

K21-1241

Bond No. 30130514

CONTRACT
BY AND BETWEEN
THE CITY OF NEW ORLEANS
AND
JACK B. HARPER ELECTRICAL, LLC

BID PROPOSAL NO.: 1557
TRAFFIC SIGNAL REPAIRS FOR DAMAGE CAUSED BY HURRICANE IDA

THIS CONTRACT (the “**Contract**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Jack B. Harper Electrical, LLC, represented by William K. Davis, General Manager (the “**Contractor**”). The City and Contractor are each sometimes referred to as a “**Party**,” and collectively, as the “**Parties**.” The Contract is effective as of the date of execution by the City (the “**Effective Date**”).

RECITALS

WHEREAS, on August 27, 2021, the Mayor of the City of New Orleans executed a proclamation declaring a state of emergency due to extreme weather associated with then Tropical Storm Ida (See “**Declaration of Emergency**” as Exhibit A);

WHEREAS, the Declaration of Emergency authorized the City to undertake any and all extraordinary measures to provide for the public health, safety, welfare, and convenience, including without limitation the suspension of any regulatory ordinance, order, rule or regulation of any local agency prescribing procedures for the conduct of local business which would in any way prevent, hinder or delay necessary action on coping with the emergency;

WHEREAS, due to the Declaration of Emergency, on October 7, 2021, the City issued an Emergency Invitation to Bid No. 1557, seeking a contractor to provide emergency traffic signal repairs for damage caused by Hurricane Ida (the “**ITB**”);

WHEREAS, the Contractor submitted the lowest responsive bid in response to the ITB; and

WHEREAS, the City desires to award the Contract to the Contractor;

NOW THEREFORE, the City grants and confirms to the Contractor the Contract to provide emergency traffic signal repairs for damage caused by Hurricane Ida to the City under the ITB, and the City and the Contractor, for good and valuable consideration, agree as follows:

ARTICLE I – THE CONTRACTOR’S OBLIGATIONS

The Contractor will perform all obligations of the Contractor and be subject to all terms and conditions set forth in this Contract and in the following documents that are incorporated fully into this Contract: the ITB and the Contractor’s Bid dated October 12, 2021 (the “**Bid**”).

ARTICLE II – THE CITY’S OBLIGATIONS

The City will pay the Contractor at the rates set forth in the Contractor’s Bid for the satisfactory performance of this Contract and will perform all obligations of the City, and be subject to all terms and conditions set forth, in this Contract and any incorporated documents.

ARTICLE III – THE SURETY’S OBLIGATIONS

A. Performance Bond. Western Surety Company (the “Surety”) intervenes in this Contract and binds itself as surety for:

1. The faithful performance of all work required of the Contractor by this Contract in the full sum of \$1,398,302.44; and
2. The full payment by the Contractor of all payments to be made by the Contractor under this Contract in the full sum of \$1,398,302.44.

Each of these bonds is to be considered separate and distinct, and no payment made by the Surety under either bond shall in any way reduce the obligations of the Surety under the other.

B. Acknowledgement of Contract. The Surety represents and warrants that it has fully read and understands the terms of this Contract, including all incorporated documents.

C. Survival and Validity of Bonds. The Surety’s bonds shall remain in full force and effect, and shall survive the termination of this Contract, but shall become null and void if the Contractor: (1) well and faithfully performs all and singular obligations assumed by the Contractor in this Contract; (2) promptly pays all wages of laborers, workmen, or mechanics to be employed by the Contractor for all work done or labor performed by the Contractor or by any subcontractors; or furnished to subcontractors, and used in the construction, erection, alteration, performance or repairs of the work required by the Contract; (3) promptly pays for all materials or supplies furnished to the Contractor, or by any subcontractor, or to any subcontractor, for the use in machines used in the construction, erection, alteration, performance, or repair of the work required by the Contract; (4) fully secures and protects the City, its legal successor and representatives, from all loss or expenses of any kind, including premises, including all costs of Court and attorneys’ fees, made necessary or arising from the failure, refusal, or neglect of the Contractor to comply with all of the obligations assumed by it; and (5) promptly delivers all the work required by the Contract to the City, free from any and all claims, liens, and expenses. The obligations of the Surety will not be affected in any way by any modifications, omissions, or additions in or to the terms of this Contract, the plans or specifications, or in the manner and mode payment.

ARTICLE IV – FORCE MAJEURE

A. Event. An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

B. Notice. To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended

C. Effect.

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:

- a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
- b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Contractor and without any further compensation due.

2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

ARTICLE V – SPECIAL CONDITIONS FOR FEMA COMPLIANCE

The “Federal Contract Clauses” attached as Exhibit “B” to this Agreement, are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents, to the contrary, upon execution of this Amendment.

ARTICLE VI – ADDITIONAL PROVISIONS

A. Convicted Felon Statement. The Contractor complies with City Code Section 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

B. Non-Solicitation Statement. The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Contract. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Contract.

C. Non-Waiver. The failure of either Party to insist upon strict compliance with any provision of this Contract, to enforce any right, or to seek any remedy upon discovery of any default or breach of the other Party at such time as the initial discovery of the existence of such noncompliance, right, default, or breach shall not affect or constitute a waiver of either Party’s right to insist upon such compliance, exercise such right, or seek such remedy with respect to that default or breach, or any prior, contemporaneous, or subsequent default or breach.

D. Entire Agreement. This Contract, including all incorporated documents, constitutes

Page 3 of 16

the final and complete agreement and understanding between the Parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Contract and are without effect to vary or alter any terms or conditions of this Contract.

(Signatures and Exhibits contained on the following pages)

IN WITNESS WHEREOF, the City, the Contractor, and the Surety, through their duly authorized representatives, execute this Contract.

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL,
MAYOR

Executed on this 22ND of OCTOBER, 2021

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Andrew Gregorian

JACK B. HARPER ELECTRICAL, LLC

BY: 
WILLIAM K. DAVIS,
GENERAL MANAGER


FEDERAL TAX I.D.

WESTERN SURETY COMPANY

BY: 

Ryan S Vicknair (PRINT NAME)
ATTORNEY-IN-FACT

[ORIGINAL POWER OF ATTORNEY
MUST BE ATTACHED TO THIS CONTRACT.]

(Exhibits A-B contained on the following pages)

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**David W Alligood, Thomas A LaPorte Jr, James J Tassin, William P Garcia, Ryan J Vicknair,
Individually**

of Baton Rouge, LA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 26th day of July, 2021.



WESTERN SURETY COMPANY

A handwritten signature in black ink, appearing to read "Paul T. Bruflat".

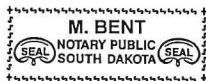
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 26th day of July, 2021, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

March 2, 2026



A handwritten signature in black ink, appearing to read "M. Bent".

M. Bent, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this day of , .



WESTERN SURETY COMPANY

A handwritten signature in black ink, appearing to read "L. Nelson".

L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

EXHIBIT A – DECLARATION OF EMERGENCY

FILED

SEP 07 2021

CIVIL DISTRICT COURT

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO.: 2021-7266 DIVISION:

N-8
SEC. NO.:

CITY OF NEW ORLEANS

FILED: _____

DEPUTY CLERK

**MAYORAL PROCLAMATION OF EMERGENCY
DUE TO TROPICAL STORM IDA**

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. Rev. Stat. § 29:721, *et seq.*, confers upon the Mayor of the City of New Orleans emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake, or other natural or man-made causes, in order to ensure that preparations of this City will be adequate to deal with such emergencies or disasters, and to preserve the natural resources of the City, lives, and property of the people of the City of New Orleans; and,

WHEREAS, La. Rev. Stat. § 29:727(F)(1) confers upon the Mayor the authority to suspend the provisions of any regulatory ordinance prescribing the procedures for conduct of local business, or the orders, rules, or regulations of any local agency, if strict compliance with the provisions of any ordinance, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency; and,

WHEREAS, a declaration of emergency is necessary to allow City agencies to thoroughly prepare for and respond to any eventuality, and to allow state and federal agencies and state and federal resources to be deployed, if necessary; and,

WHEREAS, the National Weather Service advised on Thursday, August 26, 2021, that Tropical Storm Ida is forecast to move across the Gulf of Mexico Friday and Saturday, and approach the northern Gulf Coast late Saturday or Sunday; and,

WHEREAS, the latest forecast from the National Hurricane Center calls for the system to strengthen and move ashore along the northern Gulf Coast at hurricane strength, with the City of New Orleans located within the forecast cone of the storm center; and

WHEREAS, the City of New Orleans may experience extreme weather as a result of this system, including tropical storm force winds, storm surge, intense thunderstorms, and locally heavy rains that will likely produce flash flooding and coastal and river flooding, which may arrive as early as the morning of Sunday, August 29, 2021; and,

WHEREAS, the above-recited threats to the health, safety, welfare, and property of the residents of the City of New Orleans are now imminent and emergency action must be taken;

NOW THEREFORE, I, LATOYA CANTRELL, Mayor and Chief Executive Officer of the City of New Orleans and the Parish of Orleans, by virtue of the authority vested in me as the Mayor of the City of New Orleans by the Constitution and laws of the State of Louisiana and the Home Rule Charter and laws of the City of New Orleans, do hereby declare pursuant to La. Rev. Stat. § 29:727 that due to the above-recited circumstances, a disaster and state of emergency exists in the City of New Orleans, warranting the use of all extraordinary measures appropriate to ensure public health, safety, welfare, and convenience.

In furtherance of this declaration, the Superintendent of Police is hereby directed pursuant to the provisions of La. Rev. Stat. § 40:1387, to take command and control of all peace officers and police officers within the City, when and if and to the extent that their services are needed to deal with the present emergency.

All available resources of the City of New Orleans and its boards and agencies are hereby ordered to be commandeered and utilized by the Emergency Authority for the purpose of performing or facilitating emergency services, when and if and to the extent that their resources are necessary to deal with the present emergency. The "Emergency Authority" as used in this Proclamation refers to the Superintendents of Police and of Fire under supervision of the Office of the Mayor through the Director of the Office of Homeland Security and

Emergency Preparedness, or under direct supervision of the Office of the Mayor, all acting directly under the supervision and control of the Mayor of the City of New Orleans

The direction, personnel, and functions of all local departments, agencies, and units are hereby transferred, to the extent necessary, to the Emergency Authority for the purpose of performing or facilitating emergency services.

The Emergency Authority may commandeer or utilize any private property if it finds this necessary to cope with the local disaster emergency.

The Emergency Authority, on any order as Mayor of the City of New Orleans and Chief Executive Officer of the Parish of Orleans, is hereby empowered to direct and compel the evacuation of any and all persons from any part of the City deemed by the Emergency Authority to be suitable for evacuation, if necessary, for the preservation of life or other disaster mitigation, response, or recovery in accordance with the provisions of Ordinance No. 22,247 M.C.S.

The Emergency Authority is hereby empowered to prescribe the routes, modes of transportation, and destinations for such evacuation, if necessary, to control ingress and egress to and from the disaster area and the movement of persons and occupancy of premises therein.

Subject to the provisions of Act 275 of 2006 (Regular Session), the Emergency Authority is hereby empowered, if necessary, to suspend or limit the sale, dispensing, or transporting of alcoholic beverages, firearms, explosives, and combustibles.

The Emergency Authority is hereby empowered and directed in conjunction with HANO, HUD, and any other appropriate agencies, public and private, to make provisions for the availability and use of temporary emergency housing, if necessary.

The Superintendents of Fire and Police are directed to take all necessary steps within legal bounds to ensure that no looting or arson occurs within any area ordered evacuated.

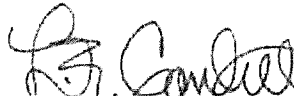
The Emergency Authority is hereby empowered to suspend the provisions of any regulatory ordinance prescribing the procedures for conduct of local business, or the orders, rules, or regulations of any local agency, if strict compliance with the provisions of any

ordinance, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency.

The Emergency Authority is hereby authorized to invoke any relevant provisions of the City Code.

The City Attorney is directed to file this proclamation promptly in the office of the Clerk of Court and arrange for it to be given prompt and general publicity.

WITNESS my hand in New Orleans, Louisiana this 27th day of August, 2021.



LATOYA CANTRELL, MAYOR

EXHIBIT B: FEDERAL CONTRACT CLAUSES

Since the parties anticipate that federal funding will be applied to this Agreement, the following federal contract clauses must be complied with, where applicable, in addition to the clauses already mentioned.

EQUAL EMPLOYMENT OPPORTUNITY

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) 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.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) 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.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency

and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) 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.

(8) 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.

COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City of New Orleans shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

CLEAN AIR ACT

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

(2) The Contractor agrees to report each violation to the GOHSEP and understands and agrees that the GOHSEP will, in turn, report each violation as required to assure notification to FEMA, and the appropriate Environmental Protection Agency Regional Office.

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

ENERGY POLICY AND CONSERVATION ACT

The Contractor hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

CLEAN WATER ACT

The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

FEDERAL WATER POLLUTION CONTROL ACT

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 7401 *et seq.*
- (2) The Contractor agrees to report each violation to the GOHSEP and understands and agrees that the GOHSEP will, in turn, report each violation as required to assure notification to the FEMA, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

SUSPENSION AND DEBARMENT

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

BYRD ANTI-LOBBYING ACT

The Contractor will be expected to comply with Federal statutes required in the Anti-Lobbying Act.

Contractors who apply or bid for an award shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress

in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

PROCUREMENT OF RECOVERED MATERIALS

In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the Contract performance schedule;
- ii. Meeting Contract performance requirements; or
- iii. At a reasonable price.

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

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

(a) Any party to this contract must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. These steps are required for the hiring of any subcontractors under this contract.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using 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.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

Any procurement of telecommunications and video surveillance services or equipment must comply with the provisions of 2. C.F.R. §200.216.

DOMESTIC PREFERENCES FOR PROCUREMENTS.

As appropriate and to the extent consistent with law, the parties should, to the greatest extent practicable, provide 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). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

ACCESS TO RECORDS

The following access to records requirements apply to this contract:

- (1) The Contractor agrees to provide the State of Louisiana, the City of New Orleans, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the City of New Orleans and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

DHS SEAL, LOGO, AND FLAGS

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

COMPLIANCE WITH FEDERAL EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund the Contract only. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

NO OBLIGATION BY THE FEDERAL GOVERNMENT

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the Contract.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

CONTRACTS WITH OTHERS

If the Contractor contracts with any other contractor or vendor for performance of any portion of the work required under this Agreement, the Contractor must incorporate into its contract with such contractor or vendor an indemnification clause holding the Federal Government, its employees and/or their contractors; the State of Louisiana, its employees, and/or their contractors;

and the City, its employees and/or their contractors, and the Contractor and its employees and/or contractors harmless from liability to third parties for claims asserted under such contract.