

**Contract Provisions for Non-Federal Entity Contracts Under Federal Awards
(In accordance with 2 C.F.R. Part 200, Appendix II)**

1. Termination for Convenience

The Agency may terminate performance of work under this contract in whole or, from time to time, in part if the Agency purchasing officer determines that a termination is in the Agency's best interest.

The Agency may terminate any resulting contract for convenience by providing (1) a statement that the contract is being terminated for the convenience of the Agency, (2) the effective date of termination, (3) the extent of termination, (4) any special instructions, and (5) the steps the contractor is to take to minimize the impact on personnel.

Upon any notification of termination for convenience, the contractor is to (1) stop work immediately on the terminated portion of the contract, (2) terminate all subcontracts related to the terminated portion of the prime contract, (3) advise the Agency of any special circumstances precluding stoppage of work, (4) perform the continued portion of the contract if the termination is partial, (5) take any action necessary to protect property in the contractor's possession in which the Agency has an interest, (6) notify the Agency of any legal proceedings growing out of any subcontract, (7) settle any subcontractor claims arising out of the termination, and (8) dispose of termination inventory as directed by the Agency

2. Partially Completed Work

No later than the first calendar day after the termination of this contract, or at the Agency's request, contractor shall deliver to the Agency all completed, or partially completed, work and any and all documentation or other products and results of these services. Failure to timely delivery such work or any and all documentation or other products and results of the services shall be considered a material breach of this contract. Contractor shall not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the Agency.

3. Default

If contractor is found to be in default under any provision of this contract, the Agency may cancel the contract without notice and either re-solicit or award the contract to the next best responsive and responsible respondent. In the event of abandonment or default, contractor will be responsible for paying damages to the Agency including, but not limited to, procurement costs, and any consequential damages to the Agency resulting from contractor's non-performance. The defaulting contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed

4. Right to Audit

The federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

5. Small Business, Minority Owned Firms and Women's Business Enterprises Efforts

Consistent with federally funded projects, the Agency shall make efforts to ensure that small and minority-owned businesses, women's business enterprises, are used to the fullest extent

practicable. This is basically accomplished through the use of the Texas Certified Historically Underutilized Business (HUB) list. Additional efforts shall include, but shall not be limited to:

- a. Including such firms, when qualified, on solicitation mailing lists;
- b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- e. Encourage contracting with consortiums of small businesses, minority-owned firms, and women's business enterprises when a contract is too large for one of these firms to handle individually;
- f. Supplementing the HUB list by using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

6. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or 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 the Federal awarding agency.

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

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is

compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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

If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

9. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended

Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

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

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

11. Debarment and Suspension (Executive Orders 12549 and 12689)

A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions 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.

12. Equal Employment Opportunity

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