

**NEXT GENERATION WARNING SYSTEM GRANT SUBRECIPIENT  
UNIFORM PROCUREMENT POLICY**

**Effective [DATE]**

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## **I. Purpose and Applicability**

The purpose of this policy is to provide public radio and television stations who receive a Next Generation Warning System Grant Program (“NGWSGP”) subgrant, but lack a federally compliant procurement policy, with a policy that the subrecipient may use to procure goods and services with their subgrant in compliance with the requirements of Title 2 of the U.S. Code of Regulations, Part 200 (“2 CFR Part 200”). This Uniform Procurement Policy is intended to support subrecipient compliance with applicable federal statutory and regulatory requirements in procurements funded by the NGWSGP.

This Uniform Procurement Policy applies only to purchases funded in whole or in part with NGWS subgrants and applies only to NGWS subrecipients who notify the Corporation for Public Broadcasting (“CPB”) in writing that the subrecipient elects to use this policy.

This policy is to be applied in concert with any other applicable policy established by the subrecipient, and in compliance with state and local law. **In the event of a conflict between the terms of this policy and the subrecipient’s other policies, the more restrictive requirement applies. To the extent that the requirements of state or local law applicable to the subrecipient are more restrictive than the requirements in this policy, the more restrictive requirement applies.**

## II. Definitions

A. “*Best Value*” Best Value is the most advantageous combination of the total cost and quality needed to meet the Subrecipient’s requirements. Best Value may not necessarily mean the lowest cost but provides the greatest overall benefit in response to the requirements.

B. “*Cardinal Change*” is a significant change to an existing contract that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.

C. “*Competitive Proposals*” is a method of vendor selection that provides Full and Open Competition and includes the issuance of a Request for Proposals (“RFP”) and the negotiation of contract terms.

D. “*Competitive Sealed Bidding*” is a method of vendor selection that provides Full and Open Competition where the award is made to the lowest acceptable bidder and is initiated by the issuance of a written Invitation for Bids (“IFB”).

E. “*Conflict of Interest*” means a real or apparent personal or organizational conflict of interest. A personal conflict of interest may arise when an employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these persons (other than a public agency/organization in which he or she is serving as an officer, director, trustee, partner, or employee), has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. An organizational conflict of interest may arise where, because of its relationship with a related entity such as a parent, affiliate, or subsidiary, an entity submitting a bid or proposal is or appears to be unable to be impartial with regard to decisions that might affect the related organization. (See Section XII for more information on Conflict of Interest.)

F. “*Emergency*” means an urgent and unforeseen situation that requires the immediate acquisition of goods or services in less time than would be required for a formal procurement by RFP or IFB.

G. “*Full and Open Competition*” means allowing bidders and offerors to compete for contracts on an equal footing, ensuring that no restrictions are placed on procurements of goods or services that may unduly limit competition. Examples of prohibited or undue restrictions that prevent Full and Open Competition include but are not limited to:

1. Allowing prohibited conflicts of interest, including allowing companies that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals to compete for such procurements. These companies must be excluded from bidding.
2. Imposing prohibited geographical preferences. The subrecipient will not impose state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where the NGWSGP or applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this Section preempts applicable state

law. When contracting for architectural and engineering (“A/E”) services, the subrecipient may use geographic location as a selection criterion provided the limitation leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

3. Placing unreasonable requirements that either favor or disqualify certain prospective offerors.
4. Requiring unnecessary experience.
5. Requiring excessive bonding.
6. Supporting non-competitive pricing practices between firms or between affiliated companies.
7. Issuing non-competitive solicitations or contracts to persons or firms on retainer contracts (or currently under another contract) that were not procured in compliance with this policy or where the award is not for property or services specified for delivery under the scope of the retainer contract.
8. Specifying only a “brand name” product instead of allowing for “an equal” product to be proposed and describing the performance of relevant requirements of the procurement. Similarly, specifying a preferred item is a form of a brand name only specification. It is not permissible unless there is an appropriate justification as to the need of the specific item.
9. Any arbitrary action in the procurement process, e.g., unfairly restrictive time limits for a potential vendor to respond to a request.

H. *“Infrastructure”*: Solely for the purposes of determining applicability of the Build America, Buy America Act (Public Law 117-58 §§ 70901-52) (“BABAA”), the term *“Infrastructure”* includes, at a minimum, the structures, facilities, and equipment for utilities; broadband infrastructure; and buildings and real property, in the United States.

I. *“Micro Purchase Threshold”* is as defined at 2 C.F.R. § 200.1 and was \$10,000 as of the date this version of the Procurement Policy was issued.

J. *“Minor Discrepancies”* are defects or errors which do not materially affect the deadlines or process for submitting bids or proposals, or the price, quality, quantity or delivery schedule of the goods or services being procured.

K. *“Procurement File”* means all procurement documents, such as solicitations, proposals, evaluations, approvals, executed agreements, and contract deliverables. (See Section III for Documentation maintained in the Procurement File.)

L. *“Project Officer”* means the person authorized to conduct a procurement for the subrecipient.

M. “*Purchase Requisition*” means the form used to document micro purchase procurements and the required approvals and vendor information. The Purchase Requisition shall be attached to the invoice and made a part of the Procurement File. (See **Attachment 1** *Purchase Requisition Form*).

N. “*Responsible*” bidder, offeror, or vendor means a person or entity that has the capability, in all material respects, to perform fully the contract requirements, and the moral and business integrity and reliability that will assure good faith performance. A documented determination of responsibility with basis for that determination will be saved in the Procurement File. (See **Attachment 5** *Contractor Responsibility Worksheet*.)

O. “*Simplified Acquisition Threshold*” is as defined at 2 C.F.R. § 200.1 and was \$250,000 as of the date this version of the Procurement Policy was issued.

### III. Documentation

A. All purchases must be documented in writing.

B. For all procurements, Project Officers shall document the procurement process that was followed and the basis for recommendations of particular vendors in the Procurement File.

C. For every NGWSGP procurement (including noncompetitive procurements of \$10,000 or less), the Project Officer must maintain the following documents in the Procurement File in sufficient detail to show the history of the procurement and the resulting contract (as applicable):

#### Initiating the Procurement:

1. Written justification for the purchase of the good or service.
2. Rationale for the method of procurement selected, i.e. micro purchases (not to exceed the Micro Purchase Threshold); small purchase procedures (not to exceed the Simplified Acquisition Threshold); formal procurement (above the Simplified Acquisition Threshold) using Competitive Sealed Bidding or Competitive Proposals; or non-competitive proposals.
3. For micro purchases, complete **Attachment 1 Purchase Requisition**.
4. For non-competitive purchases (including micro, small, and formal procurement methods), complete **Attachment 2 Non-competitive Procurement Justification Worksheet**. The form must be completed with sufficient detail that a reasonable person unfamiliar with the circumstances can identify and understand the reasons for the non-competitive procurement.
5. Rationale for selection of contract type, i.e. fixed fee, cost reimbursement, time and materials. If a time and materials contract is used, complete **Attachment 3 Template Determination of Suitability for Time and Materials Contract**.)
6. For procurements above the Simplified Acquisition Threshold (including noncompetitive procurements), an independent cost estimate must be conducted before receiving bids or proposals using **Attachment 4, Contract Cost or Price Analysis Worksheet, Step 1**. For procurements expected to fall below the Simplified Acquisition Threshold, a cost estimate must be conducted to support the expectation that the procurement will be below the Simplified Acquisition Threshold. (The Project Officer may use Attachment 4, but may use less-formal methods as long as the estimate is documented.)

#### Publicizing the Solicitation:

1. List of sources solicited.
2. Copies of published notices of proposed contract action.

3. Copy of the IFB, RFP or other evidence of solicitation, including all addenda and amendments.
4. Documentation describing the affirmative steps taken to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (See Section VII for the required affirmative steps.)
5. All bids/proposals received in response to the solicitation, including pricing.

Evaluating Bids/Proposals:

1. Documentation evidencing appointment of evaluation panel or description of how the contractor was selected.
2. The grading sheets and panel evaluations that apply the evaluation criteria in the RFP/IFB, and reasons for rejection of any bid.
3. The cost or price analysis. (Use **Attachment 4 Contract Cost or Price Analysis Worksheet, Steps 2 and 3.**)
4. Determination that the contractor is Responsible. (Use **Attachment 5 Contractor Responsibility Worksheet.**)
5. Documentation confirming good standing of the selected contractor (copy of search via [www.sam.gov](http://www.sam.gov) and applicable state and local lists).
6. Completed Suspension & Debarment Certification (Use **Attachment 6 Certification Regarding Suspension and Debarment.**)
7. If the contract will exceed \$100,000, a completed Byrd Anti-lobbying Certification (Use **Attachment 7 Byrd Anti-lobbying Certification and Disclosure Form.**)
8. If the contract is for Infrastructure, a Completed Build America Buy America Self Certification (Use **Attachment 8 Build America Buy America Self Certification**). For more information on the Build America Buy America Act requirements, see FEMA's BABAA Guidance online at [https://www.fema.gov/grants/policy-guidance/buy-america#:~:text=The%20Build%20America%2C%20Buy%20America%20Act%20\(BABAA\)%20requires%20all,project%20are%20produced%20in%20the](https://www.fema.gov/grants/policy-guidance/buy-america#:~:text=The%20Build%20America%2C%20Buy%20America%20Act%20(BABAA)%20requires%20all,project%20are%20produced%20in%20the).
9. Documentation regarding any Conflict of Interest issues that arise and a description of how they were handled.

Award:

1. Notice of Award. (Use **Attachment 10 Notice of Award.**)
2. Bid, performance, payment, and other bond documents (if applicable).
3. Copy of contract.



4. Task Order(s) (if applicable). (Use **Attachment 11** *Task Order Template*.)

D. The level of detail of the documentation included in the Procurement File should be commensurate with the size and complexity of the procurement.

E. **Contract documents must be retained for a period of three years from the date that CPB submits its final NGWSGP expenditure report to FEMA. (See 2. C.F.R. § 200.334.)**

## IV. Methods of Procurement

### A. General Rule

Use of the NGWSGP Supply Schedule is the preferred method for the purchase or lease of goods and services funded by the NGWSGP. In the event that the subrecipient does not use the NGWSGP Supply Schedule, transactions for goods or services in excess of the Simplified Acquisition Threshold shall be conducted through Competitive Sealed Bidding or Competitive Proposals unless otherwise provided by this policy. Goods and services should be procured by Competitive Sealed Bidding where price is the sole determinative factor and should be procured through Competitive Proposals where it is desirable to evaluate other factors in the decision to award a contract.

### B. Use of the NGWSGP Supply Schedule

Subrecipients are encouraged to use the NGWSGP Supply Schedule to purchase goods and services funded by NGWSGP subgrants. The NGWSGP Supply Schedule is populated with master contracts for goods and services that were competitively awarded to responsible vendors in compliance with the federal rules. This cooperative purchasing arrangement is intended to obtain more favorable terms and prices for NGWSGP subrecipients. **Orders placed from the NGWSGP Supply Schedule comply with the procurement procedures in this section with no further competition necessary, regardless of the value of the purchase.**

### C. Informal Procurement Methods: Micro- and Small Purchases

Though competition is encouraged in all purchases, the cost of a formal procurement in small purchases can outweigh its benefits. Accordingly, for purchases of goods and services costing \$250,000 or less, the subrecipient follows less formal procurement procedures.

1. Micro Purchases: purchases less than or equal to the Micro Purchase Threshold (currently \$10,000)
  - a. Purchases of goods and services not exceeding the Micro Purchase Threshold in the aggregate may be made without Competitive Sealed Bidding or Competitive Proposals if the Project Officer considers the price to be fair and reasonable. (*A Contract Cost or Price Analysis Worksheet* is available at **Attachment 4**). To the maximum extent practicable, the Project Officer should distribute micro purchases equitably among qualified suppliers. In addition, the Project Officer will also document the determination that the contractor is Responsible (use **Attachment 5, Contractor Responsibility Worksheet**) and the reason for selection if more than one vendor was considered. If applicable, the Project Officer will also document any determination that the otherwise lowest-priced vendor is not Responsible. For a complete list of the documentation requirements, see Section III (C).
  - b. The subrecipient may authorize Micro Purchases through the vendor's invoice and the Purchase Requisition form (See **Attachment 1**).

- c. The Project Officer may, but is not required to, use the Small Purchase or Formal Procurement Methods for Micro Purchases.
2. Small Purchases: Purchases of more than the Micro Purchase Threshold (currently \$10,000), but no more than the Simplified Acquisition Threshold (currently \$250,000)
    - a. Securing services, supplies, or other property which cost more than the Micro Purchase Threshold, but do not cost more than the Simplified Acquisition Threshold in the aggregate, or a lower threshold established by local or State law, may be conducted without Competitive Sealed Bidding or Competitive Proposals. However, the Project Officer must obtain written price or rate quotations from at least three qualified sources. The Project Officer will determine whether the number of price or rate quotations received is adequate under the circumstances. The contracts should be fixed price or not to exceed Time and Materials (“T&M”) contracts with assurances that the scope of work can be completed for less than the Simplified Acquisition Threshold. The Procurement File must include an independent estimate that the procurement is within the threshold to qualify for this type of procurement. Any future changes, particularly any that cause the procurement to rise above the Simplified Acquisition Threshold, should also be documented in the Procurement File. The Project Officer must also document their determination that the contractor is Responsible and, if applicable, their determination that the otherwise lowest-price vendor is not Responsible. (See **Attachment 5 Contractor Responsibility Worksheet**). For a complete list of the documentation requirements, see Section III(C).
    - b. Purchases exceeding the Micro Purchase Threshold require a written contract.
    - c. The Project Officer may, but is not required to, use Formal Procurement Methods for Small Purchases.

D. Formal Procurement Methods: Purchases above the Simplified Acquisition Threshold (currently \$250,000)

1. The purchase of services, supplies, or other property in an amount expected to exceed the Simplified Acquisition Threshold must be documented in a written contract. Such contracts must be made through Competitive Sealed Bidding or Competitive Proposals.
  - a. Competitive Sealed Bidding begins with the issuance of an IFB containing the solicitation requirements set out in Section VI below. When it is impractical to initially prepare a purchase description to support an award based on price, the IFB may request the submission of unpriced offers to be followed by an IFB that contains a complete, adequate, and realistic specification or purchase description.

Public notice of the IFB is given at least ten business days before the date set for receipt of bids by posting on the subrecipient’s website, and optionally by publication in other media. In addition, bids and offers may be solicited directly from potential vendors, and the Project Officer must take the affirmative steps in

Section VIII to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are provided every opportunity to compete for the contract.

The subrecipient may permit a shorter posting period where appropriate.

Evaluation of bids will be based on the requirements set forth in the IFB, which may include life-cycle costing, value analysis, and other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose which may be helpful in determining acceptability.

After evaluating all bids, the subrecipient may award the contract to the lowest responsive and responsible bidder who is fully qualified and best suited among those submitting proposals, based on the evaluation factors included in the IFB.

- b. Competitive Proposals begins with the issuance of an RFP containing the solicitation requirements set out in Section V below. An RFP is typically designed to solicit a proposal to solve a stated problem or meet a stated need, versus purchasing a specific item. The proposal received is the product of the offeror's creative thoughts and provides a detailed approach and description of what is to be accomplished or produced, as well as a price for the services or goods to be provided.

Public notice of the RFP is given at least ten business days before the date set for receipt of proposals by posting on the subrecipient's website, and optionally by publication in other media. In addition, proposals may be solicited directly from potential vendors and the Project Officer must take the affirmative steps in Section VII to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are provided every opportunity to compete for the contract.

The subrecipient may permit a shorter posting period where appropriate.

The subrecipient will consider all evaluation factors specified in the solicitation documents (including price) and evaluate offers only on those factors. Evaluation factors may not be modified after proposals have been submitted without re-opening the solicitation. If a contract will include options, the subrecipient will evaluate proposals for any optional quantities or periods contained in the solicitation if the subrecipient intends to exercise those options after the contract is awarded.

After completing the initial evaluation the subrecipient may, but is not required to, establish a competitive range of offerors (highly rated offers based on the RFP evaluation factors) that are responsive, Responsible, and fully qualified, and whose proposals have a reasonable chance of being selected for award. The subrecipient may invite the offerors within the competitive range to submit "best and final" cost proposals. Upon evaluating the best and final proposals using the evaluation

factors specified in the RFP, the subrecipient shall select the offeror(s) which, in its opinion, submitted the best proposal and/or offers the Best Value.

Similarly, if a competitive range of offerors is not used, the subrecipient shall select the offeror(s) which, in its opinion and using the evaluation factors specified in the RFP, submitted the best proposal and/or offers the Best Value.

The initial selection process may but is not required to include informal interviews with offerors.

When the selection process is complete, the subrecipient may then enter into contract negotiations with the selected offeror(s). However, if the subrecipient and the selected offeror fail to agree on contract terms, the subrecipient may conduct negotiations with the next most qualified offeror. If necessary, the subrecipient will conduct negotiations with successive offerors in descending order until a contract award can be made or the subrecipient decides to cancel or reissue the solicitation.

When the parties have agreed upon contract terms, the subrecipient will send a Notice of Award (See **Attachment 10** *Notice of Award*) to all offerors.

2. Awards may be made to more than one offeror only if the RFP notified all potential offerors that the subrecipient may make multiple awards.

#### E. Pre-qualification

In addition to the IFB/RFP process, the subrecipient may allow vendors to prequalify before submitting bids or proposals in individual procurements or categories of procurements. Pre-qualified lists are not contracts—they simply aid in the procurement of future contracts by documenting the qualification of prospective contractors in advance of procurements and contract awards.

Prequalification shall be based on criteria related to that which is to be procured and are designed to solicit vendors fully capable of performing the anticipated contract. The Project Officer will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure Full and Open Competition. The subrecipient will not preclude potential bidders or offerors from qualifying during the solicitation period.

#### F. Non-competitive Procurements

1. Non-competitive procurement may be used when one or more of the following circumstances apply:
  - a. The aggregate dollar amount of the property or services does not exceed the Micro Purchase Threshold.

- b. The product or service is only available from a single source. Examples of situations where goods and/or services may only be available from a single source include:
  - i. The offeror demonstrates a unique or innovative concept or capability not available from another source.
  - ii. No other product provides equivalent or similar benefits.
  - iii. There is no possibility of competition from other dealers or distributors (e.g., there are patent or data rights restrictions that would preclude competition).
  - iv. The contractor is already performing work for the subrecipient and transitioning to a new vendor would create a substantial duplication of costs that is unlikely to be recovered through competition.
  - v. Equipment compatibility.
- c. An exigency or emergency need for the requirement does not permit sufficient time for a formal competitive procurement.
  - i. A Presidential emergency or major disaster declaration under the Stafford Act is not alone sufficient to justify the use of this exception to Full and Open Competition.
  - ii. The procurement shall be conducted with such competition as is practical under the circumstances.
  - iii. Use of the or emergency exception is only permissible during the actual emergency circumstances. Upon awarding a non-competitive contract, the subrecipient will begin the process of competitively procuring similar goods and services to transition to the competitively procured contracts as soon as the actual emergency circumstances cease to exist.
- d. CPB approved the non-competitive procurement in writing.
- e. The subrecipient will solicit responses from an adequate number of qualified offerors which may be satisfied by posting on the subrecipient's website and complying with the affirmative steps in Section VII below. If fewer than two qualified and responsible offerors respond, CPB may proceed with a noncompetitive award if competition is determined to be inadequate. Before using this exception:
  - i. The Project Officer will confirm and document in the Procurement File that the need cannot be satisfied using the NGWSGP Supply Schedule.
  - ii. The subrecipient's solicitation efforts must be well-documented in the Procurement File.

- iii. The Project Officer should review the solicitation and its publication to ensure that it did not unduly restrict or eliminate competition. In undertaking this review, the Project Officer may ask those firms solicited why they did not submit offers or bids. If the reason is an overly restrictive specification or delivery requirement, then the Project Officer should evaluate whether to cancel the solicitation, change that specification to allow for more bids or offers, and re-solicit bids or offers.
  - iv. If using this exception, the Project Officer must also perform a cost or price analysis to demonstrate the reasonable cost of the goods or services.
2. Use of Noncompetitive Procurement procedures does NOT relieve the Project Officer's responsibility to:
- a. Include the required clauses in **Attachment 9** *Federal Contracting Clauses*.
  - b. Include the Federal bonding requirements at 2 C.F.R. § 200.326 if the contract is for construction or facility improvement.
  - c. Award only to a responsive and Responsible Offeror.
  - d. Complete a written cost or price analysis to determine if the cost or price is fair and reasonable.<sup>1</sup> The written analysis must be provided to OPS for approval.
  - e. Never award cost plus percentage of cost contracts.
  - f. Use a Time and Material contract (see Section V(A)(6)(c) below) only if no other contract method is suitable, and if so document that determination, include a ceiling price in the contract that the contractor may not exceed, and assert a high degree of oversight to ensure that the contractor is using efficient and effective methods of cost control. (See **Attachment 3** *Template Determination Regarding Suitability for Time and Materials Contracts*.)
3. If only one vendor responds to an IFB or RFP, ensure that the Procurement File contains information on the solicitation efforts undertaken and either cancel the solicitation and resolicit bids or proposals or document the reason for proceeding with a non-competitive award instead of cancelling the solicitation and resoliciting bids or proposals.

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<sup>1</sup> If the determination relies on comparison to a prior procurement, that procurement must have been a competitive one. The determination must also identify similarities in the goods, services and costs in the prior procurement.

## V. Solicitation Requirements

A. All solicitations (IFB/RFP) must meet the following requirements:

1. All solicitations will incorporate a clear and accurate description of the technical requirements for the good or service to be procured, including any unique capabilities or qualifications that will be required of the vendor. This description must not contain features which unduly restrict competition.
2. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if practical.
  - a. Performance or functional specifications are preferred over detailed technical specifications except where appropriate to ensure functionality, such as for electronic equipment and systems that must meet certain performance criteria, including interoperability with other equipment or systems. A performance specification describes the outcome, an objective, or standard to be achieved, and leaves the determination of how to reach the result to the contractor. When using performance specifications, the solicitation should describe what the product should be able to do or the services to accomplish without imposing unnecessarily detailed requirements on how to accomplish the tasks.
  - b. Although a brand name may not be requested or required, when it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used to define the performance or other salient requirements of the procurement. The specific features of the named brand which are required must be clearly stated.
3. All solicitations must identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. If using an RFP to procure by Competitive Proposals, the solicitation should state if the subrecipient is reserving its right to award the contract to other than the lowest priced offeror, and whether the subrecipient intends to award one or more than one contract.
4. Solicitations must acknowledge the subrecipient’s use of NGWSGP funding for the contract, in compliance with the terms of its financial assistance award and notify prospective bidders/offerors that the applicable Federal grant contracting clauses will be required in the resulting contract. The solicitation may include the required Federal Contracting Clauses (**Attachment 9**).
5. Solicitations must also set forth the requirements related to contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms set forth in Section VII, below.
6. Solicitations should state the type of contract that will be awarded. Cost plus percentage of cost contracts are prohibited. Fixed Price and Cost Reimbursement



contracts are preferred. T&M contracts may only be used if justified. (See *Template Determination of Suitability for Time and Materials Contracts at Attachment 3.*)

- a. Fixed Price – provides a firm price that remains irrespective of the contractor’s actual cost of performing the work, putting the risk on the contractor. It may include an economic price adjustment, incentives, or both.
- b. Cost Reimbursement – provides for payment of certain incurred costs and for the reimbursement of the contractor’s reasonable, allocable, actual, and allowable costs, with an agreed-upon fee. This type of contract must include a limit to the costs that a contractor may incur which cannot be exceeded without CPB’s approval, except at the contractor’s own risk. Examples include cost-plus-fixed-fee, cost-plus-incentive-fee, and cost-plus-award-fee contracts.
- c. Time and Materials (“T&M”) Contracts – Generally, use of T&M contracts will be limited to projects for which the subrecipient cannot under the circumstances establish a clearly defined scope of work to be completed within a reasonable period of time.
  - i. Under T&M contracts (which term includes time and equipment contracts), the cost to the subrecipient is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. No fee or profit is allowed except as part of the fixed billing rate for direct labor hours, such that materials are billed at cost.
  - ii. T&M contracts are generally discouraged for NGWSGP procurements but may be unavoidable. Thus, *the subrecipient will award and use such contracts only after a determination that no other contract is suitable and only if the contract includes a ceiling price to the purchaser that the contractor may not exceed.* The ceiling price must be reasonable and not so high as to render it meaningless as a cost control measure. (See **Attachment 3** *Template Determination of Suitability for Time and Materials Contract.*)
  - iii. The Project Officer will exercise a high degree of oversight of T&M contracts in order to obtain reasonable assurance that the contractor is using efficient and effective cost control methods.
- d. Cost Plus a Percentage of Cost – the use of cost plus a percentage of cost and cost plus a percentage of construction cost contracts are **prohibited** for NGWSGP contracts. Cost plus a percentage of cost contracts permit the payment of labor costs on the basis of fixed hourly billing rates and allow the contractor to bill for actual costs other than labor (such as materials or travel) plus profit in the form of a percentage rate of actual costs.
- e. Differentiating T&M/ and Cost Plus a Percentage of Cost Contracts. T&M contracts require payment of labor costs at fixed hourly billing rates specified in

the contract. These hourly rates include wages, indirect costs, general and administrative expense, and profit. Materials must be billed at actual cost, and no additional fee for profit is allowed apart from what may be included in the fixed billing rate for hours of labor. In contrast, a cost plus a percentage of cost contract applies a profit percentage to the total hourly labor and material charges.

- B. The subrecipient may either remain silent or issue an amendment to address any minor discrepancies in an RFP or IFB. The RFP or IFB should provide that CPB may waive minor discrepancies in bids and proposals.
- C. Drafting a new contract that includes a Cardinal Change from the RFP or revising an existing contract to include a Cardinal Change is equivalent to a non-competitive award. When determining whether a change is a Cardinal Change, the Project Officer should evaluate whether the change is within the general scope of the contract and within the scope of competition; if not, the contract should be canceled and re-solicited or the additional requirements should be met through a new procurement.

## **VI. Contract Cost or Price Analysis/**

- A. The contract cost or price must be reasonable. The Project Officer must prepare an independent cost estimate for all procurements above the Simplified Acquisition Threshold (including noncompetitive procurements), before opening bids or proposals. (Use **Attachment 4, Contract Cost or Price Analysis Worksheet, Step 1**). For all procurements expected to fall below the Simplified Acquisition Threshold, the Project Officer must prepare a cost estimate that supports the expectation that the procurement will be below the Simplified Acquisition Threshold. The Project Officer may use Attachment 4, but may use less-formal methods as long as the estimate is documented.
- B. In addition, after receiving bids or proposals the Project Officer will perform a cost or price analysis and document the analysis for every procurement action that is expected to exceed \$250,000 (Use **Attachment 4, Contract Cost or Price Analysis Worksheet, Steps 2 and 3**). A cost or price analysis is also required for contract modifications that exceed \$250,000. The method and degree of the analysis depends on the facts surrounding the particular procurement.
- C. Because an independent cost estimate is required before pricing is negotiated for a contract amendment or change order, Project Officers should instruct contractors not to include pricing with change order proposals. If a change order proposal includes pricing and the independent cost estimate was not completed before receipt of the change order proposal, the Project Officer will obtain a cost estimate from someone without knowledge of the contractor's price proposal.

## **VII. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms**

Subrecipients must ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are provided every opportunity to compete for NGWSGP-funded contracts.

- A. The subrecipient will perform and document compliance with the following affirmative steps:

1. Place qualified small and minority businesses, women’s business enterprises, and labor surplus area firms on solicitation lists and solicit these businesses whenever they are potential sources. The Project Officer shall research state and local lists of qualified small and minority businesses and women’s business enterprises to update its solicitation list.
  - a. A “small business” is independently owned and operated, not dominant in the field of operation in which it is bidding and qualified as a small business under the Small Business Administration criteria and size standards at 13 C.F.R. Chapter 21.
  - b. A “women’s business enterprise” is (a) at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women; and (b) whose management and daily operations are controlled by one or more women.
  - c. A “minority business” is (a) at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority group members; and (b) whose management and daily operations are controlled by one or more minority group members.
  - d. A “labor surplus area firm” is one that, together with its first-tier subcontractors, will perform substantially in labor surplus areas, as defined by the Department of Labor’s Employment and Training Administration. The Department of Labor’s list of labor surplus areas is available at <https://www.doleta.gov/programs/lsa.cfm>.
2. When economically feasible, divide project requirements into smaller tasks or quantities to maximize participation opportunities for small and minority businesses and women’s business enterprises.
3. Establish delivery schedules, where practical, that encourage participation by small and minority businesses, and women’s business enterprises.
4. Use the services and assistance, as appropriate, of organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce. This can be accomplished by searching the SBA's dynamic small business search site ([https://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm](https://web.sba.gov/pro-net/search/dsp_dsbs.cfm)) and contacting the local Minority Business Development Agency Business Center (See <https://www.mbda.gov/mbda-programs/business-centers> for location and contact information).
- B. The subrecipient will require that its contractors and subcontractors comply with the affirmative steps in paragraphs (1) through (4) above. To accomplish this, the subrecipient will include the “Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms” clause in all prime contracts. (Use **Attachment 9** *Federal Contracting Clauses*.)

## VIII. Construction and Facility Improvement Bonding

All procurements, contracts, and subcontracts for construction work or facility improvements that exceed the Simplified Acquisition Threshold require, at a minimum, the following bonds:

- A. A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of their bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- C. A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material for execution of the work provided for in the contract.

“Construction work” is 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.

## IX. Contract Clauses for NGWSGP Contracts

All NGWSGP- contracts must contain the applicable provisions described in Appendix II to Title 2 of the Code of Federal Regulations (C.F.R.) Chapter 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards. The required clauses as well as those recommended by the Federal Emergency Management Agency, with instructions for use, are contained in **Attachment 9** *Federal Contracting Clauses*.

### X. Cost Controls

#### A. Acquisition of Unnecessary or Duplicative Items.

The subrecipient will avoid the acquisition of unnecessary or duplicative items. In furtherance of that goal, contracting actions should:

1. Expend funds for current and reasonably expected needs and avoid acquisition of unnecessary or duplicative items.
2. Include written justification for the purchase of goods or services in the Procurement File before the initiation of any procurement process.
3. Consider consolidating or breaking out procurements to obtain a more economical purchase. However, “project splitting”—breaking up a larger procurement merely to bring it under the micro purchase (\$10,000) or Simplified Acquisition Threshold (\$250,000) —is not permitted.

4. Consider, where appropriate, lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

B. Economy of Scale.

To encourage favorable pricing, the subrecipient should seek to purchase the full quantity of goods or services necessary to fulfill the approved scope of the subgrant at the time of the procurement. Where the acquisition of goods or services is divided into multiple procurements from the same vendor, the total anticipated cost must be used to determine the method for each procurement.

C. Use of Purchasing Agents.

The subrecipient may engage a purchasing agent to assist in the procurement of goods and services. The purchasing agent may assist the subrecipient in, among other things, conducting market research, preparing solicitations, evaluating bids or proposals, negotiating contracts, and screening information about products. Purchasing agents may not legally bind the subrecipient and may not issue contract awards or purchase orders. Use of a purchasing agent does not relieve the subrecipient from complying with the requirements of this policy.

D. Special Considerations for Architectural/Engineering (“A/E”) Professional Services.

The subrecipient may use Competitive Proposals procedures for qualifications-based procurement of A/E professional services whereby offerors’ qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. *This method cannot be used to purchase other types of services even though A/E firms may be potential sources to perform the proposed effort.*

If the subrecipient and the most qualified offeror fail to agree on a fair and reasonable price, the subrecipient may conduct negotiations with the next most qualified offeror. If necessary, the subrecipient will conduct negotiations with successive offerors in descending order until a contract award can be made to the offeror whose price the subrecipient believes is fair and reasonable.

E. Period of Performance

The Project Officer will use sound business judgment in establishing and extending a contract’s period of performance which should not exceed the time necessary to accomplish the purpose of the contract.

**XI. Proprietary and Confidential Information**

- A. Proposals submitted to the subrecipient may contain proprietary information, and employees must maintain the confidentiality of such information, sharing it only on a need-to-know basis.
- B. Employees with information about the weighting of evaluation criteria, the evaluation of vendor proposals and selection of vendors may not share such information with anyone outside of the subrecipient, or with other employees who do not have a bona fide need to know. Nothing in this Policy is intended to restrict cooperation with audits or internal reviews by

CPB, FEMA, the DHS Office of Inspector General, or the Comptroller General of the United States.

## **XII. Conflicts of Interest**

- A. No employee, officer, or agent of the subrecipient may participate in the selection, award, or administration of a contract if he or she has a real or apparent Conflict of Interest.
- B. The subrecipient must exclude potential contractors that developed, drafted, advised, or supported the subrecipient in developing or drafting specifications, requirements, statements of work, or invitations for bids or requests for proposals from competing for such procurements.
- C. The subrecipient's employees will act in accordance with any applicable subrecipient rules regarding ethics or business conduct. The subrecipient will conduct procurements free of conflicts of interest and in a manner designed to identify actual or potential personal and organizational conflicts of interest as early in the procurement process as possible. As soon as an actual or potential Conflict of Interest is discovered, the subrecipient will consider action to avoid, neutralize, or mitigate such Conflict of Interest.
- D. The Project Officer is responsible for identifying and reporting any apparent Conflicts of Interest. For formal procurements, the Project Officer is encouraged to address Conflicts of Interest by including the following provision in the RFP/IFB:

The proposal [or bid] must notify [the subrecipient] if the vendor, or any of its principals, or any of its subcontractors or their principals, have an actual or potential personal or organizational conflict of interest. If an actual or potential conflict of interest exists, the proposal [or bid] must explain how it will be avoided or eliminated.

- E. If the vendor notifies the subrecipient of, or the Project Officer independently identifies, a mitigatable Conflict of Interest involving a vendor that the subrecipient desires to select, the subrecipient will develop an appropriate avoidance and mitigation plan to address the conflict. While not controlling, the subrecipient may, in its discretion, use the concepts in Federal Acquisition Regulation (FAR) Subpart 9.5 to inform its avoidance and mitigation plan. When complete, the plan will be saved to the Procurement File. An unmitigated Conflict of Interest is prohibited.

## **XIII. Dispute Resolution**

The subrecipient will resolve all contractual and administrative issues arising out of procurements (e.g., source evaluation, disputes, and claims) in a manner that the subrecipient, in its sole discretion, considers in the best interests of the subrecipient and its administration of the NGWSGP subgrant.

#### **XIV. Evaluation**

- A. The subrecipient will convene an evaluation panel for all competitive procurements, except for emergency or exigency procurements. The evaluation panel will consist of at least three individuals, preferably subrecipient employees.
- B. Evaluation panel members must evaluate all responsive proposals and if vendor interviews occur, must participate in all vendor interviews or review recorded interviews if they cannot attend. They may revise their initial scores as a result of the vendor interviews.
- C. The evaluation panel will evaluate all offers consistent with the terms of the RFP or IFB and prepare a written evaluation that addresses the technical aspects of each proposal. Either the Project Officer or a person designated by the Project Officer will conduct and document a cost or price analysis. The cost or price analysis will evaluate each offeror's cost or price proposal against the others, as well as against the independent cost or price estimate that was developed before opening bids or proposals.

#### **XV. Contract Execution**

No contract may be executed and no commitments to vendors may be made, formal or informal, until appropriate approvals are obtained, consistent with subrecipient's internal delegations of authority or other internal control mechanisms.

#### **XVI. Post-Procurement Modification of Contracts**

The amount payable to a vendor shall be as permitted by its contract and may not be increased without an amendment to the contract that justifies the increased payment. The Project Officer will be careful to avoid Cardinal Changes. Contract modifications above the Simplified Acquisition Threshold require an independent cost estimate and cost or price reasonableness determination.

**ATTACHMENT 1 – PURCHASE REQUISITION FOR MICRO PURCHASES**

<p><b>Instructions:</b> <i>This form is required for the purchase goods and services that are less than or equal to the Micro Purchase Threshold (currently \$10,000) using Next Generation Warning System Grant funds. Responses which require additional space should be attached and reference the specific paragraph.</i></p>	
<b>Department:</b>	<b>Date:</b>
<p><b>1. Goods and/or Services Purchasing:</b> <i>provide a complete description of the goods and/or services being purchased and the need for the purchase.</i></p>	
<b>2. Vendor Name/Address:</b>	<b>3. Vendor Bank Information:</b>
<p><b>4. Total Cost:</b> <i>must not exceed \$10,000 in the aggregate.</i></p>	
<p><b>5. Competition:</b> <i>List vendors contacted, the prices provided and attach proposals or quotes received.</i></p>	
<p><b>6. Vendor Selection:</b> <i>Describe the rationale for selecting the vendor.</i></p>	



**ACKNOWLEDGEMENT:**

*I am aware of the requirements to procure goods and services with NGWSGP funds and the criteria for justification and have gathered the required information and made a concerted effort to review comparable/equal goods and/or services, attaching the pertinent documentation hereto. This purchase complies with the Micro Purchase requirements of the NGWSGP Uniform Procurement Policy.*

**Preparer's Signature (may be electronic):** \_\_\_\_\_

**Printed Name and Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ATTACHMENT 2 – NON-COMPETITIVE PROCUREMENT JUSTIFICATION**  
**WORKSHEET**

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source. This method may be used only under the circumstances noted below pursuant to 2 C.F.R. § 200.320(c). If a non-competitive procurement method was used, indicate the applicable circumstance below. Attach additional documentation in support, if necessary.

Contractor Name (if known): \_\_\_\_\_

Contract Title/No.: \_\_\_\_\_

Brief description of the product or service to be procured:

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Expected dollar value: \$ \_\_\_\_\_

Check all that apply:

\_\_\_\_\_ The aggregate cost of the goods or services sought is less than or equal to \$10,000. (Complete Purchase Requisition.)

\_\_\_\_\_ The item is available only from a single source.

\_\_\_\_\_ The exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. A Presidential emergency or major disaster declaration under the Stafford Act alone is not sufficient.

\_\_\_\_\_ *In the attached document*, CPB expressly authorized non-competitive procurement for this purchase.

\_\_\_\_\_ After solicitation of a number of sources, competition was determined to be inadequate.

Provide a detailed explanation as to why it is necessary to contract non-competitively.

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Describe the specific steps taken to determine whether competition is feasible. For example, if the item is available only from a single source, attach market research or results from a solicitation which garnered only a single response.

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Describe the results of any Conflict of Interest review conducted (or, if you did not complete a conflicts review, explain why not). If a Conflict of Interest is unavoidable, such as due to exigency or emergency circumstances, explain how it is was unavoidable and the steps taken to mitigate the impact of that Conflict of Interest.

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Include any other pertinent information for the justification.

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Preparer's signature (may be electronic): \_\_\_\_\_

Date: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

**ATTACHMENT 3 - TEMPLATE DETERMINATION OF SUITABILITY FOR TIME  
AND MATERIALS CONTRACTS**

All NGWSGP contracts must comply with the procurement standards of the government-wide Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, at 2 C.F.R. §§ 200.318 through 200.327. Pursuant to 2 C.F.R. § 200.318(j), time and material or time and equipment contracts (collectively referred to as T&M) are to be used only under limited circumstances. As such, the Project Officer will complete this Determination Regarding Suitability for each T&M contract funded by a NGWSGP subgrant.

Contract Title/#: \_\_\_\_\_

Summary of anticipated Scope of Work:

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It is determined that a T&M contract is warranted, and no other type of contract is suitable. The following existing facts and circumstances support this determination:

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Confirm the Contract will comply with the following requirements:

\_\_\_\_\_ The Contract will be a written agreement for the scope of work described above and contain the rates to be charged.

\_\_\_\_\_ The Contract will include a “ceiling price” or “not-to-exceed” clause that Contractor exceeds at its own risk.

\_\_\_\_\_ Contract will allow the subrecipient to terminate for convenience if circumstances later allow a fixed-price, unit rate, or cost reimbursement type contract.

\_\_\_\_\_ The subrecipient will perform and document a cost or price analysis to demonstrate that the rates proposed by Contractor are reasonable and justifiable.

**Contract Oversight Plan:**

The subrecipient will exercise a high degree of oversight of T&M contracts to ensure that the Contractor is using efficient and effective cost control methods, by (check all that apply):

\_\_\_\_\_ The Contract will include a “ceiling price” or “not-to-exceed” clause and hourly rates for anticipated staff.

\_\_\_\_\_ Work will be completed under a “task order” and must describe the specific services, the deliverables for such services, and the timeframe for which deliverables should be completed. The subrecipient and the Contractor must sign each task order for it to be effective and the task orders will be incorporated into the Contract.

\_\_\_\_\_ Obtain detailed invoices based on a predetermined schedule for services rendered. The invoices will include the individual’s name, title, hourly rate, total hour works, dates worked, and work performed.

\_\_\_\_\_ Limit travel expenses to those pre-approved by the subrecipient with a “ceiling” or “not-to-exceed” amount and require Contractor to submit monthly expenses with supporting documentation.

\_\_\_\_\_ Hold regular status meetings at regular intervals: (daily/weekly/monthly/quarterly), which may be revised as needed.

\_\_\_\_\_ Additional oversight activities as described below.

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

Preparer’s signature (may be electronic): \_\_\_\_\_

Date: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

## ATTACHMENT 4 - CONTRACT COST OR PRICE ANALYSIS WORKSHEET

### BEFORE AND AFTER OPENING OF BIDS

#### **Step 1: Develop Independent Cost or Price Estimate BEFORE Opening Bids or Proposals**

REQUIRED for all procurement actions above the Simplified Acquisition Threshold. An independent price or cost estimate can be established through reliance on a wide variety of research and/or data points. Check all that were used to formulate this estimate:

\_\_\_\_\_ Market research that identifies the median rate or price for a particular type of supply or service.

\_\_\_\_\_ Review of historical pricing including old proposals, bid tabulations, and invoices.<sup>2</sup>

\_\_\_\_\_ Interviews/discussions with experienced personnel, e.g., accounting, engineers, procurement staff, etc.

\_\_\_\_\_ Consideration of prior personal experience.

\_\_\_\_\_ Pricing paid by similar entities for similar work.

\_\_\_\_\_ Due to emergency or exigent circumstances, a formal independent estimate could not be performed; however, an estimate was contemplated or discussed, based on the data points indicated above.

\_\_\_\_\_ Other:

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Anticipated Scope of Work: \_\_\_\_\_

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<sup>2</sup> If the determination relies on a comparison to a prior procurement, that procurement must have been a competitive one. The determination must also identify similarities in the goods, services, and costs in the prior procurement.

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Attach the methodology used to develop the estimate and all supporting information.

Date: \_\_\_\_\_ Estimate: \$ \_\_\_\_\_

Any Unique Considerations:

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Preparer's signature (may be electronic): \_\_\_\_\_

Date: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

**Step 2: Cost or Price Analysis Required After Opening Bids or Proposals Exceeding the Simplified Acquisition Threshold<sup>3</sup>**

After evaluating the bids or proposals, either a cost or price analysis must be completed to confirm the pricing of the top rated vendor is reasonable. The method and degree of analysis is dictated by the facts, circumstances, and complexity of the procurement. At a minimum, each bid/proposal should be compared to each other and to the Independent Cost Estimate developed in Step 1 above.

Number of bids/proposals received: \_\_\_\_\_

Scope of Work if different from that anticipated in the Independent Cost Estimate:

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<sup>3</sup> The simplified acquisition threshold is set by the Federal Acquisition Regulation at 2 C.F.R. Subpart 2.1 and is \$250,000 as of the date this Worksheet was issued.

## **A Price or Cost Analysis is Required**

### **1. Price Analysis**

Less complex; involves the review of a proposed price without evaluating its separate cost elements and proposed profit. Used most commonly for commercial items or for Competitive Sealed Bidding procurements.

Resources used; check all that apply:

\_\_\_\_\_ Compared proposed prices received in response to the solicitation; Competitive Sealed Bidding requires at least two Responsible offerors/bidders and assumes no unusual actions that negatively impacted competition.

\_\_\_\_\_ Compared historical proposed prices and contract prices with current proposed prices for the same or similar goods or services; can consider changes in quantity, delivery schedules, economy.

\_\_\_\_\_ Compared offer with competitively published catalog prices, published market prices, or similar indices.

\_\_\_\_\_ Compared proposed prices with independently developed price estimates and/or market research.

\_\_\_\_\_ Compared to prices set by law, regulation, e.g. FEMA's Equipment Rate Schedule or Federal Supply Schedules.

**OR**

### **2. Cost Analysis**

Includes evaluation of the separate cost elements (i.e. labor hours, overhead, materials, etc.) and proposed profit or fee in an offeror's proposal. Used most commonly when procurement is through Competitive Proposals, or Competitive Sealed Bidding with insufficient price competition. Also used to evaluate professional services procurements, including architectural and engineering services, and for contract modifications/change orders.

Necessary steps:

\_\_\_\_\_ Verified the individual cost elements add up to the total proposed price.

\_\_\_\_\_ Verified each cost item is necessary and reasonable for the required scope of work.



\_\_\_\_\_ Compared the costs proposed for individual cost elements with previously incurred actual costs and independently developed estimates.

\_\_\_\_\_ Considered input from experienced personnel to assist in the analysis of hours, materials, and equipment proposed, quantities, tooling, testing, head counts, productivity, and similar factors.

\_\_\_\_\_ Consulted the resources referenced above for price analysis to the extent available to aid in confirming proposed pricing.

In any case where a cost analysis is performed, profit must be negotiated as a separate element of the contract price. For this, include documentation of any discussions with the contractor and confirm the anticipated profit allocation is reasonable. The complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates for similar work may be considered. **Hourly rates for T&M contracts should incorporate profit and overhead within the rate.** Cost-plus-percentage-of-cost contracts are prohibited.

### **Step 3: Assemble Documentation and Confirm Pricing is Reasonable**

Attach documentation of the analysis performed in Step 2 and the resulting determination. Offeror's costs should be determined reasonable prior to proceeding. Proceeding without this determination may jeopardize reimbursement.

Reasonable Price Proposed: \$ \_\_\_\_\_

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

Preparer's signature (may be electronic): \_\_\_\_\_

Date: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

**ATTACHMENT 5 - CONTRACTOR RESPONSIBILITY WORKSHEET**

Contracts that are or may be funded in whole or in part using NGWSGP financial assistance may only be awarded to Responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. As demonstrated below, it is determined that \_\_\_\_\_ (“Contractor”):

\_\_\_\_\_ qualifies as responsible; or

\_\_\_\_\_ does not qualify as responsible.

**1. Contractor Integrity.** Considering available information attached to or contained within this justification, the subrecipient is [check one]:

\_\_\_\_\_ unaware of information that calls into question the contractor’s integrity; or

\_\_\_\_\_ is aware that the contractor has (check all that apply and attach supporting documentation):

<input type="checkbox"/>	Committed fraud or a criminal offense in connection with obtaining or attempting to obtain a contract;
<input type="checkbox"/>	Violated federal or state antitrust statutes;
<input type="checkbox"/>	Committed embezzlement, theft, forgery, bribery, falsification or destruction of records, or tax evasion;
<input type="checkbox"/>	Made false statements;
<input type="checkbox"/>	Violated federal criminal tax laws or has delinquent federal or state taxes;
<input type="checkbox"/>	Received stolen property;
<input type="checkbox"/>	Committed any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the contractor;
<input type="checkbox"/>	Been indicted for any of the offenses described above; or
<input type="checkbox"/>	Has delinquent federal or state taxes.

	Other information that calls into question the contractor's integrity.
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2. **Public Policy.** The subrecipient has considered available information regarding the contractor's past and current compliance with:

Equal opportunity and nondiscrimination laws prohibiting discrimination on the basis of race, color, creed, national origin, sex, disability, handicap, age, or limited English proficiency;

The affirmative steps required for Federal contracts for ensuring that small and minority businesses, women's business enterprises, and labor surplus area firms are considered for all subcontracting; and

Applicable prevailing wage laws, regulations, and executive orders.

The subrecipient is [check one]:

\_\_\_\_\_ unaware of information that calls into question the contractor's compliance with public policy; or

\_\_\_\_\_ aware of the following issues of concern:

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3. **Record of Past Performance.** (If requested in the RFP/IFB) The subrecipient considered a contractor's past performance record, which can include consideration of whether the contractor has:

Sufficient Resources – e.g. key personnel with adequate experience and subcontractors with adequate experience that will be performing work under the prospective contract.

Adequate Past Experience – e.g. successful past experience in carrying out similar work, including a record of:

- having the necessary organization, accounting, and operational controls;
- conforming to requirements and standards of good workmanship;

- forecasting and controlling costs and showing appropriate budgetary controls;
- adherence to schedules, including the administrative aspects of performance;
- reasonable and cooperative behavior and commitment to customer satisfaction;
- business-like concern for the interest of the customer; and
- meeting quality requirements.

The subrecipient [check one]:

\_\_\_\_\_ has no concerns with the contractor’s record of past performance; or

\_\_\_\_\_ is aware of the following concerns:

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**4. Financial Resources.** The subrecipient [check one]:

\_\_\_\_\_ has no concerns with the contractor’s exiting cash flow, account receivables or other financial data or existing business prospects; or

\_\_\_\_\_ has the following concerns:

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**5. Technical Resources.** The subrecipient [check one]:

\_\_\_\_\_ has no concerns with the contractor’s possession or ability to acquire the required construction, production, and/or technical facilities, equipment, employees, and other resources to perform the work under the contract; or

\_\_\_\_\_ has the following concerns:

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6. **Debarment and Suspension.** A debarred or suspended contractor is not a responsible contractor and is therefore ineligible to receive a contract award. The subrecipient confirmed that:

\_\_\_\_\_ the contractor is in good standing with the applicable state Secretary of State;  
and

\_\_\_\_\_ has been vetted through centralized government debarment and suspension lists **including [www.sam.gov](http://www.sam.gov)** to ensure the contractor is not debarred or suspended from local, State, or federal programs.

7. **Conflicts of Interest.** Contract award may not be made to a contractor with an unmitigated Conflict of Interest. The subrecipient confirmed that:

\_\_\_\_\_ there are no actual or potential personal or organizational conflicts of interest; *or*

\_\_\_\_\_ the subrecipient identified the presence of an actual or potential Conflict of Interest and developed a tailored avoidance and mitigation plan as appropriate to the circumstances. A copy of the avoidance and mitigation plan is included in the Procurement File.

**ATTACHMENT 6 - CERTIFICATION REGARDING SUSPENSION AND  
DEBARMENT**

1. By signing below and submitting this proposal, Contractor certifies that:
  - a. neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency; and
  - b. If selected, Contractor will not make any subaward or enter into any contract greater than \$25,000, with parties that are debarred, suspended, or otherwise excluded or ineligible for participation in federal programs or activities.
2. If Contractor is unable to certify to any of the statements in this certification, it shall attach an explanation.

Signature: \_\_\_\_\_

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

Representative's Name: \_\_\_\_\_

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

RFP/IFB/Contract Number: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT 7 – BYRD - ANTI-LOBBYING CERTIFICATION AND  
DISCLOSURE FORM**

The undersigned certifies, to the best of his or her knowledge and belief, 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 as required 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: \_\_\_\_\_

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

Representative's Name: \_\_\_\_\_

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

RFP/IFB/Contract No.: \_\_\_\_\_ Date: \_\_\_\_\_

## ATTACHMENT 8 - BUILD AMERICA BUY AMERICA SELF CERTIFICATION

For FEMA financial assistance programs subject to the Build America, Buy America Act (“BABAA”), contractors and subcontractors must sign and submit the following certification to the next tier (e.g., subcontractors submit to the contractor; contractors submit to the non- federal entity) each bid or offer for an infrastructure project that has not been waived by a BABAA waiver:

The undersigned certifies, to the best of their knowledge and belief, that:

The BABAA requires that no federal financial assistance for “infrastructure” projects is provided “unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” Section 70914 of Public Law No. 117-58, §§ 70901-52.

The undersigned certifies that for the \_\_\_\_\_ **[Project Name and Location]** \_\_\_\_\_ that the iron, steel, manufactured products, and construction materials used in this contract are in full compliance with the BABAA requirements including:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. All manufactured products purchased with FEMA financial assistance must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of **[Contractor’s or Subcontractor’s]** Authorized Official

\_\_\_\_\_  
Name and Title of **[Contractor’s or Subcontractor’s]** Authorized Official

\_\_\_\_\_  
Date



## ATTACHMENT 9 - FEDERAL CONTRACTING CLAUSES

*Unless otherwise noted, the following contract provisions are required by the regulations at 2 C.F.R. Part 200 or by FEMA procurement guidance. **Blue text is explanatory and not for inclusion in contracts.** Text highlighted in yellow indicates a word or phrase that may require revision to conform to the specific language of the contract. All provisions should be carefully reviewed and revised as appropriate for the contract at issue.*

### **1. REMEDIES**

*Required for all contracts in excess of \$250,000. 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. There is no federally- required language for this provision. The following is an example and may be negotiated:*

If any work performed by the Contractor fails to meet the requirements of the Contract, any other applicable standards, codes or laws, or otherwise breaches the Contract, [the subrecipient] may in its sole discretion:

- a. elect to have the Contractor re-perform or cause to be re-performed at Contractor's sole expense, any of the work which failed to meet the requirements of the Contract;
- b. hire another contractor to perform the work and deduct any additional costs incurred by [the subrecipient] as a result of substituting contractors from any amounts due to Contractor; or
- c. pursue and obtain any and all legal or equitable remedies.

This Section shall in no way be interpreted to limit [the subrecipient]'s right to pursue and obtain any and all other available legal or equitable remedies against Contractor.

### **2. TERMINATION FOR CONVENIENCE**

*A Termination for Convenience clause is required for all contracts in excess of \$10,000. Must address the manner by which it will occur and the basis for settlement. The following is an example and may be negotiated but must conform to the specific circumstances of the Contract.*

This Contract may be terminated at any time by mutual written consent of [the subrecipient] and Contractor. [The subrecipient] may terminate this Contract for its convenience immediately upon delivery of written notice to Contractor. Upon such termination, Contractor waives any claims for damages from the termination without cause including, without limitation, any and all consequential claims. Contractor's sole right and remedy shall be to recover payment for any authorized work satisfactorily completed through the termination date.

### 3. TERMINATION FOR CAUSE

*A Termination for Cause clause is required for all contracts in excess of \$10,000. Must address the manner by which it will occur and the basis for settlement. The following is an example that may be negotiated but must be modified if needed to conform to the specific circumstances of the Contract.*

[The subrecipient] reserves the right to terminate this Contract immediately, in whole or in part, at its sole discretion, for the following reasons:

- a. Lack of, or reduction in funding or resources in which instance, [the subrecipient] shall provide the Contractor ten days' written notice of such termination or lack of funds;
- b. The Contractor's improper or inept performance of services under this Contract;
- c. The Contractor's failure to comply with the terms and provisions of this Contract;
- d. The Contractor's submission of invoices, data, statements and/or reports that are incorrect, incomplete, and/or false in any way;
- e. In [the subrecipient] sole discretion, if termination is necessary to protect the health and safety of its customers or clients;
- f. If the Contractor becomes or is declared insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation or insolvency or has a receiver or similar officer appointed for it, has a receiver of its assets or property appointed or makes an assignment for the benefit of all or substantially all of its creditors, institutes or causes to be instituted any proceeding in bankruptcy or reorganization or rearrangement of its affairs, enters into an agreement for the composition, extension, or adjustment of all or substantially all of its obligations, or has a material change in its key employees; and/or
- g. The Contractor's inability to perform under this Contract due to judicial order, injunction or any other court proceeding.

In the event of termination, Contractor shall release all work produced under this Contract to [the subrecipient], including but not limited to all licensed material under the *Copyright and Data Rights* Section below. [The subrecipient] may finish the work by whatever method it may deem expedient. In such cases, the Contractor shall only be entitled to receive payment for work satisfactorily completed prior to the termination date, subject to any setoffs due [the subrecipient] for its cost of completing the work and for reimbursement of damages incurred. If the expense incurred by [the subrecipient] to finish the work exceeds the unpaid balance on this Contract, the Contractor shall pay the difference to [the subrecipient]. If [the subrecipient] makes a determination to hold the Contractor in default and terminate the Contract for cause and it is subsequently determined that [the subrecipient]'s default determination was improper, unwarranted, or wrongful, then any such termination shall be deemed for all purposes to be a termination for convenience with the same rights and obligations as provided in **Section 2 of this Attachment**. The Contractor agrees that it shall be

entitled to no damages, allowances or expenses of any kind other than as provided in this Contract in connection with such termination and does expressly waive any and all claims for consequential damages, loss of bonding capacity, destruction of business, unabsorbed home office overhead, lost profit and other such losses or damages.

#### **4. EQUAL EMPLOYMENT OPPORTUNITY**

*This provision will not be required for every Next Generation Warning System contract. It is only required for contracts or agreements for construction work that is paid for in whole or in part with federal funds. As defined in 41 C.F.R. § 60-1.3, “construction work” is defined as follows:*

*Construction work means 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.*

*If applicable, insert the following language required by 41 C.F.R. § 60-1.4(b):*

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

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other

employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- d. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to such 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 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 shall include, and require compliance by each of its subcontractors and vendors with, the provisions of these paragraphs (a) through (h) 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. The Contractor will take such action with respect to any subcontract or purchase order as the Federal Emergency Management 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 subrecipient] 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.

[The subrecipient] 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 subrecipient] 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 subrecipient] 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 subrecipient] under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from [the subrecipient]; and refer the case to the Department of Justice for appropriate legal proceedings.

## **5. DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT**

*Although there is a 2 CFR Part 200 clause for these laws, these requirements do not apply to the NGWSGP. Congress did not apply these laws to the Next Generation Warning System Grant Program.*

## **6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

*This clause is required for all contracts of more than \$100,000 that involve the employment of mechanics or laborers, and construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.*

- a. 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.
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) 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 (a) 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 (a) of this Section.

- c. Withholding for unpaid wages and liquidated damages. [The subrecipient] 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) of this Section.
- d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this Section.

*For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1 where an additional contract provision is required, FEMA suggests including the following language:*

- e. Further Compliance with the Contract Work Hours and Safety Standards Act:
  - i. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
  - ii. Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or

subcontractor will permit such representatives to interview employees during working hours on the job.

## **7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

*This clause is only required if the grant will be used to contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work. This circumstance is not expected to occur for the NGWSGP. If this circumstance exists, CPB must insert the applicable clause at 2 CFR Part 200 and comply with the requirements of 37 C.F.R. Part 401 and any implementing regulations issued by the awarding agency.*

## **8. COMPLIANCE WITH CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

*Required for all contracts in excess of \$150,000. The following is an example and may be negotiated.*

- a. Laws. 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. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
- b. Report Violations. The Contractor agrees to report each violation to [the subrecipient] and understands and agrees that [the subrecipient] will, in turn, report each violation as required to assure notification to FEMA and the appropriate Environmental Protection Agency Regional Office.
- c. Subcontracts. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

## **9. SUSPENSION AND DEBARMENT**

*This clause is required for all contracts for \$25,000 or more; however, even lesser contracts may be awarded only to “responsible” vendors. The following is an example and may be negotiated.*

Federal regulations restrict [the subrecipient] from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration and contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Contractor can verify its status and the status of its principals, affiliates, and subcontractors at [www.SAM.gov](http://www.SAM.gov).

- a. The Parties recognize that 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 has verified through its signed

*Certification Regarding Suspension and Debarment* form attached hereto at **Attachment 6**, that neither the Contractor nor 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). Contractor shall promptly notify **[the subrecipient]** of any changes to this certification during the term of this Contract.

- b. The Contractor shall 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.
- c. This certification is a material representation of fact relied upon by **[the 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 **[the subrecipient]**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

## **10. BYRD ANTI-LOBBYING AMENDMENT**

*Required for all contracts and subcontracts more than \$100,000. Contractors that apply for or bid on a contract award of \$100,000 or more must file the required certification (see **Attachment 5** to the Procurement Policy). The following is an example and may be negotiated.*

Contractors and subcontractors who apply for or bid on a federally funded contract of \$100,000 or more must file the required certification found at APPENDIX A, 44 C.F.R. PART 18. As such Contractor has verified through the signed *Byrd Anti-lobbying Certification and Disclosure* form attached hereto at **Attachment 7**, that it will not and has not used federally 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. If Contractor awards any subcontract of \$100,000 or more under this Contract, Contractor will collect a *Byrd Anti-lobbying Certification and Disclosure* form from each subcontractor and submit it to **[the subrecipient]**. Contractor and its subcontractors subject to this requirement shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Disclosures will be forwarded to FEMA.

## **11. PROCUREMENT OF RECOVERED MATERIALS**

*This 2 CFR Part 200 provision is not required for subgrants from private nonprofit entities like CPB.*

## **12. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES**

*This clause is required. The following is an example and may be negotiated.*



- a. Prohibition. Contractor *and its subcontractors* are prohibited from spending the proceeds of this Contract on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons as set forth in Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (“McCain Act”), and 2 C.F.R. Section 200.216. Contractor and its subcontractors shall not use funds paid under this Contract to fund the purchase, installation, or services of the telecommunications and video surveillance products or to contract with the entities prohibited by Section 889 of the McCain Act or 2 C.F.R. Section 200.216.
- b. Subcontractors. The Contractor shall insert the substance of this Section in all subcontracts and other contractual instruments resulting from this Contract.

### **13. DOMESTIC PREFERENCES FOR PROCUREMENTS**

*A domestic preference clause is required. The following is an example and may be negotiated.*

- a. As appropriate, and to the extent consistent with law, Contractor 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. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.
- b. The Contractor shall insert the substance of this Section in all subcontracts and other contractual instruments resulting from this Contract.

### **14. BUILD AMERICA BUY AMERICA ACT**

*This clause is required for Infrastructure contracts. The following is an example and may be negotiated.*

- a. This Contract is funded in whole or in part with federal assistance, and is subject to the Build America, Buy America Act, 41 U.S.C. 8301 note (“BABAA”). The BABAA requires that all of the iron, steel, manufactured products, and construction materials used in federally-funded infrastructure projects be produced in the United States.
- b. All iron and steel consumed in, incorporated into, or affixed to infrastructure in the performance of this Contract must be produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- c. All manufactured products used in the infrastructure project must be produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

- d. All construction materials used in the performance of this Contract must be manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.
- e. Contractor has filed the Build America Buy America certification in the form at [Attachment 8] and hereby acknowledges that it will collect this certification with each bid or offer from subcontractors to this federally funded infrastructure project, unless Contractor is notified in writing that the domestic preference requirement is waived by FEMA. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not comply with the BABAA domestic preference requirement. Such disclosures shall be sent to [the subrecipient] who, in turn, will forward the disclosures to the Corporation for Public Broadcasting, who will forward the disclosures to FEMA.

## 15. ACCESS TO RECORDS

*This provision is recommended by FEMA for all contracts. The following is an example and may be negotiated.*

- a. Access to Records. The Contractor agrees to provide [the subrecipient], the Corporation for Public Broadcasting, 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.
- b. Copying Documents. 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.
- c. Access to Work Sites. The Contractor agrees to provide the Corporation for Public Broadcasting, the FEMA Administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract.
- d. Access by FEMA and Comptroller. [The subrecipient] 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.

## 16. CHANGES

*FEMA recommends the inclusion of a changes clause 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 following is an example and may be negotiated.*

No changes to this Contract, including but not limited to the scope of work, Task Orders, or Ceiling price, shall be effective unless made in writing and signed by an authorized representative of each Party.

## **17. DHS SEAL, LOGO AND FLAGS**

*Recommended for all contracts. FEMA's suggested language is below:*

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. The Contractor shall include this provision in any subcontracts.

## **18. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

*Recommended for all contracts. FEMA's suggested language is below:*

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of this Contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives in the performance of this Contract.

## **19. NO OBLIGATION BY FEDERAL GOVERNMENT**

*Required for all contracts:*

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to [the subrecipient], the Corporation for Public Broadcasting, the Contractor, or any other party pertaining to any matter resulting from the Contract.

## **20. NO OBLIGATION BY THE CORPORATION FOR PUBLIC BROADCASTING**

*Required for all contracts:*

The Corporation for Public Broadcasting is not a party to this Contract and is not subject to any obligations or liabilities to [the subrecipient], the Contractor, or any other party pertaining to any matter resulting from the Contract.

## **21. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

*Recommended for all contracts. FEMA's suggested language is below:*

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.

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

*Required for all contracts (prime and subcontracts). This requirement should appear in the solicitation and the contract.*

If the Contractor intends to subcontract any portion of the work covered by this Contract, the Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- a. placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. 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;
- d. establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. 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.

## 23. COPYRIGHT AND DATA RIGHTS

*If the contract will require a contractor or subcontractor to produce copyrightable material and/or data, include appropriate copyright and data licenses to meet obligations under 2 C.F.R. § 200.315(b) and (d). Work that is subject to copyright, or copyrightable subject matter, includes software and/or source code, pictures or images, graphics, videos, and architectural works. If the contract will not involve the creation of such material, this clause is not required. The following is an example and may be negotiated.*

- a. License – Work Product. The Contractor grants to [the subrecipient], the Corporation for Public Broadcasting, and FEMA (the “Licensees”) a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data, materials and other results and proceeds first produced in the performance of this Contract (“Work Product”) the right to reproduce, publish, or otherwise use Work Product, including the preparation of derivative works, to distribute copies to the public, and to publicly perform and display the Work Product.
- b. License – Acquired Work Product. For data and materials required by the Contract but not first produced in the performance of this Contract (“Acquired Work Product”), the

Contractor will identify and grant to the Licensees or acquire on their behalf a license in Acquired Work Product that meets requirements, as determined solely by [the subrecipient], for the Licensees to use and to license others to use the Work Product and Acquired Work Product for all activities of the NGWSGP and for ongoing use, training, maintenance, and improvement of the resulting technology improvements.

- c. Scope - Work Product and Acquired Work Product shall include, but not be limited to, data, research, written reports or literary works, software and/or source code, pictures or images, graphics, audiovisual works, sound and/or video recordings, and architectural works.
- d. Delivery - Upon or before the completion of this Contract, the Contractor will deliver to [the subrecipient], in formats acceptable to [the subrecipient], copies of Work Product and Acquired Work Product.

**ATTACHMENT 10 - NOTICE OF AWARD**

[DATE]

NOTICE OF AWARD

RFP No. -----

[Contract Title]

[The subrecipient] announces award of the contract for [Contract Title] to:

[NAME OF CONTRACTOR]

This Notice of Award does not constitute the formation of a contract between [the subrecipient] and the apparent successful respondent. The apparent successful respondent shall not acquire any legal or equitable rights relative to the contract services until a contract containing terms and conditions acceptable to [the subrecipient] is executed.

As stated in the RFP, all decisions of [the subrecipient] with respect to the RFP and resulting contract award are final and are not subject to challenge or protest.

Thank you for participating in the competitive selection process. For information about this Notice, please contact [Name] at [email].

[DATE]

NOTICE OF INTENT TO AWARD

IFB No. -----

[Contract Title]

[The subrecipient] announces award of the contract for [Contract Title] to:

[NAME OF CONTRACTOR]

This Notice of Award does not constitute the formation of a contract between [the subrecipient] and the apparent successful respondent. The apparent successful respondent shall not acquire any legal or equitable rights relative to the contract services until a contract containing terms and conditions acceptable to [the subrecipient] is executed.

All decisions of [the subrecipient] with respect to the IFB and resulting contract award are final and are not subject to challenge or protest.

Thank you for participating in the competitive selection process. For information about this Notice, please contact [Name] at [email].

## ATTACHMENT 11 - TASK ORDER TEMPLATE

WHEREAS, the [Subrecipient] and [Contractor] (the “Contractor”) are Parties to the [Contract title and number] dated as of [Effective Date] (“Contract”), including all Exhibits and amendments to the Contract; and

WHEREAS, [the subrecipient] has a need for Contractor to perform the Services described below (“Services”);

NOW, THEREFORE, [subrecipient] hereby authorizes the Contractor to provide the Services under the terms and conditions set forth herein and, in the Contract, of which this Task Order becomes a part upon execution.

<b>Task Order Number:</b>	
<b>Services Requested:</b>	
<b>Deliverables (e.g., reports, plans, estimates):</b>	
<b>Compensation / Rates:</b>	[The subrecipient] shall pay Contractor for work performed in accordance with the rates and other compensation set forth in <b>Exhibit [#]</b> of the Contract.
<b>Not-to-Exceed Ceiling (Required for hourly work):</b>	In no event shall Contractor’s compensation under this Task Order exceed _____ Dollars (\$_____.__) for services and _____ Dollars (\$_____.__) for approved travel and related expenses.  Contractor is at risk and must bear all costs and expenses that exceed this amount for work performed under this Task Order, without compensation or reimbursement by [subrecipient], unless [subrecipient] Contractor agree in writing to an adjustment prior to Contractor performing Services that would cause the price ceiling to be exceeded.
<b>Invoicing:</b>	Contractor must submit regular invoices to [subrecipient] consistent with the terms of the Contract.



<b>Start Date:</b>	Contractor will commence work as soon as possible within 24 hours of signing this Task Order, unless otherwise indicated here:										
<b>Estimated End Date:</b>	<p>The estimated duration of work or end date is as follows:</p> <p>Contractor may request and [subrecipient] may grant, at its discretion, an extension of the time to perform. Any request for an extension and denial or grant thereof must be in writing.</p>										
<p><b>Designated Representatives.</b> The Parties designated their representatives for day-to-day communications and other issues in the Contract. Those individuals will remain the Parties' Designated Representatives for this Task Order unless alternate representatives are designated below:</p> <table border="0" data-bbox="170 976 1380 1564"> <tr> <td data-bbox="170 976 771 1018"><b>[Subrecipient] Designated Representative:</b></td> <td data-bbox="787 976 1380 1018"><b>Contractor Designated Representative:</b></td> </tr> <tr> <td data-bbox="170 1039 771 1123">Name: _____</td> <td data-bbox="787 1039 1380 1123">Name: _____</td> </tr> <tr> <td data-bbox="170 1144 771 1228">E-mail: _____</td> <td data-bbox="787 1144 1380 1228">E-mail: _____</td> </tr> <tr> <td data-bbox="170 1249 771 1333">Phone: _____</td> <td data-bbox="787 1249 1380 1333">Phone: _____</td> </tr> <tr> <td data-bbox="170 1354 771 1564">Address: _____ _____ _____</td> <td data-bbox="787 1354 1380 1564">Address: _____ _____ _____</td> </tr> </table>		<b>[Subrecipient] Designated Representative:</b>	<b>Contractor Designated Representative:</b>	Name: _____	Name: _____	E-mail: _____	E-mail: _____	Phone: _____	Phone: _____	Address: _____ _____ _____	Address: _____ _____ _____
<b>[Subrecipient] Designated Representative:</b>	<b>Contractor Designated Representative:</b>										
Name: _____	Name: _____										
E-mail: _____	E-mail: _____										
Phone: _____	Phone: _____										
Address: _____ _____ _____	Address: _____ _____ _____										
<b>Additional Requirements:</b>											

Executed on the dates set forth below by the undersigned authorized representative of

[subrecipient] and Contractor to be effective upon signature by Contractor.

[SUBRECIPIENT]

[CONTRACTOR]

By:

By:

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_