

ROWAN UNIVERSITY TERMS AND CONDITIONS

The following terms and conditions apply to all contracts or purchase agreements made with Rowan University unless specifically deleted on the University's proposal form. Vendors submitting offers to the University must cross out any paragraphs with terms they do not agree to meet. Any cross-out or change in the University's terms and conditions will be a determining factor in the award of a contract or purchase agreement. Bidders are notified by this statement that all terms and conditions will become a part of any contract(s) or order(s) awarded, as a result of the request for proposal, whether stated in part, in summary or by reference. In the event of a conflict between the vendor and the University's terms and conditions, the University's terms and conditions shall prevail.

I. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL VENDORS

- A. **CORPORATE AUTHORITY** It is required that all corporations be authorized to do business in the State of New Jersey. Corporations incorporated out of the State must file a Certificate of Authority with the Secretary of State, Department of State, State House, Trenton, New Jersey. Refer to N.J.S.A. Title 14A, Chapter 13.3.
- B. **ANTI-DISCRIMINATION** All parties to any contract with Rowan University agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained with N.J.S.A 10:2.1 through 10:2-4, N.J.S.A. 10:5-31 through 10:5.38, and all rules and regulations issued including any amendments to these laws.
- C. **PREVAILING WAGE ACT** The New Jersey Prevailing Wage Act P.L. 1963, Chapter 150 is hereby made a part of every contract entered into on behalf of Rowan University, except those contracts which are not within the contemplation of the Act. The Bidder's signature on this proposal is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by this proposal are listed or are on record in the Office of the Commissioner of the Department of Labor and Industry as one who has failed to pay prevailing wages in accordance with the provisions of this Act.
- D. **THE WORKER AND COMMUNITY RIGHT TO KNOW ACT** (P.L. 1983, c.315; N.J.S.A 34:a-1 et seq.) required employers to label all containers of hazardous substances by March 29, 1985. By August 29, 1986, employers must have labeled all containers on their premises. Proper compliance shall be deemed a term and condition of any University purchasing contract.
- E. **OWNERSHIP DISCLOSURE** Contracts for any work, goods, or services cannot be issued to any firm unless prior to or at the time of bid submission the firm has disclosed the names and addresses of all its owners holding 10 percent or more of the firm's stock or interest. Refer to N.J.P.L 1977, Chapter 33.
- F. **COMPLIANCE-STATE LAWS** It is agreed and understood that any contracts and/or orders placed as a result of this proposal shall be governed and construed and rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY.
- G. **COMPLIANCE LAWS** The vendor must comply with all local, state, and federal rules and regulations applicable to this contract and to the work to be done hereunder.

II. LIABILITIES

- A. **LIABILITY COPYRIGHT** The Contractor shall hold and save Rowan University and its officers, agents, students, servants, and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of his contract.
- B. **INDEMNIFICATION** The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless Rowan University, its officers, agents, students, servants, and employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith on account of the loss of life, property, injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract. This indemnification obligation is not limited by, but is an addition to, the insurance obligations contained in this agreement.
- C. **INSURANCE** The successful bidder shall secure and maintain in force for the term of the contract liability insurance as provided herein. The successful bidder shall provide Rowan University with current certificates of insurance for all coverage and renewals thereof which must contain the provision that the insurance provided in the certificate shall not be cancelled for any reason except after thirty days written notice to the Purchasing Department of Rowan University.
The insurance to be provided by the successful bidder shall be as follows:
 - 1. Current State of New Jersey standard comprehensive General Liability policy, not to be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an endorsement (broad form) for contractual liability and products liability (completed operations). Limits of liability shall not be less than \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage liability.
 - 2. Comprehensive General Automobile Liability policy covering owned, non-owned, and hired vehicles with minimum limits of \$1,000,000 combined single limits.
 - 3. Worker's Compensation Insurance applicable to laws of the State of New Jersey and Employers' Liability Insurance with a limit of not less than \$1,000,000.

Upon request, the successful contractor will provide certificates of such insurance to the Purchasing Department of Rowan University, prior to the start of the contract and periodically during the course of a multi-year contract.

III. TERMS GOVERNING ALL PROPOSALS TO ROWAN UNIVERSITY PURCHASING DEPARTMENT (Unless Otherwise Specified in Bid Specifications)

- A. CONTRACT AMOUNT** The estimated amount of the contract(s), as stated in Rowan University's Advertised Bid Proposal Form, shall not be construed as either the maximum or the minimum amount which the University shall be obligated to order as the result of this proposal or any contract entered into as a result of this proposal.
- B. CONTRACT PERIOD AND EXTENSION OPTION** If, in the opinion of the University's Purchasing Director, it is in the best interest of the University to extend any contracts entered into as a result of this proposal for a period of all or any part of a year, the contractor will be so notified of the University's Purchasing Director intent at least 30 days prior to the expiration date of the existing contract. If the extension is acceptable to the contractor, at the original prices and on the original terms, notice will be given the contractor by the University's Purchasing Director in writing. In such cases a net Performance Bond must be submitted by the contractor on a pro rata basis of the original Performance Bond to cover the period of the extension, at the sole discretion of the University.
- C. UNIVERSITY RIGHT TO REJECT ALL BIDS** The University reserves the right to reject any or all bids, or to award in whole or in part if deemed to be in the interest of the University. In the case of tie bids orders shall be awarded to the vendor or vendors best meeting all specifications and conditions.
- D. VENDOR RIGHT TO PROTEST-INTENT TO AWARD** Except in cases of emergency, bidders have the right to protest the University's proposed award of the contractor as announced in the notice of intent to award. Unless otherwise stated, a bidder's protest must be received no later than 48 hours after the date on the notice of intent to award. In cases of emergency, the University may eliminate the right to protest. Bidder's protest must be in writing and delivered to the University's Purchasing Director. The protests must include the specific grounds for challenging the award. Within one week of receipt of the written protest, the University's Purchasing Director shall give written notification of the University's acceptance or rejection of the protest. In cases of rejection, the Bidder has the right to request a hearing. Such request must be made within 48 hours of the date of notice of rejection. If a hearing is requested, the University's Purchasing Director will schedule it and send written notice to the Bidder no later than one week prior to the date scheduled for the hearing. The University's approved hearing officer will preside at the hearing and may call any person he/she deems necessary to testify. Should the Bidder fail to attend, it shall be considered a retraction of his protest. The University's hearing officer shall render the University's decision within one week of the end of the hearing and give a written copy to the Bidder.
- E. TERMINATION OF CONTRACT**
 - 1. Change of Circumstances**—Where circumstances and/or the needs of the University significantly change, or the contract is otherwise deemed no longer to be in the public interest, the University's Purchasing Director may terminate a contract entered into as a result of this bid, upon no less than 30 days notice to the vendor and an opportunity to respond.
 - 2. For cause:**
 - a.** Where a vendor fails to perform or comply with a contract, and fails to respond or comply with the written complaint of the University Purchasing Director, the University Purchasing Director may terminate the contract upon 10 days notice to the vendor with an opportunity to respond.
 - b.** Where a vendor continues to perform a contract poorly as demonstrated by formal complaints, late delivery, poor performance of service, short-shipping, etc. so that the University Purchasing Director is repeatedly required to issue written complaints, the University Purchasing Director may terminate the contract upon 10 days notice to the vendor with an opportunity to respond. In cases of emergency the University Purchasing Director may shorten the time periods of notification and may dispense with an opportunity to respond.
- F. SUBCONTRACTING OR ASSIGNMENT** The contract may not be sub-contracted or assigned by the contractor, in whole or in part, without the prior written consent of the Rowan University Purchasing Director. Such consent, if granted, shall not relieve the contractor of any of his responsibilities under the contract. In the event that bidder proposes to subcontract the services to be performed under the terms of the contract award, he shall state so in his bid and attach for approval a list of said subcontractors and an itemization of the services to be supplied by them. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the University.
- G. PERFORMANCE GUARANTEE OF BIDDER** The bidder hereby certifies that: The equipment offered is standard new equipment, and is the manufacturer's latest model in production with parts regularly used for the type of equipment offered, that such parts are all in production and not likely to be discontinued; also, that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
 - 1.** All equipment supplied to the University and operated by electrical current is UL listed.
 - 2.** All new machines are to be guaranteed for a period of one year from time of delivery and/or installation and prompt service rendered without charge, regardless of geographic location.

3. Sufficient quantities of parts necessary for proper service to equipment will be maintained at distribution points and service headquarters.
 4. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within 48-hour period or within the time accepted as industry practice.
 5. The contractor shall immediately replace any material, which is rejected for failure to meet the requirements of the University.
 6. All services rendered to the University shall be performed in strict and full accordance with the specifications as agreed to in the contract. A service contract shall not be considered complete until final approval by the University is rendered. Payment to vendors for such services rendered may not be made until final University approval is given.
- H. DELIVERY GUARANTEES** Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the proposal. The vendor shall be responsible for the delivery of material in first class condition to the University in accordance with good commercial practice. Items delivered must be strictly in accordance with bid specifications.
1. In the event delivery of goods or services is not made within the number of days stipulated under the schedule defined in the specifications, the University may at its option obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor failing to meet his commitments.
- I. BID ACCEPTANCES AND REJECTIONS** Bids shall be automatically rejected for any of the following causes:
1. No signature in the bid document;
 2. Bids received after date and time specified on bid request form;
 3. Bid fails to provide price information;
 4. Failure to provide required security;
 5. Failure to attend a mandatory Bidder's conference or site inspection;
 6. Failure to initial any alteration of essential information such as price;
 7. Essential information such as price and product description submitted only in pencil;
 8. Failure to comply with State of New Jersey Affirmative Action Guidelines promulgated pursuant to Chapter 127.P.L. 1975.
- J. UNIVERSITY'S RIGHT TO INSPECT BIDDER'S FACILITIES** The University reserves the right to inspect the bidder's establishment before making an award.
- K. MAINTENANCE OF RECORDS** The contractor shall maintain records for products and/or services delivered against the contract for a period of three (3) years from the date of final payment. Such records shall be made available to the University upon request.

IV. TERMS RELATING TO PRICE QUOTATION

- A. PRICE FLUCTUATIONS DURING CONTRACT** All prices quoted shall be firm and not subject to increase during the period of the contract unless agreed to in writing by the University.
1. In the event of a manufacturer's price decrease during the contract period, the University shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The University must be notified in writing of any price reduction within five (5) days of the effective date.
- B. DELIVERY COSTS** Unless noted otherwise in the specification, all prices for items in bid proposals are to be submitted F.O.B. Destination. Proposals submitted other than F.O.B. Destination may not be considered. Regardless of the method of quoting shipments, the vendors shall assume all liability and responsibility for the delivery of merchandise in good condition to the University unless otherwise specified. Unless otherwise specified, F.O.B. Destination does not cover "spotting" but does include delivery on the receiving platform of the University or the designated receiving points indicated on the Purchase Order. No additional charges will be allowed for any transportation costs resulting from partial shipments made a vendor's convenience when a single shipment is ordered. The weights and measures of the University shall govern.
- C. C.O.D. TERMS** Unless otherwise stated in the Request for Proposal, C.O.D. Terms are not acceptable as part of a bid proposal and are cause for automatic rejection of a bid.
- D. TAX CHARGES** The University is exempt from State sales or use taxes and Federal excise taxes. They must not be included in the vendor's price quotations.
- E. PAYMENT TO VENDORS** Payments for goods and/or services purchased by the University will be made only against the Contractor's Invoice. The contractor's Invoice in duplicate together with original Bill of Lading, express receipt and other related papers must be sent to the University on the date of each delivery.
- V. CASH DISCOUNTS** Cash discounts for periods of less than 10 days will not be considered as factors in the award of contracts for purposes of determining the University's compliance with any discount offered.
- A. A discount period shall commence on the day the University receives a properly executed Contractor's Invoice for products and services that have been duly accepted by the University in accordance with the terms, conditions, and specifications of

the Contract/Purchase Order. If the invoice is received prior to delivery of the goods and services, the discount period begins with the acceptance of the goods or services.

- B. The date on the check issued by the University in payment of that invoice shall be deemed the date of the University's payment of that invoice.

VI. HAZARDOUS MATERIALS

REFERENCES: 29 CFR 1910, SUBPART H AND PART .1200 NJAC TITLE 9, Chapter 59 et. al.

- A. All hazardous materials used on the campus by any contractor are required to have a Material Safety Data Sheet (MSDA) filed with the Safety Office.
- B. All hazardous materials left on-site and not consumed or used by the end of the daily work shift by a contractor's crew must be labeled and marked in accordance with the appropriate sections of the New Jersey Worker and Community Right-to-Know Act.
- C. In summary, this act required labels identifying the top five constituents of a product, hazardous or non-hazardous, by common chemical name and Chemical Abstract Service (CAS) Number.
- D. Most products manufactured or packaged outside of New Jersey do not meet this requirement without additional action on the part of the end item user or consumer.
- E. All requirements of the United States Environmental Protection Agency (US EPA) as outlined in 40 CFR must also be complied with. STORAGE ON SITE/CAMPUS: All hazardous materials stored on site or on campus must be secured to prevent unauthorized use or contact with campus affiliates or the general public. In addition, all stoppage must meet the technical requirements of the NJ DEP or DCA, or the University; whichever is more stringent.
- F. **DISPOSAL:** All contractor owned or furnished residue or surplus hazardous material must be removed from the campus immediately after being classified as "waste", or when they are no longer usable for the project they were brought on to the campus to support. The University will not accept any hazardous materials for disposal or storage for any reason at any time from any contractor.
- G. For additional information contact the University Safety Office.

VII. RIGHT TO AUDIT

Pursuant to N.J.A.C. 17:44-2.2, Rowan University and the State, including the Office of the Comptroller, has the authority to audit or review contract records that are relevant records of private vendors or other persons entering into contracts with covered entities are subject to audit or review by OSC pursuant to N.J.S.A. 52:15C-14(d).

VIII. MAINTENANCE OF RECORDS

The vendor shall maintain records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment unless otherwise specified in the bid. Such records shall be made available to the University and the State, including the Comptroller, for audit and review.

- IX. **EXECUTIVE ORDER NO.166** Pursuant to Executive Order No. 166, signed by Governor Murphy on July 17, 2020, the Office of the State Comptroller is required to make all approved State contracts for the allocation and expenditure of COVID-19 Recovery Funds available to the public by posting such contracts on a State website. Such contracts will be posted on the New Jersey transparency website developed by the Governor's Disaster Recovery Office (GDRO Transparency Website). Accordingly, the OSC will post a copy of the Contract, including the winning Bidder's proposal and other related Contract documents for the above Contract on the GDRO Transparency website.

X. DIANE B. ALLEN EQUAL PAY ACT

- A. Any employer, regardless of the location of the employer, who enters into a contract with a public body to provide qualifying services to the public body shall provide a report to the Commissioner of Labor and Workforce Development, in a form issued by regulation promulgated by the commissioner, of information regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. Data regarding compensation and hours worked by employees shall be reported in the form by pay bands to be established by regulation promulgated by the commissioner. The commissioner may establish a standard presumption for the number of hours worked by a fulltime employee or by a part-time employee for whom an employer does not track actual hours worked. An employer shall provide a report for each establishment of the employer.
- B. Any employer, regardless of the location of the employer, who enters into a contract with a public body to perform any public work for the public body shall provide to the commissioner, through certified payroll records required pursuant to P.L.1963, c.150 (C. 34:11-56.25 et seq.), information regarding the gender, race, job title, occupational category, and rate of total compensation of every employee of the employer employed in the State in connection with the contract. The employer shall

provide the commissioner, throughout the duration of the contract or contracts, with an update to the information whenever payroll records are required to be submitted pursuant to P.L.1963, c.150 (C. 34:11-56.25 et seq.).

- C. The commissioner shall retain the information provided by the employer during any period of time that one or more contracts are in effect between the employer and any public body and not less than five years after the end of that period. The retained employment information shall be made available by the commissioner to the Division on Civil Rights in the Department of Law and Public Safety, and, upon request, provided to anyone who is or was an employee of the employer during the period of any of the contracts between the employer and any public body, or any authorized representative of the employee.
- D. For the purposes of the section:
 - 1. "Public body" means the State or any agency or instrumentality of the State;
 - 2. "Public work" means public work as defined in section 2 of P.L.1963, c.150 (C. 34:11-56.26) and which is subject to the provisions of P.L.1963, c.150 (C. 34:11-56.25 et seq.). Public work shall not include the provision of goods or products.
 - 3. "Qualifying services" means the provision of any service to the State or to any other public body, except for public work as defined in section 2 of P.L.1963, c.150 (C. 34:11-56.26).
 - 4. "Service" means any act performed in exchange for payment, including the provision of professional services, but shall not include the sale of goods or products.

XI. COMPLIANCE WITH EXECUTIVE ORDER NO. 271

Contractor/Vendor is required to comply with New Jersey Governor's Executive Order 271, requiring all employees of Contractor/Vendor to be fully vaccinated for COVID-19 or receive a weekly COVID-19 test. Failure to comply fully with Executive Order 271 shall be considered a material breach of this contract and Contractor/Vendor shall be responsible for all costs associated with non-compliance of Executive Order 271 and/or damages related to the breach of this Contract based on such non-compliance.

XII. FORCE MAJEURE

Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy.

For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

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PURCHASES FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The provisions set forth below apply to all purchases funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

I. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.

Pursuant to 2 CFR 200.321, the State must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are to be made the Contractor shall:

- A. Include qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- D. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
- E. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

II. DOMESTIC PREFERENCE FOR PROCUREMENTS

Pursuant to 2 CFR 200.322, where appropriate, the State has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). If subawards are to be made the Contractor shall include a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

- A. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- B. "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

III. PROCUREMENT OF RECOVERED MATERIALS

To the extent that the scope of work or specifications in the contract requires the contractor to provide any of the following items, this Section 7.1 of the Standard Terms and Conditions modifies the terms of the scope of work or specification.

Pursuant to 2 CFR 200.322, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- A. Designated items are those set forth in 40 CFR 247 subpart B, as may be amended from time to time, including:
 - 1. Paper and paper products listed in 40 C.F.R. 247.10;
 - 2. Certain vehicular products as listed in 40 CFR 247.11;
 - 3. Certain construction products listed in 40 C.F.R. 247.12;
 - 4. Certain transportation products listed in 40 C.F.R. 247.13;
 - 5. Certain park and recreation products, 40 C.F.R. 247.14;
 - 6. Certain landscaping products listed in 40 C.F.R. 247.15;
 - 7. Certain non-paper office products listed in 40 C.F.R. 247.16; and
 - 8. Other miscellaneous products listed in 40 C.F.R. 247.17
- B. As defined in 40 CFR 247.3, "recovered material" means:
 - 1. waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process; and
 - 2. for purposes of purchasing paper and paper products, means waste material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term recovered materials includes:

- a. Postconsumer materials such as -
 - i. Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and
 - ii. All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and
- b. Manufacturing, forest residues, and other wastes such as -
 - i. Dry paper and paperboard waste generated after completion of the papermaking process (that is, those
 - ii. manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
 - iii. Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;
 - iv. Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;
 - v. Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and
 - vi. Fibers recovered from waste water which otherwise would enter the waste stream.
- C. For contracts in an amount greater than \$ 100,000, at the beginning of each contract year, contractor shall provide the State estimates of the total percentage of recovered material utilized in the performance of its contract for each of the categories listed in subsection (A). For all contracts subject to this Section 7.1 of the Standard Terms and Conditions, at the conclusion of each contract year, contractor shall certify to the State the minimum recovered material content actually utilized in the prior contract year.

IV. EQUAL EMPLOYMENT OPPORTUNITY

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

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

- A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- D. The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations,

and relevant orders of the Secretary of Labor.

- F. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

V. DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED

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

he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

VI. COPELAND ANTI KICK-BACK ACT

Where applicable, the Contractor must comply with Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

- A. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
- B. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- C. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

VII. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708

Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

VIII. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

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

IX. CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED

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

X. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

XI. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352

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

XII. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

- A.** Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
- 1.** Procure or obtain;
 - 2.** Extend or renew a contract to procure or obtain; or
 - 3.** Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - a.** For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - b.** Telecommunications or video surveillance services provided by such entities or using such equipment.
 - c.** Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.