

**Appendix A - Technical Specifications**  
**97153 - TREE AND VEGETATION CLEARING ALONG TRANSMISSION AND DISTRIBUTION**  
**ACCESS AND RIGHTS OF WAY**

In the event JEA requires the services of external “Off System” line clearance forces in response to a weather event or any other significant disaster, JEA and (Contractor) agree to the following terms and conditions for the importation of restoration crews.

1. **On System Crews:** Crew equipment and personnel normally assigned to work on the JEA System are defined as “On System” crews. Labor and equipment rates for On System crews shall be billed at the current contract rates established for JEA and the Contractor. Equipment utilized and billed during normal conditions, but not utilized for storm restoration, shall be billed up to forty (40) hours per week. The standard normal working hours, overtime, double time, holidays, standby, and rest time shall be observed for On System crews.
2. **Off System Crews:** “Off System” crews include equipment and personnel that normally work for other utilities, but the Contractor has an active agreement with JEA. Labor and equipment rates for Off System crews shall be supplied by the Contractor in Appendix 1. Equipment or personnel left behind due to JEA crew and equipment specifications shall not be billed. The standard work day for Off System crews shall be billed at straight time rates for the first ten (10) hours each day, and overtime rates (time and one half) for any hours worked past ten (10) hours. When an employee exceeds forty (40) cumulative hours in a week (including hours worked on other properties and/or travel time) all additional hours shall be billed at overtime (time and one half). Hours worked Sunday or on Contractor observed holidays shall be billed at the overtime rate of time and one half.
3. **Timesheets:** Weekly timesheets shall be submitted during storm restoration. Beginning and ending times shall be for the Eastern Time zone. On System crews shall continue to use their standard JEA timesheet. Off System crews can submit timesheets in a different format, but shall include the following:
  - a. Week Ending Date
  - b. Daily Billable Labor Hours and Pay Rate by Crew Member Including Name
  - c. Daily Billable Equipment Hours and Pay Rate
  - d. Daily Mileage During Travel
  - e. Per diem Line Items if Applicable
  - f. Signed Itemized Receipts if Applicable
4. **Travel Time:** Billable time during travel for equipment and/or personnel begins when personnel are considered “on duty”. On duty begins when the crew is fully staffed and equipped and begins travel to or from the JEA service territory. Sleeping or scheduled rest periods shall not be considered on duty when traveling from or returning to the home utility or JEA. Timesheets covering travel periods shall reflect the billable time for each day for each person and piece of equipment.
  - a. Mileage and billable travel time shall be determined by using a publicly available web site based mapping service such as Google Maps or Bing. A print copy of these mapping and time estimates shall be included with the timesheets. An additional hour shall be added to this time estimate for each applicable meal (breakfast, lunch, or diner). Travel time may be impacted by traffic or other unavoidable circumstances. If billable time exceeds twenty percent (20%) of the web site estimate; a written justification shall need to be included with the timesheets.
  - b. Mileage rates for equipment shall be paid to Tier 1 and Tier 2 crews as supplied by the Contractor in Appendix B.

5. **Tier 1 Crews:** Tier 1 off system tree crews originate within 250 miles of Jacksonville, Florida. Tier 1 off system crews shall not be paid a mobilization fee, but shall be paid per diem rates for meals. JEA approved per diem rates for meals are found in Appendix 2. Lodging expenses shall be reimbursed with no mark-up fees. Copies of receipts shall be submitted with weekly timesheets, and shall include the names of each room occupant.
6. **Tier 2 Crews:** Tier 2 off system tree crews originate from more than 250 miles from Jacksonville, Florida. Tier 2 off system crews shall be paid a mobilization fee as supplied by the Contractor in Appendix 1. Mobilization fees shall only be applicable to bucket or manual/climbing tree crews. Crews in cars or pick-up trucks shall not be applicable. Tier 2 crews shall not be reimbursed for lodging or meals when traveling from or returning to their home utility and JEA.
7. **Miscellaneous Expenses:**
  - a. Contractor shall be responsible for all other expenses incurred during travel in accordance with the JEA travel policy.
  - b. Primary responsibility for vehicles and equipment belonging to the tree crews rests with the Contractor. However, these vehicles and equipment may be returned to one of the designated Staging Areas at the end of each day and refueled by JEA if deemed necessary to support the restoration effort. In addition, repair work for these vehicles and equipment may be provided by JEA if necessary. Charges for these services, including applicable taxes, shall be back-billed to the Contractor.
  - c. Any miscellaneous expenses should always be based on prudent and sound business practices.
8. **Standby and Staging:** Depending on the severity of the event, JEA may elect to bring in crews prior to the storm to ensure that they are available for system restoration at the earliest opportunity.
  - a. Per Diem shall be paid for meals for each person each day if crews are required to stage prior to arrival in Jacksonville. JEA's current per diem rates are per JEA's contractor travel policy.
  - b. Lodging expenses shall be reimbursed in accordance with JEA's Contractor Travel Policy. Copies of receipts shall be submitted with weekly timesheets, and shall include the name of each room occupant.
  - c. Personnel on standby or staging at a hotel, JEA staging area, or off system staging area may be considered billable for this standby time up to ten (10) hours per day. These ten (10) hours shall be straight time if forty (40) hours' time worked has not been reached for the week. These ten (10) hours include any already billable worked or travel time for that day, and is not in addition to already billable worked or travel time. Standby time ends once a crew is released from storm duty.
  - d. In a severe event in which no hotel or suitable temporary lodging (tent city) is available; crew personnel required to sleep in their vehicles shall be billed at overtime (time and one half) for up to eight (8) hours per day after they have a minimum of ten (10) hours of billable worked, travel, or standby time. This combined time shall not exceed twenty-four (24) hours. Once suitable lodging is supplied by JEA this overtime shall not be permitted.
9. **Meals:** Any crews brought in for storm restoration shall be fed in the same manner as JEA crews. Tree crews should arrive prepared to be self-sufficient for the first three (3) days. If JEA is unable

to provide meals; per diem rates in accordance with the JEA Contractor Policy shall apply. Once JEA is able to supply meals; per diem shall not be paid. If crew personnel are unable to obtain a JEA provided meal; meals shall be reimbursed only if receipts are submitted with weekly timesheets, and include the date, time, and listing of all personnel fed. This shall be a straight pass through expense with no mark-up.

10. **Laundry:** All tree crews from On System and Off System should be self-sufficient with clean clothing for the first five (5) days of storm restoration. Off system crews may need laundry service in less time due to travel. Laundry service shall be billable to JEA. The Contractor shall be responsible for coordination of this service.
11. **Supervision:** Supervision consisting of one billable General Foreperson shall be responsible for five (5) to seven (7) tree crews. Administrative supervision, Safety Supervisors, or Mechanics shall be non-billable and assigned at the discretion of the Contractor.
12. **Roster:** Prior to deployment Contractor shall supply JEA with a list of all personnel and their classification and equipment for each crew, and at least one contact phone number for each tree crew and each General Foreperson. This information shall include the Supervision for each crew. Contractor should have one point of contact to fill in a JEA supplied roster in excel format. This roster shall be supplied by JEA prior to tree crew deployment.
13. **Crew Composition:** Due to the nature of the JEA electric system no manual or climbing crews shall be deployed for storm restoration unless specifically requested. *This request and acknowledgement must be in writing (email).*
  - d. Bucket crews shall consist of two (2) or three (3) personnel based on their normal composition at their home utility. Composition shall include no more than one Foreman, a Trimmer, and/or a Ground Person and at least one (1) contact cell phone number for each crew.
  - e. Each bucket crew shall have a hydraulic pole saw. Each bucket, manual, or climbing crew shall have one (1) chainsaw for each person on the crew, and one (1) spare. A hand held gasoline powered pole saw may be used as a spare. Bucket and manual crews shall have at least one (1) big saw with a twenty-eight inch (28") bar, and no more than one (1) climbing saw with a fourteen inch (14") bar. Climbing crews shall have one big saw and at least one (1) climbing saw for each climber.
  - f. All crews shall have the basic industry standard compliment of tools consisting of push poles, pruner poles, hanger poles and extensions, ropes, cant hooks, etc.
  - g. All crew personnel shall arrive prepared to work inclement weather and night conditions. Raingear, spot lights, and flashlights are considered standard crew equipment and are expected to be in working order.
  - h. All safety equipment shall be on each crew prior to arrival. This safety equipment shall include, but not be limited to the following:
    - i. PPE basics: Hardhat, safety glasses, ear protection, work boots, gloves, first aid kits, etc.
    - ii. Traffic Control Tools: Safety vests, Men Working signs, Cones, Stop/Slow paddles, etc.

**APPENDIX B - MINIMUM QUALIFICATIONS FORM**

**97153 - STORM RESTORATION SERVICES TREE AND VEGETATION CLEARING ALONG  
TRANSMISSION AND DISTRIBUTION ACCESS AND RIGHTS OF WAY**

**GENERAL**

**THE MINIMUM QUALIFICATIONS SHALL BE SUBMITTED ON THIS FORM. IN ORDER TO BE CONSIDERED A QUALIFIED RESPONDENT BY JEA YOU MUST MEET THE MINIMUM QUALIFICATIONS LISTED BELOW, AND BE ABLE TO PROVIDE ALL THE SERVICES LISTED IN THIS SOLICITATION.**

**THE RESPONDENT MUST COMPLETE THE BIDDER INFORMATION SECTION BELOW AND PROVIDE ANY OTHER INFORMATION OR REFERENCE REQUESTED. THE RESPONDENT MUST ALSO PROVIDE ANY ATTACHMENTS REQUESTED WITH THIS MINIMUM QUALIFICATIONS FORM.**

**PLEASE SUBMIT THIS FORM AND ANY REQUESTED ADDITIONAL DOCUMENTATION WITH THE BID SUBMISSION TO [MOOREA@JEA.COM](mailto:MOOREA@JEA.COM).**

**RESPONDENT INFORMATION**

COMPANY NAME: \_\_\_\_\_

BUSINESS ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP CODE: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

PRINT NAME OF AUTHORIZED REPRESENTATIVE: \_\_\_\_\_

SIGNATURE OF AUTHORIZED REPRESENTATIVE: \_\_\_\_\_

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE: \_\_\_\_\_

**MINIMUM QUALIFICATIONS:**

- The Company responding to this RFQ shall have successfully completed one (1) similar service contract in the United States in the past five (5) years date ending March 31, 2019.
  - A similar service contract is defined as a continuing services contract with at least two (2) years in length, with tree trimming and vegetation clearing in transmission and distribution right-of-ways by energized power lines, where the contract value was at least \$5,000,000.00 in value for each of the two (2) years.
  - Company shall be qualified electric line clearance contractors to work around energized transmission and distribution power lines.

## APPENDIX B - MINIMUM QUALIFICATIONS FORM

**97153 - STORM RESTORATION SERVICES TREE AND VEGETATION CLEARING ALONG TRANSMISSION AND DISTRIBUTION ACCESS AND RIGHTS OF WAY**

## REFERENCE 1

COMPANY NAME: \_\_\_\_\_

COMPANY ADDRESS: \_\_\_\_\_

BUSINESS CONTACT: \_\_\_\_\_

TELEPHONE / EMAIL: \_\_\_\_\_

DOLLAR VALUE OF WORK: \_\_\_\_\_

DESCRIPTION OF WORK: \_\_\_\_\_

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page, leaving small margins at the top and bottom. There are no vertical margin lines, and the paper is otherwise completely blank.

**APPENDIX B- QUALIFICATIONS PACKAGE SUBMISSION FORM**

**97153 – STORM RESTORATION SERVICES TREE AND VEGETATION CLEARING ALONG TRANSMISSION  
AND DISTRIBUTION ACCESS AND RIGHTS OF WAY**

COMPANY NAME: \_\_\_\_\_

BUSINESS ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP CODE: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

EMAIL OF CONTACT: \_\_\_\_\_

**A Company must complete and return their Qualifications Package to: [moorea@jea.com](mailto:moorea@jea.com) and any other information or attachments.**

**Company's Certification**

By submitting this Qualifications Package, the Company certifies that the Company has read and reviewed all of the documents pertaining to this RFQ and agrees to abide by the terms and conditions of the RFQ and that the person signing below is an authorized representative of the Company, that the Company is legally authorized to do business, and maintains an active status, in the State of Florida.

The Company certifies, under penalty of perjury, that it holds all licenses, permits, certifications, insurances, bonds, and other credentials required by law, contract or practice to perform the Work. The Company also certifies that, upon the prospect of any change in the status of applicable licenses, permits, certifications, insurances, bonds or other credentials, the Company shall immediately notify JEA of status change.

We have received addenda \_\_\_\_\_ through \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorize Officer of Company or Agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Phone Number

**APPENDIX B- QUALIFICATIONS PACKAGE SUBMISSION FORM**

**97153 – STORM RESTORATION SERVICES TREE AND VEGETATION CLEARING ALONG TRANSMISSION  
AND DISTRIBUTION ACCESS AND RIGHTS OF WAY**

<u><b>Storm Rates For Tree Crews</b></u>			
<b>Labor Rates</b>	<b>Straight Time Rates</b>	<b>Overtime Rates</b>	<b>Double Time Rates</b>
	General Foreman		
	Foreman/ Crew Leader		
	Trimmer/Climber		
	Ground Person		

**Mobilization Charge (Tree Crews Only)** \_\_\_\_\_

<b>Equipment Rates</b>	<b>Hourly Rate</b>	<b>Mileage Rate</b>
Mobilization Charge ( <b>Tree Crews Only</b> )		
50' - 55' Aerial Lift		
60' - 70' Aerial Lift		
50' - 55' Aerial Lift (4x4)		
60' - 70' Aerial Lift (4x4)		
Big Foot Aerial Lift (4x4)		
Pickup (2x4)		
Pickup (4x4)		
Manual Truck (2x4)		
Manual Truck (4x4)		
Loader Truck with knuckle boom		
Chain Saw		
<b>Other</b> (Additional Equipment Rates To Be Quoted Upon Request)		

## **97153 - APPENDIX C- ADDITIONAL CONTRACT TERMS**

### **FEMA REQUIREMENTS DURING STORM AND EMERGENCY RESTORATION SERVICES**

The following requirements for terms and conditions for FEMA grant and cooperative agreement programs reimbursement are incorporated, either by the base agreement terms and conditions complying with the C.F.R referenced requirements or by the incorporation of the expanded definition provided in this Appendix C.

#### **Definitions:**

Subrecipient – JEA is considered a Subrecipient under FEMA requirements.

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326.

#### **1. Remedies.**

- a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

#### **2. Termination for Cause and Convenience.**

- a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

#### **3. Equal Employment Opportunity.**

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60- 1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. 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 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
- b. Key Definitions.
  - (1)Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
  - (2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.
- c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
- d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause: “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, 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, 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 considerations for employment without regard to race, color, religion, sex, or national origin.
  - (3)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.

- (4) 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.
- (5) 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.
- (6) 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 as 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.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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."

#### **4. Davis Bacon Act and Copeland Anti-Kickback Act.**

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.
- b. 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 at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.
- c. 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.
- d. 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.
- e. In contracts subject to the Davis-Bacon Act, 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 at 29 C.F.R. 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 Copeland Anti-Kickback 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 FEMA.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback Act."** However, for purposes of grant programs where both clauses do apply, FEMA requires the following contract clause: "Compliance with the Copeland "Anti-Kickback" Act  
(1) 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 this contract.  
(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the 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
- (3)Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

**5. Contract Work Hours and Safety Standards Act.**

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), 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 at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
- c. Under 40 U.S.C. § 3702, 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.
- d. 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.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:  
“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 (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 (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.  
(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.  
(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

**6. Rights to Inventions Made Under a Contract or Agreement.**

- a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity 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 non-

Federal entity must comply with the requirements of 37 C.F.R. 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 FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

- c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

**7. Clean Air Act and the Federal Water Pollution Control Act.** Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor 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 FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

- a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

**“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 (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

**“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. 1251 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.”

**8. Debarment and Suspension. Applicability:**

- a. This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ I; and Chapter IV, ¶ 6.d and Appendix C, ¶ 2. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that 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. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. §180.530; Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
- d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.
- e. Specifically, a covered transaction includes the following contracts for goods or services:
  - (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
  - (2) The contract requires the approval of FEMA, regardless of amount.
  - (3) The contract is for federally-required audit services.

- (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

f. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

**“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, its 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 (insert name of subrecipient). 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 (name of state agency serving as recipient and name of subrecipient), 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.”

**9. Byrd Anti-Lobbying Amendment.**

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ J; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, ¶ 4.
- c. 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. See Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

d. The following provides a Byrd Anti-Lobbying contract clause:

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended) Contractors who apply or bid for an award of \$100,000 or more 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.”

**10. Procurement of Recovered Materials.**

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ K; 2 C.F.R. § 200.322; Chapter V, ¶ 7.
- c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. 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 by 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.
- d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) 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.

(2) Information about this requirement is available at EPA’s Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.”

#### **11. Additional FEMA Requirements.**

- a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:
- b. **Changes.** To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.
- c. **Access to Records.** All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).
- d. The following provides a contract clause regarding access to records:  
**"Access to Records. The following access to records requirements apply to this contract:**
  - (1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), 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."

#### **12. DHS Seal, Logo, and Flags.**

- a. All non-Federal entities must place in their contracts a provision that a 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. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).
- b. The following provides a contract clause regarding 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."

#### **13. Compliance with Federal Law, Regulations, and Executive Orders.**

- a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and 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."

#### **14. No Obligation by Federal Government.**

- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the 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.
- b. The following provides a contract clause regarding 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."

#### **15. Program Fraud and False or Fraudulent Statements or Related Acts.**

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. The following provides a contract clause regarding Fraud and False or Fraudulent 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."

**APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements. (To be submitted with each bid or offer exceeding \$100,000)**

The undersigned \_\_\_\_\_[Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date"