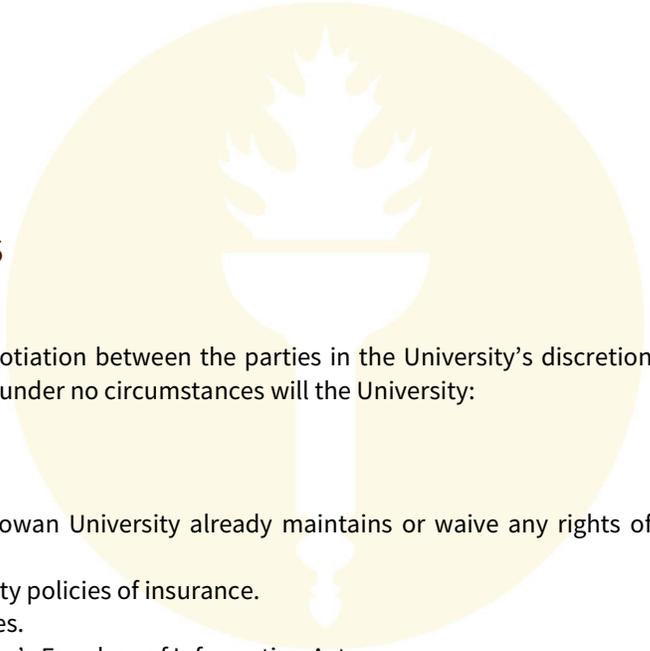


Last revision made 01.25.2024

ROWAN UNIVERSITY TERMS & CONDITIONS



I. MODIFICATIONS

The terms and conditions set forth below are subject to negotiation between the parties in the University's discretion provided, however, that due to the University's public nature, under no circumstances will the University:

- A.** Provide any defense, hold harmless or indemnity.
- B.** Waive any statutory or constitutional immunity.
- C.** Apply the law of a state other than New Jersey.
- D.** Procure types or amounts of insurance beyond those Rowan University already maintains or waive any rights of subrogation.
- E.** Add any entity as an additional insured to Rowan University policies of insurance.
- F.** Pay attorneys' fees, costs, expenses, or liquidated damages.
- G.** Promise confidentiality in a manner contrary to New Jersey's Freedom of Information Act.
- H.** Permit an entity to change unilaterally any term or condition once the contract is signed.
- I.** Accept any references to terms and conditions, privacy policies or any other websites, documents or conditions referenced outside of the contract; or
- J.** Agree to automatic renewals for term(s) greater than month to-month.

By signing the terms and conditions, contract, bid, or other offer to do business with the University your entity understands and agrees that:

- A.** The terms set forth above will not be modified and are thereby incorporated into any agreement entered into between the University and your entity; that such terms and conditions shall control in the event of any conflict with any such agreement; and that your entity will not propose or demand any contrary terms.
- B.** The terms set forth above will govern the interpretation of provisions related there in any agreement between the parties notwithstanding the expression of any other term and/or condition to the contrary.
- C.** Your entity agrees that any agreement entered into with the University will be the entire agreement between and in the event that the Respondent requires terms of use agreements or other agreements, policies or understanding, whether on an order form, invoice, website, electronic, click-through, verbal or in writing, with University's employees or other end users, such agreements shall be null, void and without effect, and the terms of the executed agreement shall apply unless specifically accepted by the University in writing and provided further that any terms and conditions contained therein, to the extent accepted, will not be accepted to the extent such provisions conflict with the terms and conditions set forth above.

II. REPRESENTATIONS AND WARRANTIES

The vendor expressly warrants that:

- A.** The vendor has legal capacity to execute and perform any Agreement arising from this quote, contract, and/or public solicitation.
- B.** The Agreement is valid, binding, and enforceable against the vendor according to its terms.
- C.** The execution and performance of an agreement by the vendor does not, and will not, violate or conflict with the terms of any existing Agreement or understanding of which the vendor is a party.
- D.** The execution and performance of an Agreement by the vendor does not, and will not, violate or conflict with any law, rule, regulation, judgment or order of any court or other adjudicative entity binding the vendor.
- E.** The vendor knows of no reason why the vendor is in any way, physically, legally, or otherwise, precluded from performing the obligations under an Agreement arising from this bid, in accordance with its terms, including without limitation those relating to health and safety.

F. Such warranties shall survive and shall not be deemed waived by delivery or acceptance of, or payment for the goods and services.

III. GOVERNING LAW, JURISDICTION, ATTORNEY'S FEES

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to any applicable conflict of laws provision. Vendor hereby irrevocably and unconditionally agrees that any suit, action or other legal proceeding arising out of or in connection with this Agreement, or the transactions contemplated hereby, shall be brought in the courts of record of the State of New Jersey or the courts of the United States located in said state, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection to the venue of any such suit, action or proceeding in any of such courts. In the event a suit or action shall be instituted in connection with any controversy arising out of this Agreement, the prevailing Party shall be entitled to receive, in addition to its costs, all attorneys' fees, including attorneys' fees and costs upon appeal.

IV. DEFAULT

In case of failure to deliver goods or services in accordance with the contract(s) terms and conditions, Rowan University, after due oral or written notice, may procure substitute goods or service from other sources and hold the vendor(s) responsible for any resulting additional purchasing and administrative costs. This remedy shall be in addition to any other solution which Rowan University may have.

V. SALE OR BANKRUPTCY OF BUSINESS

A. If during the life of this Agreement, the awarded vendor disposes of its business by sale, transfer, force of law or by any means to another party, all obligations are transferred to such purchaser. In this event, the new owner(s) may, in Rowan University' discretion, be required to submit a performance bond in the amount of the value of services to be delivered pursuant to this Agreement.

B. In the event of the institution of any proceedings by or against the awarded vendor, voluntarily or involuntarily, in bankruptcy or insolvency, or under the provisions of the Federal Bankruptcy Act, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors of the property of the vendor, Rowan University shall have, in addition to the rights previously stated, the right to cancel this Agreement forthwith.

VI. 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 uncopied composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of his contract.

B. INDEMNIFICATION

Vendor agrees to indemnify, protect, save harmless, and defend Rowan University, its governors, officers, employees, and agents from and against any and all claims, losses, costs, damages, and expenses, including legal costs and attorney fees, and demands of any kind whatsoever, whether for bodily injury, including death, damage to property, including the loss of work performed by the Proposer, its agents or employees, alone or with others, or resulting from or arising out of services provided jointly by the Proposer, its agents or employees or servants.

1. Vendor shall reimburse, and make good to the University all monies, which the University or its representatives shall pay, or cause to be paid, or become liable to pay, by reason of such claims, or in connection with any litigation, investigation or other matters connected therewith.

2. This indemnification obligation is not limited by but is in 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 Page 2 of 11 Last Revision 11.1.2023 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. 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 a multi-year contract.

VII. FORCE MAJEURE

- A. 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.
- B. 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.

VIII. PAYMENT TERMS, SCHEDULE, & COMPENSATION

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.
2. 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. Tax charges must not be included in the vendor's price quotations. The State's Federal Excise Tax Exemption number is 22-75-0050K.

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 documentation must be sent to the University on the date of each delivery.

- F. All cost will not exceed a total of agreed upon amount, inclusive of any reimbursable.
- G. All fees will be paid to Vendor within 30 days upon acceptance of the deliverable. Full completion is required for payment. No earnest money or partial or periodic payments will be made.
- H. All fees are to be considered 'all inclusive' and to be paid in the form of a University Check.
- I. Rowan University, unless specifically agreed upon within scope of contract, does not reimburse or pay for any of the travel or lodging needs of the contracted Vendor.

J. AVAILABILITY OF FUNDS

The University's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the University or the State of New Jersey for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency and made available through receipt of revenue.

K. NEW JERSEY PROMPT PAYMENT ACT

The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within 60 days of receipt and acceptance of goods and services.

IX. 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.

X. TERMS GOVERNING ALL PUBLIC SOLICITATIONS ISSUED BY ROWAN UNIVERSITY'S 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 because of this proposal.

A. 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 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.

B. 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.

C. 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.

D. 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 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.

E. 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. If bidder proposes to subcontract the services to be performed under the terms of the contract award, they 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.

F. 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.

G. 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.

H. UNIVERSITY'S RIGHT TO INSPECT BIDDER'S FACILITIES

The University reserves the right to inspect the bidder's establishment before making an award.

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.

(REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK)

TERMS & CONDITIONS: SPECIFIC TO NEW JERSEY STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL VENDORS

Rowan University is an agency of the State of New Jersey thus requiring University compliance with all State regulations. The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

Where conflict among the compliance requirements or with these specifications exists the most stringent requirements shall be utilized. The most recent edition of any relevant regulation, standard, document, or code shall be in effect.

It is agreed and understood that any contracts and/or orders placed as a result of this proposal shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

I. BUSINESS REGISTRATION

Pursuant to N.J.S.A. 52:32-44, the University is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the bidder who shall provide it to the University.

- A.** The contractor shall maintain and submit to the University a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The contractor shall submit to the University a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.
- B.** Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.
- C.** The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the University. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

II. ANTI-DISCRIMINATION

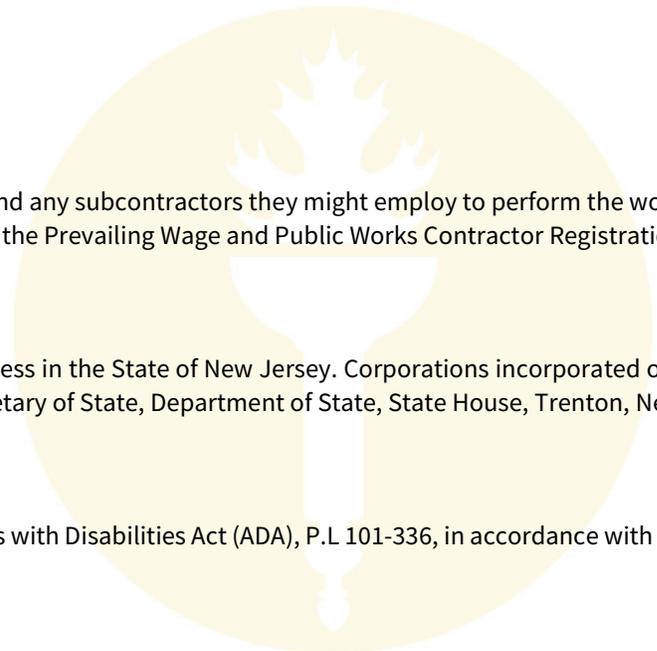
All parties to any contract with the University agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) and Constructions Contracts (Exhibit B and Executive Order 151, August 28, 2009, attached) as appropriate.

- A.** The vendor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

III. PREVAILING WAGE ACT

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the University, except those contracts which are not within the contemplation of the Act. The bidder's signature on this proposal is their guarantee that neither they nor any subcontractors they might employ to perform the work covered by this proposal has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's

signature on the proposal is also their guarantee that they and any subcontractors they might employ to perform the work covered by this proposal shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.



IV. 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.

V. AMERICANS WITH DISABILITIES ACT

The vendor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.

VI. MACBRIDE PRINCIPLES

The vendor must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

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).

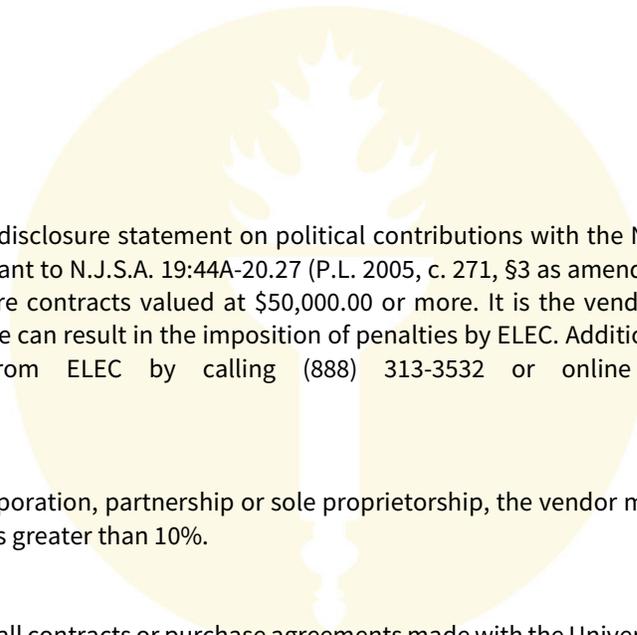
VIII. MAINTENANCE OF RECORDS

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. PAY TO PLAY PROHIBITIONS

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:

- A.** Make or solicit a contribution in violation of the statute;
- B.** Knowingly conceal or misrepresent a contribution given or received;
- C.** Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- D.** Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
- E.** Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- F.** Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- G.** Engage in any exchange of contributions to circumvent the intent of the Legislation; or
- H.** Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.



X. POLITICAL CONTRIBUTION DISCLOSURE

The vendor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one (1) or more contracts valued at \$50,000.00 or more. It is the vendor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling (888) 313-3532 or online at <http://www.elec.state.nj.us/>.

XI. OWNERSHIP DISCLOSURE

Pursuant to N.J.S.A. 52:24.2, in the event the vendor is a corporation, partnership or sole proprietorship, the vendor must disclose all corporate and non-corporate ownership interests greater than 10%.

XII. STANDARDS PROHIBITING CONFLICTS OF INTEREST

The following prohibitions on vendor activities shall apply to all contracts or purchase agreements made with the University pursuant to Executive Order No. 189 (1988).

- A.** No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g;
- B.** The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards;
- C.** No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any University officer or employee, State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of a University officer or employee, State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;
- D.** No vendor shall influence, or attempt to influence or cause to be influenced, any University officer or employee, State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;
- E.** No vendor shall cause or influence, or attempt to cause or influence, any University officer or employee, State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and
- F.** The provisions cited above shall not be construed to prohibit a University officer or employee, State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

XIII. SET OFF AGAINST CONTRACT PAYMENT TAX

- A.** Whenever any taxpayer under contract to provide goods or services to the State of New Jersey or its agencies or instrumentalities, and including the legislative and judicial branches of State government, or under contract for

construction projects of the State of New Jersey or its agencies or instrumentalities, and including the legislative and judicial branches of State government, is entitled to payment for the goods or services or on that construction project and at the same time the taxpayer is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The director, in consultation with the Director of the Division of Budget and Accounting in the Department of the Treasury, shall establish procedures and methods to effect a set-off. The director shall give notice of the set-off to the taxpayer, the provider of goods or services or the contractor or subcontractor of construction projects and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S.54:49-18, but no request for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. No payment shall be made to the taxpayer, the provider of goods or services or the contractor or subcontractor of construction projects pending resolution of the indebtedness. Interest that may be payable by the State pursuant to P.L.1987, c.184 (C.52:32-32 et seq.), to the taxpayer, the provider of goods and services or the contractor or subcontractor of construction projects shall be stayed.

- B.** The Department of the Treasury shall notify each provider of goods or services and contractor or subcontractor of a construction project under contract with the State, its agencies or instrumentalities in an amount of \$500,000 or greater on the effective date of P.L.1995, c.159 (C.54:49-19 et seq.) of the provisions of this section in writing within 30 days after its effective date. A contract entered into by the State, its agencies or instrumentalities with a provider of goods or services or a contractor or subcontractor of a construction project after the effective date of P.L.1995, c.159 (C.54:49-19 et seq.) shall contain a notice of the provisions in this section.

XIV. CONTRACTS; WARRANTY; VIOLATION

Every contract or agreement negotiated, awarded or made pursuant to this act shall contain a suitable warranty by the contractor that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business, for the breach or violation of which warranty the State college shall have the right to annul such contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

XV. ANTIDISCRIMINATION PROVISIONS

Every contract for or on behalf of the State or any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees that:

- A.** In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- B.** No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- C.** There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

- D. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.
 - E. No provision in this section shall be construed to prevent a board of education from designating that a contract, subcontract or other means of procurement of goods, services, equipment or construction shall be awarded to a small business enterprise, minority business enterprise or a women's business enterprise pursuant to P.L.1985, c.490 (C.18A:18A-51 et seq.).
- XVI.** 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.
- XVII. 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.

TERMS & CONDITIONS SPECIFIC TO NEW JERSEY STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT

I. COMPLIANCE CODES

The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

II. PUBLIC WORKS CONTRACTOR REGISTRATION ACT

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

III. BUILDING SERVICE

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

IV. THE WORKER AND COMMUNITY RIGHT TO KNOW ACT

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the University must be labeled by the contractor in compliance with the provisions of the statute.

V. 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. Page 5 of 11 Last Revision 11.1.2023
- 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 University Safety Office.

VI. SERVICE PERFORMANCE WITHIN U.S.

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Senior Director of Contracting and Procurement shall be performed within the United States, except when the Senior Director of Contracting and Procurement

certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the New Jersey State Treasurer.

- A.** A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to of the Terms and Conditions provided, unless previously approved by the Senior Director of Contracting and Procurement and the State Treasurer.

(REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK)

TERMS & CONDITIONS SPECIFICALLY RELATED TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The provisions set forth in the following section applies to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

B. 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:

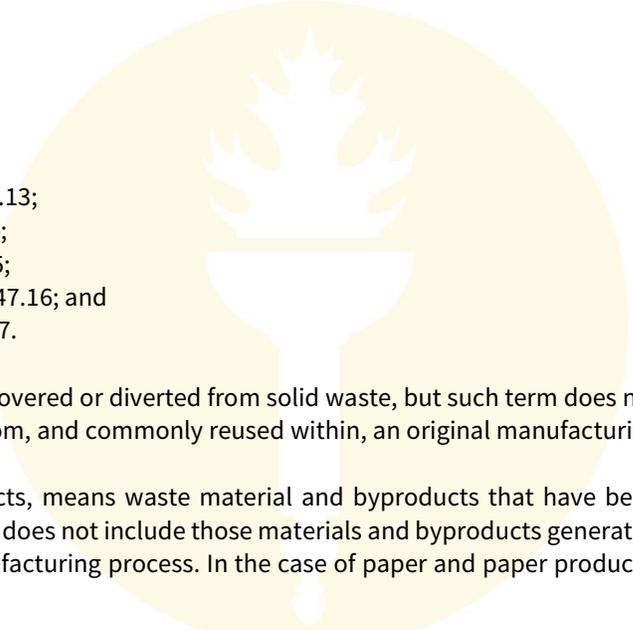
- A.** “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- B.** “Manufactured products” means items and construction materials composed in whole or in 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 modifies the terms of the scope of work or specification.

Pursuant to 2 CFR 200.322, the vendor 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 –
 - 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
 - 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 --
 - Dry paper and paperboard waste generated after completion of the papermaking process (that is, those 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
 - Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;
 - Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;
 - Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and
 - Fibers recovered from waste water which otherwise would enter the waste stream.
 3. 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 the subsections above. For all contracts subject to this section, 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:

- 1.** 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:
 - 1.** 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.
 - 2.** 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.

3. 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.
4. 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.

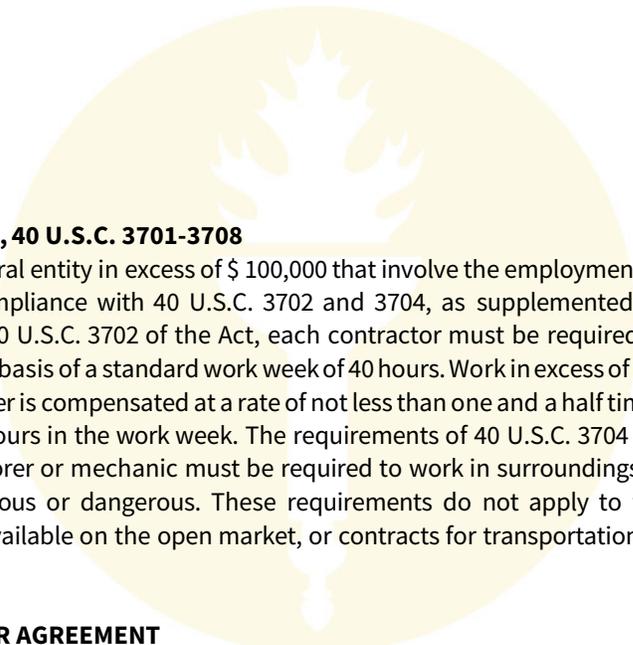
V. DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED

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.

(END OF TERMS & CONDITIONS)