



**REQUEST FOR PROPOSAL**

**FOR**

**DISASTER DEBRIS MANAGEMENT AND SUPPORT SERVICES**

**RFP NO. 17-205/SLB**

**FEBRUARY 2017**

**SOLID WASTE AUTHORITY OF PALM BEACH COUNTY  
7501 NORTH JOG ROAD  
WEST PALM BEACH, FLORIDA 33412  
(561) 640-4000**

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**PART I  
GENERAL INFORMATION**

**1. Purpose**

The purpose of this Request for Proposal (RFP) is to solicit formal written Proposals from experienced and qualified individuals, corporations, partnerships and other legal entities (PROPOSER) to provide Disaster Debris Management and Support Services for the Solid Waste Authority of Palm Beach County (AUTHORITY).

**2. Selection Process and Evaluation**

The selection process will be conducted by the Selection Committee in accordance with, but not limited to, the methods and criteria described in *Part IV – Proposal Evaluation and Award*.

**3. Procurement Schedule**

A summary schedule of the major activities associated with the AUTHORITY'S procurement process for this solicitation is presented in *Table 1 – Procurement Schedule*. The AUTHORITY, at its sole discretion, may modify the schedule as it deems appropriate. The AUTHORITY will notify of any changes in association with submittal dates by written Addenda in accordance with *Part I, Section 6 – Addenda*.

**Table 1 - Procurement Schedule**

<b>NO.</b>	<b>ACTIVITY</b>	<b>DATE</b>
1	Issue RFP	February 10, 2017
2	Last Date for Authority to Receive Questions on RFP	February 17, 2017
3	Last Date for Authority to Issue Addendum in Response to Questions	February 21, 2017
4	Proposal Submission Due Date	March 14, 2017
5	Selection Committee Meeting, <i>tentative date</i>	March 21, 2017

**4. Proposal Submission and Withdrawal**

The AUTHORITY must receive all Proposals **no later than 2:00 P.M.**, Eastern Time, on the date established in *Part I, Section 3 – Procurement Schedule*, at the following address:

Mrs. Sandra L Brady, Director of Purchasing Services  
Solid Waste Authority of Palm Beach County  
7501 North Jog Road  
West Palm Beach, FL 33412

The AUTHORITY cautions those submitting Proposals to assure actual delivery of mailed or hand-delivered Proposals directly to the AUTHORITY'S Purchasing Services office at 7501 North Jog Road in West Palm Beach, Florida, prior to the deadline set for receiving Proposals. If the Proposal is hand delivered, deposit it with the Purchasing Specialist in the Administration Building. Telephone confirmation of timely receipt of the Proposals may be made by calling (561) 640-4000 ext 4527 before the deadline. All Proposals received after the established deadline will be rejected and returned unopened.

PROPOSER may withdraw their Proposal by notifying the AUTHORITY'S Purchasing Services office in writing at any time prior to the time set for the Proposals receipt deadline. PROPOSERS may withdraw their Proposals in person or through an authorized representative. PROPOSERS and authorized representatives must disclose their identity and provide a signed receipt for the Proposals. Proposals, once opened, become the property of the AUTHORITY and will not be returned to the PROPOSERS.

## **5. Communication Protocol**

All questions and communications concerning this procurement process must be directed to **Mrs. Sandra L. Brady, Director of Purchasing Services**. All requests for clarifications or additional information **must be submitted in writing via electronic mail to [sbrady@swa.org](mailto:sbrady@swa.org), or by facsimile to 561-640-3400**. All questions shall be submitted no later than the date specified in *Table 1 – Procurement Schedule*. The AUTHORITY will record its responses to questions, if any and address them in the form of a written Addendum.

## **6. Addenda**

Should revisions to the RFP become necessary, the AUTHORITY will issue written Addenda. All Addenda must be acknowledged. This Acknowledgement must be included in Proposal Form 1 – Transmittal Letter. Addenda may be downloaded from the AUTHORITY'S website at [www.swa.org](http://www.swa.org). PROPOSERS' submittals may be rejected as non-responsive if PROPOSER has failed to submit Proposal without Addenda Acknowledgement.

All PROPOSERS should contact the AUTHORITY no more than five (5) calendar days before the due date for receiving Proposals to ascertain whether any Addenda have been issued. Failure of the PROPOSER to make this inquiry could result in its Proposal being non-responsive in the event addenda were issued and not acknowledged by the PROPOSER in their submittal.

No Addenda will be issued later than five (5) calendar days prior to the due date for receipt of Proposals except an Addendum withdrawing the RFP or one that includes postponement of the date for receipt of Proposals.

## **7. Rights of the AUTHORITY**

This RFP constitutes an invitation for submission of Proposals to the AUTHORITY. This RFP does not obligate the AUTHORITY to procure or contract for any of the scopes of services set forth in this RFP. The AUTHORITY reserves and holds at its sole discretion, various rights and options under Florida law, including without limitation, the following:

- To prepare and issue addenda to the RFP that may expand, restrict, or cancel any portion or all work described in the RFP without obligation to commence a new procurement process or issue a modified or amended RFP.
- To receive questions from potential PROPOSERS and to provide such answers in writing as it deems appropriate.
- To waive any informalities, technicalities or irregularities in the Proposals submitted.
- To reject any and all Proposal submissions.
- To change the date for receipt of Proposals or any deadlines and dates specified in the RFP.
- To change the procurement and/or selection process prior to receipt of Proposals.

- To conduct investigations with respect to the information provided by each PROPOSER and to request additional information (either in writing or in presentations and interviews) to support such PROPOSER’S responses and submittals.
- To visit facilities referenced in the PROPOSER’S submittal at any time or times during the procurement process.
- To seek clarification of Proposals from the PROPOSERS either in writing or in presentations and interviews.
- To cancel the RFP with or without the substitution of another RFP.

## **8. Proposal Preparation Costs**

The AUTHORITY accepts no liability for costs and expenses incurred by the PROPOSER in preparation and submission of Proposals and responses to clarifications from the AUTHORITY, potential site visits and interviews, negotiations, future RFP or any other work performed in connection with the Proposal. Each PROPOSER that enters into the procurement process shall prepare the required materials and submittals at its own expense and with the express understanding that they cannot make any claims whatsoever for reimbursement from the AUTHORITY for the costs and expenses associated with the process. PROPOSER should prepare their submittal providing a straightforward and concise description of the PROPOSER’S ability to meet the requirements of the RFP. Unnecessarily elaborate brochures, art work, expensive paper, bindings, visual and other presentation materials, beyond that sufficient to present a complete and effective response to this RFP is not desired.

## **9. Interpretations**

The AUTHORITY will not be bound by or responsible for any explanation or interpretation of the RFP documents other than those given in written addenda. In no event shall PROPOSERS rely on any oral statement by the AUTHORITY, its staff, agents, advisors, or consultants.

Any PROPOSER that submits in its Proposal to the AUTHORITY any information which is determined to be substantially inaccurate, misleading, exaggerated, or incorrect, may be disqualified from consideration.

## **10. Non – Collusion Affidavit**

The PROPOSER is required to submit Proposal Form 3 – Non-Collusion Affidavit stipulating Agreement to the following: “PROPOSER certifies that its Proposal is made without previous understanding, Agreement, or connection with any person, firm, or corporation making a Proposal for the same item(s) and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action”.

## **11. Public Entity Crimes**

Pursuant to Section 287.133(2)(a), as amended: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

## **12. Public Records Act/Information Disclosure to Third Parties**

Sealed bids, proposals, SOQs, or replies received by the AUTHORITY pursuant to a competitive solicitation are exempt from s. 119.07(1) and s.24(a), Article I of the State Constitution until such time as the AUTHORITY provides notice of an intended decision or until thirty (30) days after opening the bids, proposals, SOQs, or final replies, whichever is earlier. As such, the AUTHORITY shall not in any way be liable or responsible for the disclosure or result of disclosure of any submissions or portions thereof submitted in response to the RFP.

The law provides for certain exclusions to disclosure. If the PROPOSER believes that some information contained in their Proposals is exempt from disclosure, the PROPOSER is instructed to label such information as confidential, specify the pertinent section of the public record law that justifies nondisclosure, and request in writing the AUTHORITY keep such information confidential and free from disclosure. The AUTHORITY reserves the right to make any final determination of the applicability of the public records law. In addition, all Proposals received by the submission date will become the property of the AUTHORITY and will not be returned.

Oral presentations, meetings where PROPOSER(S) is answering questions, negotiations, and AUTHORITY meetings to discuss negotiation strategy are exempt from public access.

## **13. Posting of Recommendation for Award**

Recommendation for Award will be posted on the date of the Selection Committee meeting for a period of five (5) calendar days. Failure to file a protest to the Director of Purchasing Services within the time prescribed, as more fully detailed in the AUTHORITY'S Purchasing Manual, Section 10, shall constitute a waiver of proceedings.

It is the PROPOSERS' sole responsibility to ascertain the time and date of posting of the Recommendation for Award. This may be accomplished by telephone, fax, e-mail, or other means deemed timely by the PROPOSER.

## **14. Insurance**

The awarded PROPOSER(S) shall maintain insurance coverage reflecting the minimum amounts and conditions specified in the attached Sample Agreement, Attachment A. In the event the PROPOSER(S) is a governmental entity or a self-insured organization, different insurance requirements may apply. Misrepresentation of any material fact, whether intentional or not, regarding the PROPOSER(S) insurance coverage, policies or capabilities may be grounds for rejection of the proposal(s) and rescission of any ensuing agreement(s).

## **15. Cone of Silence**

PROPOSERS are advised that a Cone of Silence that prohibits any communication, except for written correspondence, regarding a particular request for proposal, request for qualification, bid, or any other competitive solicitation between PROPOSERS or any person representing the PROPOSERS and any member of the Solid Waste Authority Governing Board, their staff, any AUTHORITY employee authorized to act on behalf of the AUTHORITY to award the contract under this response, or any member of the selection committee authorized to evaluate the response.

The Cone of Silence shall be in effect as of the deadline to submit response even if response is withdrawn or is otherwise eliminated from consideration consistent with the procedures as outlined in this RFP. The Cone of Silence shall remain in effect until the Governing Board, or AUTHORITY staff, if authorized to act on behalf of the Board, awards or approves the contract, rejects all responses or otherwise takes action which ends the solicitation process.

The provisions of this article shall not apply to oral communications at any public proceeding, including pre-proposal conference, oral presentations before selection committees, and contract negotiations during any public meetings, presentations made to the Board and protest hearings. Further, the Cone of Silence shall not apply to contract negotiations between AUTHORITY employees and the intended awardee(s), any dispute resolution process following the filing of a protest between the person filing the protest and any AUTHORITY employee, or any written correspondence at any time with any AUTHORITY employee, Board member or Advisory board member, or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.

The Governing Board by means of action taken at any properly noticed Governing Board meeting may invoke the cone of silence earlier than the time specified in this section for any procurement.

#### **16. Agreements with other Governmental Entities**

All PROPOSERS submitting a response to this RFP agree that such response also constitutes a response to all State Agencies and Political Subdivisions of the State of Florida under the same terms and conditions, for the same prices and for the same effective period as specified in this RFP, should the successful PROPOSER deem it in the best interest of their business to do so. The Agreement(s) resulting from this RFP in no way restricts or interferes with any State Agency or Political Subdivision of the State of Florida from re-solicitation for any or all items specified in this RFP.

#### **17. Scrutinized Companies**

As provided in F.S. 287.135, by entering into any Agreement with the AUTHORITY, or performing any work in furtherance hereof, PROPOSER hereby certifies that PROPOSER and PROPOSER'S affiliates, suppliers, sub-consultants, consultants, or any agents of any type whatsoever, who will perform hereunder, have not been placed on the Scrutinized Companies with Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 and 215.4725. If the AUTHORITY determines, using credible information available to the public, that a false certification has been submitted by PROPOSER, this PROPOSER may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135.

#### **18. Office of Inspector General**

Palm Beach County has established the Office of the Inspector General (OIG), Ordinance No. 2009-049 which is authorized and empowered to review past, present and proposed county contracts, transactions, accounts and records. The AUTHORITY has entered into an Interlocal Agreement (ILA) for Inspector General Services. This Agreement provides for the Inspector General to provide services to the AUTHORITY in accordance with the authority, functions and powers set out in the Palm Beach County Office of Inspector General Ordinance. All parties doing business with the AUTHORITY and receiving AUTHORITY funds shall fully cooperate with the Inspector General including providing access to records relating to this Agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the CONSULTANT, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

#### **19. Third Party Beneficiary Disclaimer**

It is not the intention of these RFP documents to create third party beneficiary status in any person or entity that is not a direct party to the contract awarded as a result of being the successful PROPOSER to this RFP and no language in these RFP documents or the contract awarded pursuant to this RFP should be construed or interpreted as creating a third party beneficiary.

**PART II**  
**STATEMENT OF WORK**

**1. Background Information**

The AUTHORITY is seeking proposals from experienced and qualified PROPOSERS to provide Disaster Debris Management and Support Services for the AUTHORITY. Selected PROPOSER (CONSULTANT) is expected to be extremely knowledgeable in Federal Emergency Management Agency (FEMA) and Federal Highway Administration (FHWA) regulations, guidelines and operating policies. The CONSULTANT will support the AUTHORITY during a disaster recovery effort and will be responsible for the overall monitoring of debris collection. The CONSULTANT shall coordinate with the Disaster Debris Removal Contractor(s) and the AUTHORITY to ensure a compliant, well-managed and organized approach to debris collection and disposal within FEMA guidelines.

The AUTHORITY intends to utilize an automated debris management system (ADMS) and anticipates that the Disaster Debris Removal Contractor(s) will provide vehicle certification placards.

The AUTHORITY will provide a Field Service Representative for each AUTHORITY'S Franchise Service Area (1-5) to oversee and monitor the collection activity within these service areas and to work directly with the Disaster Debris Removal Contractor(s) and the CONSULTANT to schedule all work. The AUTHORITY will provide temporary debris management sites (DMS).

The AUTHORITY currently has an Enterprise GIS System which utilizes ESRI's ArcGIS Server, ArcGIS Desktop Advanced, and Microsoft's SQL Server. Data is published to staff and the public using Rolta's Onpoint, which is a thin client for ESRI's ArcServer.

The AUTHORITY'S Disaster Debris Removal Contractor(s) will provide the manpower and collection equipment in a timely manner to safely remove disaster debris as soon as possible. Additionally, the AUTHORITY'S Disaster Debris Removal Contractor(s) will open and operate DMS and immediately begin processing material on site and begin shipping material to final destination within ten (10) days of opening.

The purpose of this RFP is to put in place an indefinite delivery/indefinite quantity Agreement for Disaster Management and Support Services based upon the specifications detailed herein. Task Orders will be issued against the Agreement, as necessary to complete work. What follows is a general description of the work anticipated.

**2. Scope of Services**

The scope of services to be provided pursuant to this RFP includes Project/Operations Management, Collection Monitoring, ADMS, Data Processing and Management, DMS Monitoring, Debris Vehicle Certification, Damage Complaint Tracking, Data Compilation and Reporting, Payment Monitoring and Reconciliation Processing, Reporting and Coordinating with the AUTHORITY'S Project/Operations Manager, and other related services as outlined in this section.

PROPOSERS are advised to propose based on the entire scope of services as defined herein, however the AUTHORITY reserves the right to select which specific services the CONSULTANT will provide and to add or delete services throughout the term of any resulting agreement with mutual consent.



## **2.1 Project/Operations Management**

CONSULTANT will be responsible for Project/Operations Management of the debris monitoring activities for the AUTHORITY. This responsibility includes providing an experienced Project/Operations Manager, supplying a temporary field office for the monitoring staff, and coordinating and meeting with the AUTHORITY, field staff and contractors. Additionally, CONSULTANT will be responsible for hiring, training, deploying, scheduling and monitoring the activities of its collection monitors.

## **2.2 Collection Monitoring**

The CONSULTANT will be responsible for monitoring and certifying all AUTHORITY'S authorized collection activities. This responsibility includes monitoring and certifying all debris loads to ensure eligibility for federal reimbursement, providing trained collection monitors, exercising quality control over the debris monitoring activity, and providing daily feedback to the AUTHORITY. CONSULTANT shall ensure that all Disaster Debris Removal Contractor(s) loads are correctly captured by their ADMS.

The CONSULTANT shall photographically document daily collection activities. CONSULTANT shall identify and document all leaners, hangers and stumps and coordinate with federal and state representatives to ensure eligibility and maximum reimbursement.

Additionally, the CONSULTANT shall coordinate with the AUTHORITY to respond to problems in the field, such as property damage complaints, debris crew issues, other customer complaints, etc.

CONSULTANT'S staff should be equipped with modern communication equipment. CONSULTANT shall have the ability to maintain shapefiles or geodatabases of collection passes, customer complaints and leaners, hangers and stumps including photos, and to track these issues using a GIS and provide an updated shapefile or geodatabase to the AUTHORITY on an appropriately determined schedule.

## **2.3 ADMS**

Per FEMA policy document 327 Public Assistance Debris Monitoring Guide, recent advances in automated debris management tracking systems provided real-time, automated tracking and reporting. FEMA embraces technological advancements and recognizes the potential benefits of these automated systems.

The CONSULTANT shall provide an electronic automated debris management system that shall create load tickets electronically, eliminating the need for written and scanned tickets. The ADMS features shall include, at a minimum, the following:

1. Paperless electronic (handheld device) load ticket generation and data collection;
2. Debris vehicle certification data capture at certification site;
3. Encrypted and secure field data transfer (field to DMS, DMS to server);
4. Accessible secure database for government and Disaster Debris Removal Contractor(s) use. Database will be internet accessible by Disaster Debris Removal Contractor(s), AUTHORITY, State and other public entities on a need to know basis;
5. Minimal manual entry of load ticket data fields (e.g., load call, type of debris);
6. Automation of debris pickup location thru use of GPS technologies;
7. Evaluation of daily event status using web-based reporting and GIS tools;
8. Coordination of Disaster Debris Removal Contractor(s) invoices, FEMA documentation and applicant payment process enabled thru an integrated database management system;
9. CONSUTLANT shall use an ADMS during the performance of services under this agreement for managing the collection, transport, and/or disposal of debris.

The AUTHORITY has Interlocal Agreements for Disaster Debris Management with municipalities to deliver eligible storm debris to AUTHORITY'S DMS. These municipalities may choose to use the current AUTHORITY'S paper load ticket system.

The municipalities must submit a legible and complete paper load ticket at the AUTHORITY'S DMS with each load. The AUTHORITY will provide the truck certification, placard, and load tickets for these municipalities. CONSUTLANT will be responsible to enter paper load ticket data.

#### ***2.4 DMS Monitoring***

The CONSULTANT will provide DMS monitors and spotters to observe and document the unloading, processing and loading of debris in accordance with FEMA requirements and the AUTHORITY'S Debris Management Plan. This responsibility includes estimating the load volume, completing the ADMS load tickets and signing and certifying that the information is complete and accurate. Additional responsibilities include conducting pre-use and post-use environmental monitoring, ensuring that the truck certifications are accurate, ensuring that all collection vehicles are equipped with the necessary safety restraints, coordinating with all federal, state and local agencies, and keeping accurate records.

#### ***2.5 Debris Vehicle Certification***

The CONSULTANT will be responsible for measuring and capturing data elements for each Disaster Debris Removal Contractor(s) vehicle in accordance with FEMA requirements utilizing their ADMS. Additionally, CONSULTANT will take a photograph of each vehicle showing the vehicle number and type of vehicle. CONSULTANT will also perform random verifications once per week at each DMS to ensure that no vehicle modifications have been made.

#### ***2.6 Damage Complaint Tracking***

The CONSULTANT shall assist the AUTHORITY with tracking, managing, reporting and customer follow-up through to resolution of all damage complaints resulting from debris removal activities. The AUTHORITY desires the complaints to be tracked using a GIS including linked photos.

#### ***2.7 Data Compilation and Reporting***

The CONSULTANT will be responsible for collecting, auditing for completeness and accuracy, tabulating and organizing debris disposal data and vehicle certifications, project records, photos and manifests, etc., to support federal (FEMA), state and local reimbursements, and subsequent audits.

The CONSULTANT will be responsible for providing regular status updates to the AUTHORITY. This reporting will include creating, updating and maintaining a database to include all information on debris removal and disposal, including number of loads and types, vehicle certification, stump, hanger and leaner information and images. All electronic reporting will be provided in a format acceptable to the AUTHORITY and the AUTHORITY shall have access to the database to perform queries and produce reports. The AUTHORITY will require the CONSULTANT to meet minimum standards for the timeliness of data reporting.

#### ***2.8 Payment Monitoring and Reconciliation Processing***

The CONSULTANT will be responsible for reviewing, validating and reconciling Disaster Debris Removal Contractor(s) invoices prior to submission to the AUTHORITY for processing.

## **2.9 Other Related Services**

Additional services the AUTHORITY desires the CONSULTANT to provide include the following:

- A. Assistance the AUTHORITY in preparing final reports for reimbursement by FEMA, FHWA and other agencies;
- B. Providing professional oversight to ensure compliance with Florida Department of Environmental Protection (FDEP), Florida Department of Transportation (FDOT), Florida Department of Forestry (DOF), and FEMA regulatory and reporting requirements, as well as any other federal, state, or local regulation applicable to debris management;
- C. Ensuring that the processing of federal funding is done as expeditiously as possible by taking ownership of the responsibility for ensuring the accuracy of invoices, payroll, monitoring information, reports, ADMS data, vehicle certifications, and operating data;
- D. Meeting with AUTHORITY'S representatives and the Disaster Debris Removal Contractor(s) daily during disaster event activation. Meeting with the AUTHORITY'S Project Manager or his/her designee at least once per year at no cost to the AUTHORITY prior to hurricane season, and;
- E. Additional services that the PROPOSER wishes to propose or that the AUTHORITY and the CONSULTANT agree to add at later date.

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**PART III**  
**PROPOSAL SUBMISSION REQUIREMENTS**

**1. Proposal Submission Requirements and Format**

The AUTHORITY must receive all Proposals no later than **2:00 P.M.**, Eastern Time on the date established in *Part I, Section 3 – Procurement Schedule* and *Section 4 – Proposal Submission and Withdrawal*. PROPOSERS shall submit one (1) original, five (5) photocopied sets, and one (1) CD/DVD containing all documents in Adobe PDF electronic format. The original and disc shall be submitted in a separate sealed envelope identifying it as the original document.

The Proposal Package shall be clearly labeled on the outside with the PROPOSER'S name and address, and shall be identified as follows: **RFP No. 17-205/SLB – Disaster Debris Management and Support Services**. Failure by the PROPOSER to provide the above information on the outside of the envelope may result in the rejection of the PROPOSER'S submittal.

Original and photocopies shall be of 8½” by 11” and bound into spiral bound or three-ring binder. Proposal pages shall be numbered. The **minimum** font size for all text sections of the Proposal shall be eleven-point (11 pt). Marketing brochures or any other information not pertaining to this RFP shall not be included in the Proposal.

**1.1 Content**

The PROPOSER shall provide the appropriate information in accordance with the content requirements set forth in the following subsections. To allow the Selection Committee to more effectively review the Proposals, PROPOSERS are to provide all requested information in the order and in the format requested below.

**1.1.1 Title Page**

The Title Page shall include the RFP Title and Number. The page shall indicate clearly the name of the PROPOSER submitting the Proposal and the name, address, phone number, fax number and e-mail address of the PROPOSER'S designated contact person. The PROPOSER'S designated contact person is the individual who shall be the main point of contact for the AUTHORITY to communicate with regarding this procurement.

**1.1.2 Table of Contents**

**1.1.3 General Information**

PROPOSER shall provide completed Proposal Forms 1 – 7 as follows:

**1.1.3.1 Proposal Form 1 – Transmittal Letter**

PROPOSER shall submit a completed Proposal Form 1 – Transmittal Letter acknowledging, among other things, that the PROPOSER has completely reviewed, understands, and agrees to be bound by the requirements of this RFP. The Proposal Transmittal Letter shall be signed by a representative of the PROPOSER who is empowered to sign it and to commit the PROPOSER to the obligations contained in the Proposal.

### **1.1.3.2 Proposal Form 2 – Price Proposal**

PROPOSER shall submit a completed Proposal Form 2 – Price Proposal. The quantities used in the Proposal Form 2 – Price Proposal are estimated. No minimum or maximum amount of work is being promised. The AUTHORITY reserves the right to add and/or remove a position/service and increase or decrease the total quantities throughout the term of the Agreement. PROPOSER shall provide a price on every item to be considered in the evaluation of his/her submittal.

The AUTHORITY reserves the right to request: additional pricing, explanations for any out-of-balance pricing, explanations for any pricing it deems too low or too high, and to negotiate a best and final price with the highest ranked PROPOSER(S).

### **1.1.3.3 Proposal Form 3 – Non-Collusion Affidavit**

PROPOSER shall provide a completed Proposal Form 3 – Non-Collusive Affidavit as described in *Part I, Section 10 – Non-Collusion Affidavit*.

### **1.1.3.4 Proposal Form 4 – Drug-Free Workplace**

PROPOSER shall provide a completed Proposal Form 4 – Drug-Free Workplace.

### **1.1.3.5 Proposal Form 5 – Schedule No. 1 – Participation of SBE Firms**

PROPOSER shall provide a completed Proposal Form 5 – Schedule No. 1 – Participation of SBE Firms, *if applicable*.

### **1.1.3.6 Proposal Form 6 – Schedule No. 2 – Letter of Intent to Perform as a SBE Sub-Contractor/Supplier**

PROPOSER shall provide a completed Proposal Form 6 – Schedule No. 2 – Letter of Intent to Perform as a SBE Sub-Contractor/Supplier, *if applicable*.

### **1.1.3.7 Proposal Form 7 – Schedule No. 3 – Statement of Good Faith Efforts**

PROPOSER shall provide a completed Proposal Form 7 – Schedule No. 3 – Statement of Good Faith Efforts, *if applicable*.

## **1.1.4 Minimum Requirements**

The PROPOSER shall substantiate in its submittal that it meets or exceeds the following minimum requirements. Failure to do so may be cause for disqualification of its submittal:

1. PROPOSER must be engaged in providing the services as outlined in this RFP;
2. PROPOSER must have a demonstrated comprehensive understanding in areas listed in this RFP. Understanding and previous experience are essential criteria in the qualifying process;
3. PROPOSER'S personnel and management to be utilized for the services described in this RFP shall be knowledgeable in their areas of expertise. The AUTHORITY reserves the right to perform investigations as may be deemed necessary to insure that competent persons will be utilized in the performance of the contract.

### 1.1.5 Experience and Qualifications

PROPOSER shall submit the following:

1. **PROPOSER'S Credentials:** Details on the qualifications of the firm, including a brief history of the firm, documentation of the firm's experience providing services similar to those requested in this RFP and the number of years in business. Qualifications for all sub-contractor(s) should also be included in this section;
2. **Expertise of Designated Staff:** Describe the qualifications and experience of personnel that will provide these services including demonstrated knowledge and understanding of the types of services to be performed; previous experience in similar or related work, local codes, laws and regulations governing the work;
3. **Past Performance:** PROPOSER shall provide any information that documents successful and reliable experience in past performance, especially those performances related to the requirements of this RFP. Related experience shall be restricted to those assignments undertaken within the last five (5) years (March, 2012). PROPOSER shall provide a breakdown showing all activations by calendar year in the last five (5) years. PROPOSER shall outline contract invoice amount and whether manual load ticket or ADMS was utilized for each activation;
4. **Managerial Capabilities:** Provide evidence of the firm's ability to manage tasks simultaneously and expeditiously and describe firm's approach to problem/task resolution and teamwork;
5. **References:** List a minimum of three (3) former references (name, contact persons, telephone number and email address) for similar projects only, who can attest to the firm's knowledge, quality of work, timeliness, diligence and flexibility;
6. **Current Contracts:** PROPOSER shall provide a list of all city, county, state or federal disaster service related contracts which he/she is currently obligated to fulfill during the initial term of this agreement. PROPOSER shall also disclose any contractual relationship with FEMA, or any other entity that may pose a conflict of interest or prevent the PROPOSER, if selected, from fulfilling its obligations to the AUTHORITY;
7. **Invoice Processing:** The PROPOSER shall provide a description of its invoicing process.

### 1.1.6 Technical

In this section PROPOSER must explain the Statement of Work as understood by the PROPOSER and detail the approach, activities and work products. PROPOSER shall also provide the following:

1. A detailed list of all services that the firm is able to provide and explain how these services will be accomplished;
2. Address, in the order presented, all of the services outlined in Section 2, Scope of Services, and its subsections;
3. Provide a guaranteed response time and schedule of services;
4. A list of any assistance the AUTHORITY may be requested to provide to the selected CONSULTANT;
5. Other information the PROPOSER may deem advantageous to demonstrate understanding and approach to the work.

### 1.1.7 Small Business Enterprise (SBE) Participation

The Governing Board of the AUTHORITY has set 15% as the AUTHORITY'S goal for Small Business Enterprise (SBE) participation in contracts and purchases. **PROPOSER shall submit a Plan showing how he/she will assist the AUTHORITY in achieving this goal through SBE sub-contractor participation or any other method.** The goal is to encourage doing business with certified SBE'S certified from an agency of the State of Florida or another Florida local governmental agency (the AUTHORITY does not have a certifying office). Proof of current certification from these governmental entities will be required. The AUTHORITY will require documentary proof of the implementation, progress and final outcome of the proposed Plan.

A PROPOSER who is SBE need not submit a Plan. Documentary proof of PROPOSER'S status as SBE must be submitted in the response to this RFP. Although the PROPOSER may be SBE him/herself, involvement of other SBE'S as suppliers or sub-consultants under SBE PROPOSER is still encouraged. Non-certified SBE status claimed by the PROPOSER for him/herself may be submitted but is subject to stringent verification by the AUTHORITY.

If PROPOSER is not SBE, then Proposal Form 5 – Schedule No. 1, Proposal Form 6 – Schedule No. 2, and Proposal Form 7 – Schedule No. 3 contain SBE Model Plan acceptable to the AUTHORITY for use by PROPOSER in response to this RFP. The intent of the Model Plan format is to reflect the percentage of SBE participation pledged by PROPOSER and/or proof of the “good faith” effort expended attempting to enlist potential participants. Alternate plans may be acceptable to the AUTHORITY, at its sole discretion, so long as substantially the same information is provided.

If the PROPOSER has not been able to achieve 15% SBE documented participation in Proposal Form 5 – Schedule No. 1 and Proposal Form 6 – Schedule No. 2, then Proposal Form 7 – Schedule No. 3 is required. NOTE: M/WBE information is being collected for tracking purposes only. M/WBE participation will not be counted towards 15% SBE goal participation.

Failure of the PROPOSER to provide any/all of the foregoing requested items may disqualify the PROPOSER at the discretion of the AUTHORITY.

The PROPOSER'S Plan will be incorporated into the Agreement between the PROPOSER and the AUTHORITY. In addition to the required Plan, the successful PROPOSER shall demonstrate a determined effort to implement the Plan.

### 1.1.8 Other

1. PROPOSER must acknowledge ownership or licensing of a proprietary ADMS. PROPOSER must demonstrate in its proposal that it maintains on hand sufficient automated debris tracking equipment dedicated to meet the needs of the AUTHORITY. If PROPOSER is licensing such technology, PROPOSER shall include graphic illustration and explanation of system capability and security (encryption) and be prepared to demonstrate system functionality, if requested, at the time of proposal evaluation and/or interview. PROPOSER must demonstrate that the ADMS will provide paperless ticketing from day one of debris removal operations. PROPOSER shall include a list of ADMS deployments undertaken at a minimum within the last 5 years;
2. Provide evidence of current levels of insurance in areas of General Liability, Automobile Liability, Workers' Compensation, and Professional Liability;
3. Provide a statement of PROPOSER'S financial security, strength, resources and capabilities to include financial reports and current or prior bankruptcy proceedings, *if applicable*;

4. Identify the type of business entity involved (e.g., sole proprietorship, partnership, corporation, etc.). Identify whether the business entity is incorporated in Florida, another state, or a foreign country;

If PROPOSER is a corporation, provide certification from the Florida Secretary of State verifying PROPOSER'S corporate status and good standing, and in the case of out-of-state corporations, evidence of authority to do business in the State of Florida. Additionally, indicate the Parent Organization(s) that the PROPOSER is a subsidiary of and the identification of any subsidiaries of the PROPOSER, if any;

5. Provide a summary of any litigation filed against the PROPOSER in the past three years which is related to the services that PROPOSER provides in the regular course of business. The summary shall state the nature of the litigation, a brief description of the case, the outcome or projected outcome, and the monetary amounts involved;
6. Additional Data - Any additional information, which the PROPOSER considers pertinent for consideration, should be included in a separate section of the proposal.

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<b>PART IV</b> <b>PROPOSAL EVALUATION AND AWARD</b>
--

**1. General**

All Proposals submitted in response to this RFP will be evaluated by the AUTHORITY'S Selection Committee based on the information supplied per *Part III – Proposal Submission Requirements* and utilizing criteria specified in *Part IV – Proposal Evaluation and Award*.

**2. Evaluation Criteria**

The review and analysis of the Proposals by the Selection Committee will be based on the following criteria:

- Submission of a complete package including all Forms
- Minimum Requirements
- Experience and Qualifications
- Technical
- Price Proposal
- Small Business Enterprise Participation
- Other

**3. Evaluation Method**

Selection Committee members will conduct a completeness review of the Proposals. Proposals must include all requirements specified in *Part III – Proposal Submission Requirements*. Minor informalities may be waived by the AUTHORITY. Those Proposals found to be complete, will then be ranked by individual members. At its discretion the AUTHORITY may require any PROPOSER(S) to make an oral presentation of his/her submittal. An oral presentation provides an opportunity for the PROPOSER(S) to clarify his/her submittal for the AUTHORITY. The AUTHORITY, if deemed necessary, will notify the PROPOSER(S) and schedule an oral presentation.

*Table 2 – Evaluation Criteria, and Points* provide guidelines for the Selection Committee members for the ranking of Proposals. In each category where points are to be assigned, PROPOSERS may receive up to the maximum allowable number of points from an individual Selection Committee member. Total points of each Selection Committee member for each Proposal will be tallied and averaged. Proposal with highest total average score will be ranked first.

**Table 2 - Evaluation Criteria, and Points**

EVALUATION CRITERIA	POINTS
Experience and Qualifications	35
Technical	30
Price Proposal	20
Small Business Enterprise Plan	10
Other	5
<b>TOTAL:</b>	<b>100</b>

#### **4. Award**

The AUTHORITY anticipates award to the PROPOSER who submit the Proposal judged by the AUTHORITY to be the most advantageous.

The AUTHORITY intends to enter into the Agreement negotiations with the highest ranked PROPOSER. If the AUTHORITY and the highest ranked PROPOSER cannot negotiate a successful Agreement, the AUTHORITY may terminate such negotiations and begin negotiations with the next highest ranked PROPOSER. No PROPOSER shall have any rights against the AUTHORITY arising from such negotiations.

The price structure submitted in the Proposals shall be firm. However, the AUTHORITY reserves the right to negotiate a “best and final” price with the highest ranked PROPOSER.

The Agreement will be for a term of five (5) years with option to extend for one (1) additional year.

The PROPOSER understands that this RFP does not constitute an agreement or a contract with the PROPOSER. An official agreement or contract is not binding until Proposals are reviewed and accepted by appointed staff, approved by the appropriate level of authority within the AUTHORITY, and executed by the parties. A Sample Agreement is attached to this RFP. The AUTHORITY anticipates that the final agreement will be in substantial conformance with the Sample Agreement; nevertheless, PROPOSERS are advised that any agreement, which may result from this RFP, may deviate from the Sample Agreement.

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**PART V  
PROPOSAL FORMS**

The following Proposal Forms are included:

Proposal Form 1 – Transmittal Letter

Proposal Form 2 – Price Proposal

Proposal Form 3 – Non-Collusion Affidavit

Proposal Form 4 – Drug-Free Workplace

Proposal Form 5 – Schedule 1

Proposal Form 6 – Schedule 2

Proposal Form 7 – Schedule 3

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**PROPOSAL FORM 1 – TRANSMITTAL LETTER**

*(To be typed on PROPOSER’S Letterhead)*

[Date]

Mrs. Sandra L. Brady, MPA, CPPB  
Director of Purchasing Services  
Solid Waste Authority of Palm Beach County  
7501 North Jog Road  
West Palm Beach, FL 33412

Dear Mrs. Brady:

\_\_\_\_\_ (PROPOSER) hereby submits its Proposal in response to the Request for Proposal (RFP) for Disaster Debris Management and Support Services issued by the Solid Waste Authority of Palm Beach County (AUTHORITY) in February 2017.

As a duly authorized representative of the PROPOSER, I hereby certify, represent and warrant, on behalf of the PROPOSER team, as follows in connection with the Proposal:

- 1. The PROPOSER acknowledges receipt of the RFP and the following Addenda:

<u>No.</u>	<u>Date</u>
_____	_____
_____	_____

- 2. The submittal of the Proposal has been duly authorized by, and in all respects is binding upon, the PROPOSER.
- 3. All information and statements contained in the Proposal are current, correct and complete, and are made with full knowledge that the AUTHORITY will rely on such information and statements in qualifying PROPOSER.
- 4. The PROPOSER certifies under penalties of perjury that the RFP has been prepared and is submitted in good faith without collusion, fraud or any other action with any other person taken in restraint of free and open competition for the services contemplated by the RFP. As used in this Proposal Form, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
- 5. The PROPOSER is not currently suspended or debarred from doing business with any governmental entity.
- 6. The PROPOSER has reviewed all of the engagements and pending engagements of the PROPOSER, and no potential exists for any conflict of interest or unfair advantage.
- 7. No person or selling agency has been employed or retained to solicit the award of the Agreement under an arrangement for a commission, percentage, brokerage or contingency fee or on any other success fee basis, except bona fide employees of the PROPOSER.

8. The principal contact person who will serve as the interface between the AUTHORITY and the PROPOSER for all communications is:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

The PROPOSER has carefully examined all documents constituting the RFP and the addenda thereto and, being familiar with the work and the conditions affecting the work contemplated by the RFP and such addenda, offers to furnish all labor, materials, supplies, equipment, facilities and services which are necessary, proper or incidental to carry out such work as required by and in strict accordance with this RFP and the Proposal.

\_\_\_\_\_  
Name of Proposer  
\_\_\_\_\_  
Print Name of Designated Signatory  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Title

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_ personally known to me to be the person described in and who executed this \_\_\_\_\_ and acknowledged that (she/he) signed the same freely and voluntarily for the uses and purposes therein described.

In witness thereof, I have hereunto set my hand and affixed my official seal the day and year last written above.

\_\_\_\_\_  
*Signature*

Notary Public in and for the State of \_\_\_\_\_

*(Affix Seal here)*

\_\_\_\_\_  
(Name printed)

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

**PROPOSAL FORM 2 – PRICE PROPOSAL**

PROPOSER shall provide a completed Proposal Form 2 – Price Proposal and provide a price on every item to be considered in the evaluation of his/her submittal.

<b>PROPOSED FEES</b> (based on estimated 3 million cubic yards)			
<b>ITEM NO / POSITION DESCRIPTION</b>	<b>ESTIMATED ANNUAL HOURS</b>	<b>UNIT PRICE PER HOUR</b>	<b>EXTENSION</b>
1. Project Office/Principal	200	\$	\$
2. Project Manager	700	\$	\$
3. Operations Manager	1,900	\$	\$
4. FEMA Reimbursement Manager	500	\$	\$
5. Operations Specialist	700	\$	\$
6. Field Supervisor	8,000	\$	\$
7. Engineer/Scientist/Professional	400	\$	\$
8. Environmental Consultant	700	\$	\$
9. Environmental Field Technician	700	\$	\$
10. Data Manager	700	\$	\$
11. GIS Analyst/Specialist	200	\$	\$
12. Administrative Support	1,200	\$	\$
13. DMS Monitor	22,000	\$	\$
14. Field Monitor	43,000	\$	\$
15. Call Center Operator	4,300	\$	\$
16. Data Entry Clerk-Paper Ticket	500	\$	\$
<b>TOTAL PROPOSAL PRICE (Items 1 - 16):</b>			<b>\$</b>

Proposed fees shall be fully loaded and include all expenses and equipment, including but not limited to, ADMS, travel related expenses, meal allowances, hotel rooms, and any other relevant out of pocket expenses, as well as vehicles, electronics, communications equipment and any other equipment, facilities, or infrastructure necessary to carry out the task.

**PROPOSAL FORM 3 – NON-COLLUSION AFFIDAVIT**

State of \_\_\_\_\_

County of \_\_\_\_\_

Being duly sworn deposes and says:

That she/he is an officer of the parties making the foregoing Proposal, that such Proposal is genuine and not collusive or sham; that said PROPOSER has not colluded, conspired, connived or agreed, directly or indirectly with any PROPOSER or person, to put in a sham bid or to refrain from bidding and has not in any manner, directly, or indirectly, sought by agreement or collusion or communication or conference with any person, to fix the price or affiant or any other PROPOSER, or to fix any overhead, profit or cost element of said price, or that of any other PROPOSER, or to secure any advantage against the AUTHORITY, or any person interested in the proposed contract and that all statements in said Proposal are true.

\_\_\_\_\_  
Name of Proposer

\_\_\_\_\_  
Print Name of Designated Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_ personally known to me to be the person described in and who executed this \_\_\_\_\_ and acknowledged that (she/he) signed the same freely and voluntarily for the uses and purposes therein described.

In witness thereof, I have hereunto set my hand and affixed my official seal the day and year last written above.

\_\_\_\_\_  
*Signature*

Notary Public in and for the State of \_\_\_\_\_

(Affix Seal here)

\_\_\_\_\_  
(Name printed)

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

**PROPOSAL FORM 4 – DRUG-FREE WORKPLACE**

The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies that \_\_\_\_\_ does:

*(Name of Business)*

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business’s policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United State or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee’s community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

\_\_\_\_\_  
Print Name of Designated Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**PROPOPSAL FORM 5 – SCHEDULE NO. 1**

**PARTICIPATION OF SBE FIRMS**

<b>BID/RFP NAME:</b>	<b>DISASTER DEBRIS MANAGEMENT AND SUPPORT SERVICES</b>	<b>RFP NUMBER: 17-205/SLB</b>
<b>NAME OF PROPOSER:</b>		

NAME, ADDRESS AND PHONE NO. OF SBE FIRM	DESCRIPTION OF SERVICE TO BE PROVIDED	CONTRACT AMOUNT				
		BLACK	HISPANIC	WOMAN	SMALL BUSINESS	OTHER
		\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$
		\$	\$	\$	\$	\$
<b>TOTAL SBE FIRMS:</b>		\$	\$	\$	\$	\$

*Note: M/WBE information is being collected for tracking purposes only.*

<b>PROPOSER TO COMPLETE</b>			
<b>TOTAL PROPOSED SERVICES:</b>	\$	<b>PERCENTAGE PARTICIPATION:</b>	%
<b>TOTAL SBE PROPOSED SERVICES:</b>	\$		

*(Make additional copies as necessary)*

**PROPOSAL FORM 6 – SCHEDULE NO. 2**

***LETTER OF INTENT TO PERFORM AS A SBE SUB-CONSULTANT***

RFP NAME: \_\_\_\_\_ RFP NO.: \_\_\_\_\_

TO: \_\_\_\_\_  
*(Name of Proposer)*

FROM: \_\_\_\_\_  
*(Name of Sub-Consultant)*

The undersigned intends to provide services in connection with the above as (*✓one*):

- an individual       a partnership       a corporation       a joint venture

The undersigned is certified by \_\_\_\_\_ as a SBE

Certification date: \_\_\_\_\_

The undersigned is certified by \_\_\_\_\_ as a M/WBE

Certification date: \_\_\_\_\_

Attach proof of SBE-M/WBE Certification, either letter or certificate from certifying agency

The undersigned is prepared to provide the following services in connection with the above RFP (*specify in detail particular work items or parts thereof to be performed*):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

at the following price: \_\_\_\_\_  
*(Amount must match Sub-Consultant's quote as listed on Schedule 1)*

\_\_\_\_\_  
*Signature of SBE-M/WBE Sub-Consultant*

\_\_\_\_\_  
Printed Name of Signer

\_\_\_\_\_  
Title of Signer

\_\_\_\_\_  
Date

Corporate Seal  
*(If applicable)*

*(Make additional copies as necessary)*

## PROPOSAL FORM 7 – SCHEDULE NO. 3

### STATEMENT OF GOOD FAITH EFFORTS

*Good Faith efforts attempted by PROPOSER to achieve SBE participation through use of sub-consultants. Good Faith efforts should include but are not limited to:*

#### **Select 2 out of 3 for A through C**

- A. Letters sent to SBE sub-consultants advising of the need for bids/proposals (provide copies of letter(s), response(s)). Note: solicitation letters must be sent to prospective SBE firms with reasonable lead times to allow proper responses.
- B. PROPOSER shall advertise in general circulation, trade association, and/or SBE focus media indicating the availability of subcontracting opportunities (provide copy of advertisement(s)).
- C. PROPOSER shall utilize services of available SBE community organizations, contractor groups, local/state/federal business assistance offices or other organizations (provide proof).

#### **Select D or E**

- D. List of SBE firms who have expressed interest in providing the service but who were not accepted by the PROPOSER. If no expressions of interest were received, please so indicate.
- E. Document past utilization of SBE'S

**PART VI  
ATTACHMENTS**

The following Attachments are included:

Attachment A – Sample Agreement



YOUR PARTNER FOR  
SOLID WASTE SOLUTIONS

AGREEMENT FOR

---

BETWEEN

SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

AND

---

SAMPLE AGREEMENT NO. 17-XXX

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**AGREEMENT FOR PROFESSIONAL SERVICES**

**This Agreement is made and entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between Solid Waste Authority of Palm Beach County**, a special district created by Chapter 2001-331, Laws of Florida, as amended, (hereinafter referred to as AUTHORITY) and \_\_\_\_\_ (hereinafter referred to as CONSULTANT), a \_\_\_\_\_ Corporation, whose Federal Employer ID Number is \_\_\_\_\_:

*Whereas*, in accordance with the AUTHORITY’S Request for Proposals No. 17-205/SLB, solicited to employ the services of the CONSULTANT for the purpose of providing Disaster Debris Management and Support Services, and,

*Whereas*, CONSULTANT represents it is capable and prepared to provide such services.

*Now, therefore*, in consideration of the promises contained herein, the parties hereto agree as follows:

**ARTICLE 1 - EFFECTIVE DATE**

The effective date of this Agreement shall be \_\_\_\_\_ through \_\_\_\_\_.

Term of Agreement shall be for a five (5) year period as per the Effective Date, unless otherwise terminated as provided herein. The AUTHORITY shall have the option of extending the Agreement for one (1) additional year, as approved by the AUTHORITY, at the same terms and conditions. Extension of the Agreement beyond the initial period, and any option subsequently exercised, is an AUTHORITY prerogative, and not a right of the CONSULTANT. This prerogative will be exercised only when such continuation is clearly in the best interest of the AUTHORITY. Such extension shall be in the form of a written Amendment to the Agreement executed by both parties.

**ARTICLE 2 - SERVICES TO BE PERFORMED BY CONSULTANT**

CONSULTANT shall perform the services as specifically stated in the Scope of Work, attached hereto and made a part hereof as Exhibit A, and/or as may be specifically designated and authorized by the AUTHORITY. Such authorizations which will be referred to as Consultant Services Authorizations (CSA) shall each set forth the specific services required, the amount of compensation, and the completion date. In addition the CONSULTANT may employ the use of sub-consultant(s) whose services are necessary to the CONSULTANT in the provision of services and upon specific approval in an individual CSA. In such case the sub-consultant, the specific services to be performed and his/her compensation (including a not-to-exceed amount) shall be identified as part of the CSA.

**ARTICLE 3 - COMPENSATION**

3.1 The AUTHORITY shall pay CONSULTANT in accordance with the Fee Schedule, attached hereto and made a part hereof as Exhibit B.

3.2 In addition, the parties may negotiate a lump sum or not-to-exceed amount on a per-project basis on an individual CSA. Invoices must reference the current Agreement or CSA number (if any) along with the assigned purchase order number.



- 3.3 CONSULTANT shall submit a monthly invoice for services rendered. Invoices shall include a statement of progress made regarding the project, a description of services rendered and a breakdown of hours spent on the project. There shall be no reimbursable expenses allowable.
- 3.4 Payment of invoices shall be due and payable within thirty (30) days after receipt of a correct, fully documented invoice. All invoices shall be delivered to:

Solid Waste Authority of Palm Beach County  
7501 North Jog Road  
West Palm Beach, Florida 33412  
Attn: Accounts Payable

- 3.5 CONSULTANT will clearly mark its final/last billing with the words "Final Invoice". This will certify that all services have been fully performed under this Agreement and that all charges and costs have been invoiced to the AUTHORITY. Thereupon, this account will be closed and any additional charges or costs, not included in the final invoice, shall be waived by CONSULTANT.

#### ARTICLE 4 - INSURANCE

- 4.1 During the performance of the Services under this Agreement, CONSULTANT shall maintain the following insurance policies, and be written by an insurance company authorized to do business in Florida.
1. **General Liability** Insurance with bodily injury limits of not less than \$5,000,000 for each occurrence, and with property damage limits of not less than \$5,000,000 for each occurrence.
  2. **Automobile Liability** Insurance with bodily injury limits of not less than \$1,000,000 for each person and not less than \$1,000,000 for each accident and with property damage limits of not less than \$1,000,000 for each accident.
  3. **Workers' Compensation** Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$1,000,000 for each accident, \$1,000,000 for each disease, and \$1,000,000 aggregate.
  4. **Professional Liability** Insurance with limits of not less than \$5,000,000 annual aggregate.
- 4.2 Deductible amounts shall not exceed 5% of the total amount of required insurance in each category. Should any policy contain any unusual exclusions, said exclusions shall be so indicated on the certificate(s) of insurance.
- 4.3 CONSULTANT shall furnish AUTHORITY **certificates of insurance** which shall include a provision that policy cancellation, non-renewal or reduction of coverage will not be effective until at least **thirty (30) days** written notice has been made to the AUTHORITY. CONSULTANT shall include AUTHORITY as an **additional insured** on all liability insurance policies required by the Agreement. All of CONSULTANT 'S sub-consultants shall be required to include AUTHORITY and CONSULTANT as **additional insured** on all of their liability insurance policies.
- 4.4 CONSULTANT'S naming of the AUTHORITY as an additional insured on all of its liability insurance policies pursuant to this Agreement shall afford coverage only for the grossly negligent and willful acts of CONSULTANT pursuant to this Agreement and is limited to the terms and conditions of indemnity provisions in the Agreement. Notwithstanding anything herein to the contrary, CONSULTANT shall in no way be responsible for the defense or indemnity of matters

arising or resulting from the AUTHORITY'S negligence, errors or omissions or willful misconduct.

- 4.5 In the event that sub-consultants used by the CONSULTANT do not have insurance, or do not meet the insurance limits, CONSULTANT shall indemnify and hold harmless the AUTHORITY for any claim in excess of the sub-consultants insurance coverage.
- 4.6 The CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the AUTHORITY.

#### **ARTICLE 5 - STANDARD OF CARE**

- 5.1 CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily provided by a comparable professional under similar circumstances and CONSULTANT shall, at no additional cost to AUTHORITY, re-perform services which fail to satisfy the foregoing standard of care.
- 5.2 The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

#### **ARTICLE 6 - INDEMNIFICATION**

##### **6.1 GENERAL**

Having considered the risks and potential liabilities that may exist during the performance of the services and in consideration of the promises included herein, AUTHORITY and CONSULTANT agree to allocate such liabilities in accordance with this Article 6.

##### **6.2 INDEMNIFICATION**

The CONSULTANT shall indemnify and hold harmless the AUTHORITY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the Agreement.

##### **6.3 SURVIVAL**

Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive.

#### **ARTICLE 7 - INDEPENDENT CONSULTANT**

- 7.1 The CONSULTANT is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Consultant, and not an employee, agent, or servant of the AUTHORITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT 'S relationship and the relationship of its employees to the AUTHORITY shall be that of an Independent Consultant and not as employees or agents of the AUTHORITY.
- 7.2 The CONSULTANT does not have the power or authority to bind the AUTHORITY in any promise, agreement or representation other than specifically provided for in this Agreement.

## **ARTICLE 8 - AUTHORITY TO PRACTICE**

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

## **ARTICLE 9 - COMPLIANCE WITH LAWS**

In performance of the Services, CONSULTANT will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

## **ARTICLE 10 - SUB-CONSULTANT**

- 10.1 The AUTHORITY reserves the right to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant under this Agreement.
- 10.2 If a sub-consultant fails to perform or make progress, as required by this Agreement, and it is necessary to replace the sub-consultant to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new sub-consultant by the AUTHORITY.

## **ARTICLE 11 - FEDERAL AND STATE TAXES**

The AUTHORITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the AUTHORITY will provide an exemption certificate to CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the AUTHORITY, nor shall the CONSULTANT be authorized to use the AUTHORITY'S Tax Exemption Number in securing such materials.

## **ARTICLE 12 - AVAILABILITY OF FUNDS**

The obligations of the AUTHORITY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of the Solid Waste Authority of Palm Beach County.

## **ARTICLE 13 - AUTHORITY'S RESPONSIBILITIES**

AUTHORITY shall be responsible for providing access to all project sites, and providing information on hand required by CONSULTANT, including; existing reports, studies, financial information, and other required data that are available in the files of the AUTHORITY.

## **ARTICLE 14 - DEFAULT**

- 14.1 The AUTHORITY may, by written notice of default to the CONSULTANT, terminate the Agreement in whole or in part if the CONSULTANT fails to satisfactorily perform any provisions of this Agreement, or fails to make progress so as to endanger performance under the terms and conditions of this Agreement, or provides repeated non-performance, or does not remedy such failure within a period of ten (10) days (or such period as the Director of Purchasing Services may authorize in writing) after receipt of notice from the Director of Purchasing Services specifying such failure. In the event the AUTHORITY terminates this Agreement in whole or in part because of default of the CONSULTANT, the AUTHORITY may procure goods and/or services similar to those terminated, and the CONSULTANT shall be liable for any excess costs incurred due to this action.

- 14.2 If it is determined that the CONSULTANT was not in default or that the default was excusable (e.g., failure due to causes beyond the control of, or without the fault or negligence of, the CONSULTANT), the rights and obligations of the parties shall be those provided in Article 15 – Termination for Convenience.

#### **ARTICLE 15 - TERMINATION FOR CONVENIENCE**

- 15.1 The Director of Purchasing Services may, whenever the interests of the AUTHORITY so require, terminate the Agreement, in whole or in part, for the convenience of the AUTHORITY. The Director of Purchasing Services shall give five (5) days prior written notice of termination to the CONSULTANT, specifying the portions of the Agreement to be terminated and when the termination is to become effective. If only portions of the Agreement are terminated, the CONSULTANT has the right to withdraw, without adverse action, from the entire Agreement.
- 15.2 Unless directed differently in the Notice of Termination, the CONSULTANT shall incur no further obligations in connection with the terminated work, and shall stop work to the extent specified and on the date given in the Notice of Termination. Additionally, unless directed differently, the successful CONSULTANT shall terminate outstanding orders and/or subcontracts related to the terminated work.
- 15.3 Unless the CONSULTANT is in breach of this Agreement, the CONSULTANT shall be paid for services rendered to the AUTHORITY'S satisfaction through the date of termination.

#### **ARTICLE 16 - UNCONTROLLABLE FORCES**

- 16.1 Neither the AUTHORITY nor CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.
- 16.2 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

#### **ARTICLE 17 –REMEDIES**

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement shall be in a State court of competent jurisdiction located in Palm Beach County. With the exception of the choice of law and venue provisions contained herein, no remedy conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

## **ARTICLE 18 - NON-DISCRIMINATION**

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

## **ARTICLE 19 - WAIVER**

A waiver by either AUTHORITY or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

## **ARTICLE 20 - SEVERABILITY**

20.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

20.2 The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

## **ARTICLE 21 - ENTIRETY OF AGREEMENT**

The AUTHORITY and the CONSULTANT agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the AUTHORITY and CONSULTANT pertaining to the Services, whether written or oral. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

## **ARTICLE 22 - MODIFICATION**

The Agreement may not be modified unless such modifications are evidenced in writing signed by both AUTHORITY and CONSULTANT. Such modifications shall be in the form of a written Amendment executed by both parties.

## **ARTICLE 23 - SUCCESSORS AND ASSIGNS**

AUTHORITY and CONSULTANT each binds itself and its partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives. CONSULTANT shall not assign this Agreement without the express written approval of the AUTHORITY via executed amendment.

## **ARTICLE 24 - CONTINGENT FEES**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

## **ARTICLE 25 - TRUTH-IN-NEGOTIATION CERTIFICATE**

- 25.1 Execution of this Agreement by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.
- 25.2 The said rates and costs shall be adjusted to exclude any significant sums should the AUTHORITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The AUTHORITY shall exercise its rights under this "Certificate" within one (1) year following payment.

## **ARTICLE 26 - OWNERSHIP OF DOCUMENTS**

CONSULTANT shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the AUTHORITY for its use and/or distribution as may be deemed appropriate by the AUTHORITY.

## **ARTICLE 27 - PUBLIC RECORDS, ACCESS AND AUDITS**

- 27.1 It is the intent of this Article to maintain compliance with the Florida Public Records Law, Ch. 119, Florida Statutes, as amended effective July 1, 2016.

27.2 **DESIGNATED RECORDS CUSTODIAN CONTACT INFORMATION:**

**RECORDS MANAGER  
SOLID WASTE AUTHORITY OF PALM BEACH COUNTY  
7501 NORTH JOG ROAD  
WEST PALM BEACH, FL. 33412  
561-640-4000 EXT. 4210  
RECORDS CUSTODIAN@SWA.ORG**

- 27.3 The CONSULTANT shall maintain records related to all charges, expenses, and costs incurred in estimating and performing the work, in accordance with the timeframes and classifications for records retention as per the General Records Schedule GS1-SL for State and Local Government Agencies (see: <http://dos.dos.state.fl.us/library-archives/records-management/general-records-schedules/>) after completion or termination of this Contract. The AUTHORITY shall have access to such records as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

- 27.4 Notwithstanding anything herein to the contrary, the CONSULTANT expressly acknowledges that: i) it is providing a specific service to the AUTHORITY in the performance of this Contract; ii) acting on behalf of the AUTHORITY in the performance of this Contract; iii) that it has read and is familiar with the Florida Public Records Law, Ch. 119, Florida Statutes, as amended, and both understand its responsibility and obligation to comply with this law; and iv) to the extent any question(s) arise regarding its duties to produce public records, it shall contact the Records Manager with same.
- 27.5 Any public records requests directed to, or related in any way to this contract shall be directed solely to the Records Manager. If the requested records are not in the possession of the Records Manager they shall immediately notify the CONSULTANT and the CONSULTANT must provide the records or allow access to the records within a reasonable time. A CONSULTANT who fails to provide the records to the public agency within a reasonable time may be subject to penalties under Florida Statutes (F.S) §119.10, and §119.10(2) provides that a person who willfully and knowingly violates the Public Records Act commits a misdemeanor of the first degree, which is punishable by up to a year in jail and a fine not to exceed \$1,000.
- 27.6 Therefore, the CONSULTANT is required to:
- 1) maintain public records that ordinarily and necessarily would be required by the AUTHORITY in order to perform the service;
  - 2) provide the public with access to public records on the same terms and conditions that the AUTHORITY would provide the records and at a cost that does not exceed the cost provided by Florida law;
  - 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
  - 4) meet all requirements for retaining public records and transfer, at no cost to the AUTHORITY, all public records in possession of the CONSULTANT upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. When requested by the AUTHORITY, either during performance of the contract or after termination or completion of the contract, all records stored electronically must be provided to the AUTHORITY in a format that is compatible with the information technology systems of the AUTHORITY.
- 27.7 Failure of the CONSULTANT to comply with these requirements shall be a material breach of this Contract.
- 27.8 CONSULTANT shall maintain financial and program records to justify all charges and costs incurred in performing the work for at least three (3) years following final payment by the AUTHORITY as Federal Emergency Management Agency sub-grantee as required by FEMA'S 322 Public Assistance Guide, page 114, as amended, incorporated in this Agreement as Exhibit D. The AUTHORITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit
- 27.9 In the event records retention requirements in Florida Statutes Chapter 119 and 257 exceed those of FEMA, the records shall be retained to comply with State of Florida requirements.

## **ARTICLE 28 – OFFICE OF INSPECTOR GENERAL**

Palm Beach County has established the Office of the Inspector General (OIG), Ordinance No. 2009-049 which is authorized and empowered to review past, present and proposed county contracts, transactions, accounts and records. The AUTHORITY has entered into an Interlocal Agreement (ILA) for Inspector

General Services. This agreement provides for the Inspector General to provide services to the AUTHORITY in accordance with the authority, functions and powers set out in the Palm Beach County Office of Inspector General Ordinance. All parties doing business with the AUTHORITY and receiving AUTHORITY funds shall fully cooperate with the Inspector General including providing access to records relating to this agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the CONSULTANT, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

## ARTICLE 29 - NOTICE

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

<b>AS TO AUTHORITY</b>
------------------------

Solid Waste Authority of Palm Beach County  
7501 North Jog Road  
West Palm Beach, Florida 33412

Attention: Mark Eyeington, Chief Operations Officer  
Office No.: 561-640-4000 Ext. 4513 Fax No.: 561-640-3400 E-Mail: [meyeington@swa.org](mailto:meyeington@swa.org)

<b>AS TO CONSULTANT</b>
-------------------------

*(Legal Name of CONSULTANT)*

*Address #1*

*Address #2*

*Attention: [Name and Title]*

*Office No.: xxx-xxx-xxxx Fax No.: xxx-xxx-xxxx E-Mail:*

Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONSULTANT and AUTHORITY.

## ARTICLE 30 - CONTRACT ADMINISTRATION

Services of CONSULTANT shall be under the general direction of \_\_\_\_\_, Director of \_\_\_\_\_, or his or her successor, who shall act as the AUTHORITY'S representative during the term of the Agreement.



**ARTICLE 31 - KEY PERSONNEL**

CONSULTANT shall notify AUTHORITY in the event of key personnel changes which might affect this Agreement. Notification shall be made within ten (10) days of said changes. AUTHORITY has the right to reject proposed changes in key personnel. The following personnel shall be considered key personnel:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 32 - SMALL BUSINESS ENTERPRISE (SBE)**

The Governing Board of the AUTHORITY has set 15% as the AUTHORITY’S goal for small business participation in contracts and purchases. CONSULTANT’S submitted Plan showing how he/she will assist the AUTHORITY in achieving this goal is incorporated into this Agreement as Exhibit C. The AUTHORITY will require periodic documentary proof, acceptable to the AUTHORITY, of the implementation, progress, and final outcome of the proposed Plan. Failure to implement the Plan, or achieve reasonable interim progress, or achieve the final goal reflected in the Plan, may be considered by the AUTHORITY as failure to perform a material provision of this Agreement.

**ARTICLE 33 - SCRUTINIZED COMPANIES**

As provided in F.S. 287.135, by entering into any Agreement with the AUTHORITY, or performing any work in furtherance hereof, CONSULTANT hereby certifies that CONSULTANT and CONSULTANT’S affiliates, suppliers, sub-contractors, contractors, or agents of any type whatsoever who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 and F.S. 215.4725. If the AUTHORITY determines, using credible information available to the public, that a false certification has been submitted by CONSULTANT, this CONSULTANT may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135.

**ARTICLE 34 - AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES**

- 34.1 The CONSULTANT agrees that this Agreement constitutes an offer to all State Agencies and Political Subdivisions of the State of Florida under the same terms and conditions, for the same prices and for the same effective period as specified in this Agreement; should the CONSULTANT deem it in the best interest of their business to do so.
- 34.2 The Agreement in no way restricts or interferes with any State Agency or Political Subdivision of the State of Florida from re-solicitation.

**ARTICLE 35 – THIRD PARTY BENEFICIARY DISCLAIMER**

It is not the intention of these documents to create third party beneficiary status in any person or entity that is not a direct party to the contract awarded as a result of being the successful CONSULTANT to the RFP and no language in these RFP documents or the contract awarded pursuant to this RFP should be construed or interpreted as creating a third party beneficiary.

**ARTICLE 36 - FLORIDA HIGHWAY ADMINISTRATION (FHWA) FORM 1273**

- 36.1 This Agreement incorporates all of the provisions set forth in the document commonly known as FHWA Form 1273, Exhibit E, which is attached hereto and incorporated by reference as part of this Agreement. The term “contractor,” as used in Exhibit E, shall apply to and mean the

CONSULTANT, who may also be referred to in Exhibit E as the “prime contractor”, “bidder”, “proposer”, “prospective primary participant”, “prospective participant”, “participant” or the like. The CONSULTANT will perform the duties and obligations of the other contracting party regardless of the description or label used in FHWA Form 1273, Exhibit E.

- 36.2 The CONSULTANT shall comply with the Davis-Bacon wages rates to the extent applicable to the work performed under this Agreement. The provisions of the Davis-Bacon Act do not apply to debris removal work unless such work is done in conjunction with a construction project or “linked” to a particular Federal highway. Wage rate tables may be found at [www.dot.state.fl.us/construction](http://www.dot.state.fl.us/construction). Said wage rate tables are incorporated into and made a part of this Agreement by reference.

### **ARTICLE 37 - BUY AMERICA REQUIREMENTS**

The CONSULTANT agrees to comply with the requirements of the Federal Buy America law (See 23 U.S.C. 313, ISTEA Sections 1041(a) and 1048(a), and FHWA’s implementing regulations at 23 CFR 635.410, as they may be amended from time to time), as they relate to Federal-aid contracts and the use of steel and iron produced in the United States. A description of the requirements of Buy America is set forth in Exhibit F, which is attached hereto and incorporated by reference as part of this Agreement. CONSULTANT shall provide a certification statement regarding the origin of all materials or products covered under the Buy America provisions and used in its performance of the Agreement in accordance with the requirements of law and the AUTHORITY, FDOT, FHWA, and FEMA, to the extent applicable.

### **ARTICLE 38 - DISADVANTAGED BUSINESS ENTERPRISES**

- 38.1 The Agreement is subject to the requirements of 49 CFR Part 26. The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The CONSULTANT shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Failure by the CONSULTANT to carry out these requirements is a material breach of Agreement, which may result in the termination of this Agreement or such other remedy as the AUTHORITY deems appropriate, including but not limited to the withholding of payments. Each subcontract the CONSULTANT signs with a sub-consultant must include the assurance in this paragraph. (See 49 CFR 26.13.) Upon request, the CONSULTANT will provide the AUTHORITY with a copy of each subcontract it enters into.
- 38.2 The CONSULTANT is required to pay its sub-consultants performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the CONSULTANT’S receipt of payment for that work from the AUTHORITY. The CONSULTANT may not hold any retainage from its sub-consultants unless pursuant to an agreement approved by the AUTHORITY. The CONSULTANT shall return all retainage payments withheld within thirty (30) days after the sub-consultant’s work has been satisfactorily completed.
- 38.3 The CONSULTANT shall, on a monthly basis, submit payment certifications, including a certification regarding their truth and accuracy, for all payments it is seeking and certifications from all sub-consultants indicating who has been paid and how. The certifications shall comply with all Federal and State requirements regarding the reporting of DBE participation. The CONSULTANT shall, if required by the AUTHORITY or FDOT, report its DBE participation monthly on the Equal Opportunity Reporting System located on the Florida Department of Transportation’s (FDOT) website found at [www.dot.state.fl.us/equalopportunityoffice](http://www.dot.state.fl.us/equalopportunityoffice). Audits may be conducted to review payments to DBE sub-consultants. The CONSULTANT will fully cooperate with the AUTHORITY, FDOT, FHWA or FEMA regarding the monitoring of sub-consultants and payments made thereto.

## **ARTICLE 39 - CERTIFICATION REGARDING SUSPENSION AND DEBARMENT**

- 39.1 This Agreement is a covered transaction for purposes of 49 CFR Part 29. Accordingly, the CONSULTANT shall verify that neither the CONSULTANT, nor its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified from participation in this Agreement as defined at 49 CFR 29.940 and 29.945.
- 39.2 The CONSULTANT agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the term of this Agreement. The CONSULTANT must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. The CONSULTANT acknowledges and affirms that by signing and submitting its bid or proposal, the CONSULTANT made the certification described in Section X of the attached FHWA Form 1273, Exhibit E. CONSULTANT'S certification is a material representation of fact relied upon by the AUTHORITY. If it is later determined that the CONSULTANT knowingly rendered an erroneous certification, in addition to remedies available to the AUTHORITY, the State or Federal Government may pursue any available remedies, including but not limited to suspension and/or debarment. The CONSULTANT further agrees that it will include a provision requiring such compliance in all of its subcontracts or lower tier covered transactions.

## **ARTICLE 40 - ACCESS TO RECORDS AND THEIR RETENTION**

- 40.1 This provision shall supplement Article 27 of the Agreement. The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Agreement for at least five (5) years after completion or termination of this Agreement or FDOT's closure of an "emergency event" with the Florida Division of Emergency Management, whichever comes last, except in the event of litigation or settlement of claims arising from the performance of the Agreement, the CONSULTANT agrees to maintain said records until all litigation, claims, appeals or exceptions related thereto have been resolved. The records shall be maintained at a location in Palm Beach County, Florida or such other location in Florida approved by the AUTHORITY.
- 40.2 The CONSULTANT shall make all of its books, records, and other documents related, in any manner to its or its sub-consultants' performance of the Agreement, available to the AUTHORITY and any other funding entity (e.g., FDOT, FHWA, FEMA, the Comptroller General of the U.S. or any of their authorized representatives) for the purpose of examination, audit, reproduction, excerpts and transcripts, during normal business hours, at the CONSULTANT'S place of business or if CONSULTANT'S place of business is not located in Palm Beach County, then at the location for maintenance of records referenced above. The CONSULTANT shall also require its sub-consultants to make their books, records and documents available for examination, audit, reproduction, excerpts, and transcripts, for the same duration and in the same manner, and at or near the same locations required herein of CONSULTANT.

## **ARTICLE 41- AUDIT REQUIREMENTS**

This provision shall supplement Article 27 of the Agreement. The CONSULTANT agrees that audits may be undertaken of its records related to its performance of the Agreement as may be authorized or required under OMB Circular A-133, as revised. The CONSULTANT agrees that it will comply and fully cooperate with the AUTHORITY and any State and/or Federal funding agency(ies), including but not limited to FDOT, Florida's Auditor General, FHWA, FEMA, or any of their authorized representatives, in any audit or monitoring procedures or processes any such entity(ies) may undertake related to CONSULTANT'S performance of the Agreement.

#### **ARTICLE 42 - NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**

The CONSULTANT shall cooperate with the AUTHORITY, FDOT, FHWA and FEMA so as to assure that all activities related to the performance of this Agreement comply with the requirements of the National NEPA of 1969, as amended, and the regulations and guidance related thereto.

#### **ARTICLE 43 - AMERICANS WITH DISABILITIES ACT**

The CONSULTANT does hereby represent and certify that it will comply with all of the requirements of the Americans with Disabilities Act of 1990 (42 USC 12102, et seq.), as it may be amended, and all applicable implementing regulations of the U.S. DOT, FHWA, FEMA and other Federal-aid agencies.

#### **ARTICLE 44 - COMPLIANCE WITH TITLE VI, TITLE VII AND OTHER FEDERAL LAWS AND REGULATIONS**

The CONSULTANT does hereby represent and certify that it will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1968, as they have been and may be modified from time to time (42 USC 2000d, *et. seq.* and 3601 *et.seq.*), and the Age Discrimination and Employment Act of 1967 and Section 303 of the Age Discrimination Act of 1975, as amended (42 USC 6102), and all applicable Federal laws and regulations, policies, procedures and directives of the U.S. DOT, FHWA, FEMA, and/or other Federal-aid agencies, as they may be promulgated and amended from time to time.

#### **ARTICLE 45 - CONVICT LABOR PROHIBITION**

The CONSULTANT does hereby represent and certify that it will comply with the convict labor prohibition in 23 U.S.C. 114, and all implementing regulations thereto.

#### **ARTICLE 46 - CERTIFICATION REGARDING LOBBYING ACTIVITIES**

A bidder or proposer for an award of certain Federal-aid contracts in the amount of \$100,000 or more, must file the certification required by 49 CFR Part 20. The CONSULTANT confirms that by signing and submitting a bid or proposal for the work covered by this Agreement, it made the certification described in Section XI of the attached FHWA Form 1273, Exhibit E.

*In Witness Whereof*, this Agreement has been fully executed on behalf of the parties hereto by its duly authorized representatives, as of the date first written above.

**SOLID WASTE AUTHORITY OF PALM BEACH COUNTY:**

Witness:

1. \_\_\_\_\_

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

*Mark Hammond*  
Executive Director

2. \_\_\_\_\_

Approved as to Form and Legal Sufficiency:

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

*General Counsel to the Authority*

**(CONSULTANT):**

Attest:

\_\_\_\_\_  
*Corporate Secretary*

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

*(Corporate Seal)*

Witness:

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

1. \_\_\_\_\_

Title: \_\_\_\_\_

2. \_\_\_\_\_

**SCOPE OF WORK**

*(see RFP Part II, Statement of Work)*

**FEE SCHEDULE**

*(see RFP, Price Proposal Form)*

**SBE PLAN**

*(Plan to be inserted upon Agreement execution)*



<p style="text-align: center;"><b>FEMA 322</b> <b>PUBLIC ASSISTANCE GUIDE</b></p>
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## CHAPTER 5

### PROJECT MANAGEMENT

Project management begins when a disaster occurs and does not end until an applicant has received final payment for the project. Good project management ensures successful recovery from the disaster, expedited payment of funds, and more efficient close-outs of PA Program grants.

#### Record Keeping

It is critical that the applicant establish and maintain accurate records of events and expenditures related to disaster recovery work. The information required for documentation describes the “who, what, when, where, why, and how much” for each item of disaster recovery work. The applicant should have a financial and record keeping system in place that can be used to track these elements. The importance of maintaining a complete and accurate set of records for each project cannot be over-emphasized. Good documentation facilitates the project formulation, validation, approval, and funding processes.

All of the documentation pertaining to a project should be filed with the corresponding *PW* and maintained by the applicant as the permanent record of the project. These records become the basis for verification of the accuracy of project cost estimates during validation of small projects, reconciliation of costs for large projects, and audits.

Applicants should begin the record keeping process before a disaster is declared by the President. To ensure that work performed both before and after a disaster declaration is well documented, potential applicants should:

- designate a person to coordinate the compilation and filing of records;
- establish a file for each site where work has been or will be performed; and
- maintain accurate disbursement and accounting records to document the work performed and the costs incurred.

The Federal Office of Management and Budget requires grant recipients to maintain financial and program records on file for three years following final payment. Records of grant recipients may be subject to the provisions of the Single Audit Act, as described on page 117 of this guide. Applicants may refer to the Applicant Handbook, FEMA 323, for additional information regarding record-keeping.

**FHWA-1273**

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for

withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific

requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield

qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

**III. NONSEGREGATED FACILITIES**

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate

or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

**IV. DAVIS-BACON AND RELATED ACT PROVISIONS**

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

**1. Minimum wages**

a. All laborers and mechanics employed or working upon the site of the work, 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 1.d. 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 29 CFR 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 1.b. 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.

b. (1) 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:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) 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, Employment Standards Administration, 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.

(3) 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 Wage and Hour Administrator for determination. The Wage and Hour 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.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) 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.

c. 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.

d. 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 contracting agency 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, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, 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

a. 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. 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.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting 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 contracting agency for transmission to the State DOT, the FHWA 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 contracting agency.

(2) 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:

(i) 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;

(ii) 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;

(iii) 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.

(3) 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 3.b.(2) of this section.

(4) 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.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, 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 FHWA may, after written notice to the contractor, the contracting agency or the State DOT, 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

a. Apprentices (programs of the USDOL).

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.

b. Trainees (programs of the USDOL).

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.

c. 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.

d. Apprentices and Trainees (programs of the U.S. DOT). Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**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 Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 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.**

a. 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).

b. 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).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**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 therefore 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 FHWA or the contracting agency 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.

**VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the

submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

**VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry



out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

**VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

**IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as

the contracting agency may direct as a means of enforcing such requirements.

**X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

**1. Instructions for Certification – First Tier Participants:**

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility

and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

J. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
  - a. 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 any Federal 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.
  - b. 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 Federal 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.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
  - a. To the extent that qualified persons regularly residing in the area are not available.
  - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
  - c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.
2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.
3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.
5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.
6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**BUY AMERICA REQUIREMENTS**

Source of Supply – Steel and Iron (Federal Aid Contracts Only): For Federal-aid contracts, the CONSULTANT will only use steel and iron produced in the United States, in accordance with the buy America provisions of 23 CFR 635.410. CONSULTANT will ensure that all manufacturing processes for these materials occur in the United States. A manufacturing process is any process that modifies the chemical content, physical shape, size or final finish of a product, beginning with the initial melding and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and iron as a component of any manufactured product incorporated into the project (*e.g.*, concrete pipe, pre-stressed beams, corrugated steel pipe, etc.), these same provisions apply, except that the manufacturer may use minimal quantities of foreign steel and iron when the cost of such foreign materials does not exceed 0.1% of the compensation or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the CONSULTANT uses but does not incorporate into the finished work. The CONSULTANT shall provide a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the finished product was manufactured in the United States in accordance with the requirements of this provision. Such certification shall also include: (1) a statement that the product was produced entirely within the United States, or (2) a statement that the product was produced with the United States except for minimal quantities of foreign steel and iron and specify the actual value of the product. Each such certification shall be furnished to the AUTHORITY prior to incorporating the material into the project. When FHWA allows the use of foreign steel on a project, CONSULTANT shall furnish invoices to document the costs of such material, and obtain the AUTHORITY’s written approval prior to incorporating the material into the project.