crew Pickup</b>              | _____                   | \$ _____            | <b>Vibrating Drum</b>                 | _____                   | \$ _____            |
| <b>Distributor Truck</b>        | _____                   | \$ _____            |                                       |                         |                     |
| <b>Other</b>                    | _____                   | \$ _____            |                                       |                         |                     |
|                                 | _____                   | \$ _____            |                                       |                         |                     |
|                                 | _____                   | \$ _____            |                                       |                         |                     |

## **V. CONTRACT**

THIS CONTRACT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by, and between the County of Matagorda (hereinafter called "County") and \_\_\_\_\_ (hereinafter called "Contractor/Hauler").

### **WITNESSETH:**

WHEREAS, the Contractor/Hauler did on \_\_\_\_\_, 2019, submit a BID for Road Material/Equipment Rental/or Road Construction to include rates for equipment used in constructing roads for Matagorda County, Bay City, Texas and to perform such work as may be incidental thereto.

NOW, THEREFORE, in consideration of the following mutual agreements and covenants, it is understood and agreed by and between the parties hereto as follows:

- a. The contractor is hereby granted the sole and exclusive right and privilege within the territorial jurisdiction of the County and shall furnish all personnel, labor, equipment, trucks, and all other items necessary to perform all of the work called for as described in the Contract Documents.
- b. The Contract Documents shall include the following documents, and this Contract does hereby expressly incorporate same herein as if fully set forth verbatim in this Contract:
  - I. Invitation to bid, Instructions & Terms of Contract;
  - II. General Conditions;
  - III. Bid Conditions & Specifications;
  - IV. Bid Form;
  - V. This instrument; and
  - VI. Any addenda or changes to the foregoing documents agreed to by the parties hereto.

**INITIALS OF BIDDER (IN INK): \_\_\_\_\_ DATE: \_\_\_\_\_**

- c. All provisions of the Contract Documents shall be strictly complied with and conformed to by the Contractor, and no amendment to this Contract shall be made except upon the written consent of the parties, which consent shall not be unreasonably withheld. No amendment shall be construed to release either party from any obligation of the Contract Documents except as specifically provided for in such amendment.
- d. This Contract is entered into subject to the following conditions:
1. The Contractor/Hauler shall procure and keep in full force and effect throughout the term of this Contract all of the insurance policies specified in, and required by, the Contract Documents.
  2. The Contractor/Hauler shall not be liable for the failure to wholly perform his duties if such failure is caused by for force majeure. "Force Majeure" means a delay encountered by the Contractor in the performance of its obligations under this contract which is caused by an event beyond the reasonable control of the Contractor. Without limiting the generality of the foregoing, "Force Majeure" shall include but not be restricted to the following types of events: acts of God or public enemy; acts of governmental or regulatory authorities; fires, floods, epidemics or serious accidents; unusually severe weather conditions; strikes, lockouts or other labor disputes; and defaults by subcontractors.
  3. In the event that any provision or portion thereof of any Contract Document shall be found to be invalid or unenforceable, then such provision or portion thereof shall be reformed in accordance with the applicable laws. The invalidity or unenforceability of any provision or portion of any Contract Document shall not affect the validity or enforceability of any other provision or portion of the Contract Documents.

**INITIALS OF BIDDER (IN INK):** \_\_\_\_\_ **DATE:** \_\_\_\_\_



IN WITNESS WHEREOF, We the contracting parties, by our duly authorized agents, hereto affix our signature and seal, as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

COUNTY OF MATAGORDA COUNTY

ATTEST:

By: \_\_\_\_\_

Its: County Judge \_\_\_\_\_

\_\_\_\_\_  
Matagorda County Clerk Signature

Print Name: \_\_\_\_\_

\_\_\_\_\_  
Contractor Signature

Its: \_\_\_\_\_

## 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

### 1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

### 2. Termination for Cause and Convenience.

- a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

### 3. Equal Employment Opportunity.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
- b. Key Definitions.

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

(2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

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

d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

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

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

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

(3) The contractor will 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.

- (4) 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.
- (5) 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.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- b. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40

U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.

- c. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- d. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback Act."** However, for purposes of grant programs where both clauses do apply, FEMA requires the following contract clause:

**"Compliance with the Copeland "Anti-Kickback" Act.**

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

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

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

5. Contract Work Hours and Safety Standards Act.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“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 (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. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (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 prime 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.”

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by

FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

- c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

- 7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

- a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

“Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal



government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
  - b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
  - c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual* Chapter IV, ¶ 6.d, and Appendix C, ¶ 2 [hereinafter *PDAT Supplement*]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530; *PDAT Supplement*, Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
  - d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.
  - e. Specifically, a covered transaction includes the following contracts for goods or services:
-

(1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.

(2) The contract requires the approval of FEMA, regardless of amount.

(3) The contract is for federally-required audit services.

(4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

- d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

“Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, 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).

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

(3) This certification is a material representation of fact relied upon by (insert name of subrecipient). 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 (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; *PDAT Supplement*, Chapter IV, 6.c; Appendix C, ¶ 4.
- c. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or

attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See PDAT Supplement, Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

d. The following provides a Byrd Anti-Lobbying contract clause:

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

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

#### 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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (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 of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date"

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. 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, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.322; *PDAT Supplement*, Chapter V, ¶ 7.
- c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) 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—

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

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

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

#### 11. Additional FEMA Requirements.

- a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:

- b. Changes.

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

- c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and

agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

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

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

12. DHS Seal, Logo, and Flags.

a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).

b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

13. Compliance with Federal Law, Regulations, and Executive Orders.

a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor

will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. No Obligation by Federal Government.

- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. The following provides a contract clause regarding no obligation by the Federal Government: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

15. Program Fraud and False or Fraudulent Statements or Related Acts.

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: “The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”



**KRISTEN E. KUBECKA**  
**COUNTY AUDITOR**  
MATAGORDA COUNTY  
2200 SEVENTH STREET, ROOM 208  
BAY CITY, TEXAS 77414  
979-241-0120

**Certificate of Interested Parties Texas Ethics Commission (Form 1295)**

Your contract is being recommended to the Matagorda County Commissioner's Court for approval as a future agenda item.

As you may, or may not be aware, the Texas Legislature passed HB 1295 in their last legislative session which added section 2252.908 to the Texas Government Code that now requires that a governmental entity receive a **Certificate of Interested Parties Texas Ethics Commission (Form 1295)** before entering into a contract (new, amended, extended or renewed) that

- 1) requires an action or vote by the Commissioner's Court before the contract may be signed, or
- 2) has a value of at least \$1 million

Accordingly, we are needing assistance in complying with the new Form 1295 requirements.

Note: Contract with Matagorda County require approval by the Commissioner's Court, therefore this form is required in order to approve and execute your contract.

As of January 1, 2016, Vendors are responsible for complying with this law.

Per the direction of the Texas Legislature, the Texas Ethics Commission made available on its website a new filing process that must be used to file Form 1295.

Information regarding how to use the filing process is available on the Texas Ethics Commission website at the following link:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

A Vendor must:

- 1) use the online application to process the required information on Form 1295
- 2) print a copy of the form which will contain a unique certification number
- 3) an authorized agent of the Vendor must sign the printed copy of the form
- 4) and have the form **notarized**
- 5) the completed Form 1295 and certification of filing must be filed (scanning and emailing the form is sufficient) with Matagorda County before the signed contract is submitted for Commissioner's Court approval

If you haven't already done so, your first step in completing Form 1295 will be to create an account. For assistance on how to register and how to complete Form 1295, we would highly encourage you to watch the short "Logging In the First Time- Business User" and "How to Create a Certificate" videos that are posted on the website noted above. In addition there are several other links on the website posted above that may be helpful to you in understanding and completing Form 1295.



Matagorda County's guidance in completing Form 1295 is as follows (Please note this is not legal advice):

- 1) Who is the contract with – click "Other Governmental Entity"
- 2) Agency/Entity Name – Matagorda County, Texas
- 3) Contract ID Number – enter the Contract # specified at the top of this letter
- 4) Who is the Signature of officer administering oath (the entire bottom line of the form)
  - the Notary

With regards to listing your entity's Interested Parties, the Ethics Commission defines the terms controlling interest and intermediary interest is as follows:

**"Controlling interest"** means:

- 1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;
- 2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
- 3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most high compensated by a business entity that has more than four officers...

**"Intermediary interest"** means: a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

- 1) receives compensation from the business entity for the person's participation;
- 2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
- 3) is not an employee of the business entity

**Your help is appreciated in completing and returning Form 1295 at your earliest convenience. Any delay in returning this form will result in delay of approval and/or award of the contract. If this form is not returned, Matagorda County will not proceed with the approval and/or award of the contract.**