

INVITATION TO BID
CITY OF NEW ORLEANS, DEPARTMENT OF FINANCE, PURCHASING BUREAU
CITY HALL, 1300 PERDIDO ST., ROOM No. 4W07, NEW ORLEANS, LA 70112

THIS IS A FORMAL CITY BID SOLICITATION FOR MATERIALS, EQUIPMENT, SUPPLIES, OR NON-PROFESSIONAL SERVICES. INTERESTED PERSONS SHOULD CAREFULLY READ AND ATTEND ALL STATED INFORMATION AND REQUIREMENTS, INCLUDING SUCH CONTAINED IN ATTACHMENTS.

BID TYPE:	<input checked="" type="checkbox"/> Materials, Equipment, Supplies <input type="checkbox"/> Non-professional Services	BID NO. 3719	ISSUE DATE: 11/16/2023
		SPONSORING CITY DEPT. OR AGENCY: New Orleans Police Department (NOPD)	

BID DESCRIPTION: Physical Fitness Equipment

BID CONFERENCE:	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Optional	<input type="checkbox"/> Mandatory-The City will receive bids only from persons/firms shown on the City's attendance list.
	<u>Date:</u>	<u>Time:</u>	<u>Place:</u> <input checked="" type="checkbox"/> Purchasing Conference Room, #4W05, 4 th Floor City Hall, 1300 Perdido St., New Orleans, LA 70112 followed by a site walk-through at or <input type="checkbox"/>

Note: The City may prepare a conference report showing attendance, summarized Q&A, and matters discussed. The City will publish such report by issuing an Addendum to the Invitation to Bid. Said Addendum will be posted to the City's Supplier Portal at (<https://www.purchasing.nola.gov/>).

BID INSTRUCTIONS:

Once a bid is submitted to the City, it becomes City property. A bidder should mark documents or information claimed confidential and justify any claimed exemption from public records disclosure. The City will not credit blanket confidentiality claims. The treatment of all confidentiality designations will be governed by Louisiana Public Records Law, La. R.S. 44:1, *et seq.*

All bids remain valid for 90 calendar days after the Bid Deadline.

Specification references to certain brands, makes, or manufacturers state only the general style, type, character, and quality desired. Equivalent products are acceptable.

The City is not responsible for bid costs.

Procurements produce no exclusive right to City work or purchases.

Specifications under Attachment A may provide additional information for bidders.

Bidders should closely monitor the City's purchasing website for new or revised specifications, bid instructions, notices, etc. The City will change the invitation to bid ONLY by issuing formal addendum. In no case shall verbal communication override written communication.

Prospective bidders commit to abide by City Code, Chap. 2, Art. XIII, Sect. 2-1120 (relative to the operations and authority of the City Inspector General).

The City adheres to the Louisiana Code of Governmental Ethics, contained in the Louisiana Revised Statutes Annotated, R.S. 42:1101, *et seq.* By submitting a bid, prospective bidders warrants that there are no "conflict of interest" related to this solicitation that would violate applicable Louisiana Law. Violation of the Louisiana Code of Governmental Ethics may result in rescission of contract, permit or licenses, and the imposition of fines and/or penalties, without contractual liability to the public in accordance with applicable law.

The City's protest policy applies to this invitation to bid. The policy is available at: <https://www.nola.gov/getattachment/Purchasing/Forms/No-130-Procurement-Protest-Policy.pdf/>.

Prospective bidders shall familiarize themselves with and shall comply with all applicable Federal and State Laws, parish/municipal ordinances, resolutions, and the rules and regulations of all authorities having jurisdiction over the solicitation. These laws and/or ordinance will be deemed to be included in the contract, the same as though herein written in full.

DOCUMENTS: APPLIES? YES NO Bidding Documents may be obtained online at <https://www.purchasing.nola.gov/> or through the City of New Orleans webpage www.nola.gov, by selecting "City Purchasing Portal". Addenda will be transmitted to all bidders who login and acknowledge download of Bidding Documents online from the City Purchasing Portal, i.e. answer 'yes' when downloading Bidding Documents.

A. SUBMISSION DUE:	Date: 12/13/2023	Time: 11:00 a.m.	Location: Purchasing Bureau, City Hall, 1300 Perdido St., Room No. 4W07, New Orleans, LA 70112
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Note: The City will not accept bids delivered by fax, or by email address, or at any other location than the one above, or past the date and time of submission set forth above (the "Bid Deadline"). The purchasing date and time stamp clock will be the official and sole device for determining time of receipt for all mailed and hand delivered bids. Bids received after the Bid Deadline will be date

	<i>stamped and returned to the bidder unopened.</i>
B. BID OPENING:	The City will open the bids in public at <input checked="" type="checkbox"/> the Purchasing Bureau or <input type="checkbox"/> immediately following the Bid Deadline.
C. SUBMISSION OF BID PACKAGE:	<p>The bidder can submit its bid package either via a sealed envelope or online https://www.nola.gov/purchasing/.</p> <p>Note: Bidders are hereby advised that due to the nature of the internet, The City cannot guarantee that access to the BRASS System will be uninterrupted or that emails or other electronic transmissions will be sent to you or received by us. The City is not responsible for any delays caused by the bidder's chosen means of online bid delivery. Bidder is also responsible for ensuring that its courier service provider makes inside deliveries to our physical office location. The City will not credit delivery claims lacking a written proof of delivery. The bidder should submit bids according to means that produce a written proof of delivery. It is solely the bidder's responsibility to ensure the timely delivery of its bid. Failure to meet the bid opening date and time, irrespective of the mode of delivery, shall result in the rejection of the bid.</p>
D. REQUIRED CONTENTS:	
1. BID	<p>The bidder can:</p> <p>Either</p> <p><u>TYPED OR PRINTED BID.</u> Said bid must bear the original signature (IN BLUE INK) by the bidder, or an authorized representative, on the form provided under Attachment C ("Bid Form") with required attachments if any, and receipt of all addenda acknowledged.</p> <p>Or</p> <p><u>SUBMIT BID ONLINE</u> at http://purchasing.nola.gov. The bidder must attach completed and signed digital copies of the Bid Form, the Bid Bond (if required), a signature authorization, and any other required bid submissions or attachments as required.</p>
2. SIGNATURE AUTHORIZATION	At the time of bidding, the bidder shall submit a corporate resolution or written evidence of the authority of the person signing the bid package. See Attachment G.
3. BID BOND	<p>REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO A bid bond or security in an amount not less than <input type="checkbox"/> \$_____ or <input checked="" type="checkbox"/> five percent (5%) of bid amount, conditioned on the bidder's failure to execute a contract with the City to supply the specified goods or services. Bidders shall provide bid security in the form of a bid bond, cashier's check or certified check (as per R.S. 38:2218) in the amount of (see above) of the bid price (Base Bid and any Alternates).</p> <p><u>IF SUBMITTING A BID ONLINE,</u> A bid bond submission is required by uploading the required paper bid bond online. The City requires a Bid Bond entered Online.</p> <p><u>IF SUBMITTING A BID VIA SEALED ENVELOPE,</u> the City will accept a cashier's check, certified check or satisfactory bid bond payable to the City.</p> <p><i>Note: The City will retain bid securities of the three (3) lowest responsible bidders until the Contract is executed or until final bid disposition. The City will return other bid securities after the bid canvass. At contract execution, the City will return bid securities not forfeited for failure to execute a contract with the City.</i></p>
E. POST-BID DEADLINE SUBMISSION:	<p>The 2 apparent lowest bidders shall submit to the Purchasing Bureau the following document(s) within 3 business days of the Bid Deadline.</p> <p><i>Note: In addition to the following items, the City may require the submission of other documents. The bidder shall review the Specifications.</i></p>
1. DBE	REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Required by City Code Sec. 70-456 <i>et seq.</i> See Attachment D.
F. AWARD:	<p>The City may require additional information from bidders, and it may conduct inquiries to determine the bidder's responsiveness, responsibility, and/or the accuracy of furnished information.</p> <p>Subject to merit-based cancellation and confirmed City funding, the City will award the solicitation to the lowest responsive and responsible bidder.</p> <p>The City reserves the right to reject any and all bids in whole or in part, to waive informalities, or to award as it may elect to the extent permitted by law.</p>

G. CONTRACT:	
1. TYPE	<input type="checkbox"/> None: Obtain specified good(s) or service(s) by purchase order. <input type="checkbox"/> Fixed Price: Obtain the specified good(s) or service(s) at the bid price. <input checked="" type="checkbox"/> Requirements/Price Protection: Commit to supply the good(s) or service(s) as requested, at bid price, during term of the contract.
2. TERM	<input type="checkbox"/> year[s] with City option to renew. <input checked="" type="checkbox"/> As provided in Contract Terms and Conditions under Attachment B..
3. ADDITIONAL PROVISIONS	The contract will contain additional terms and conditions shown in Contract Terms and Conditions under Attachment B.
4. FEES	The successful bidder is responsible for any recordation, notary, and copy fees.
5. ADDITIONAL NEEDS: THE SUCCESSFUL BIDDER MUST SATISFY INDICATED NEEDS ON OR BEFORE IT RECEIVES A CONTRACT.	<u>PERFORMANCE BOND</u> : REQUIRED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Supply a performance bond acceptable to the City upon written request by the City, issued in the sum of: <input type="checkbox"/> 5% of bid amount. <input type="checkbox"/> \$_____ <input type="checkbox"/> specified amount.
	<u>PAYMENT BOND</u> : REQUIRED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Supply a payment bond acceptable to the City upon written request by the City, issued in the sum of: ___% of bid amount. <input type="checkbox"/> \$_ _ <input type="checkbox"/> Specified amount.
	<u>INSURANCE</u> : REQUIRED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Supply insurance certificates upon written request by the City showing coverage required in the Specifications.
	<u>TAX CLEARANCE</u> : REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO City Code Sec. 2-8. Supply a tax clearance form upon written request by the City. See Attachment F.
	<u>NON-COLLUSION AFFIDAVIT</u> : REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Supply said affidavit upon written request by the City. See Attachment E.
	<u>LICENSES/PERMITS</u> : REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Supply copy to the City of all applicable and required license(s) and/or permit(s) upon written request by the City.
	<u>CITY'S HIRING REQUIREMENTS</u> : REQUIRED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO City Code Sec. 2.8. Supply said affidavit upon written request by the City. See Attachment H.
H. ATTACHMENTS	Attachment A "Specifications" Attachment B "Contract Terms and Conditions" Attachment C "Federal Compliance Provisions" Attachment D "Bid Form" Attachment E "Disadvantaged Business Enterprise Requirements" Attachment F "Non-Collusion Affidavit" Attachment G "Tax Clearance" Attachment H "Proof of Authority to Sign Bid" Attachment I "Affidavit of Compliance with City's Hiring Requirements"

I. POINTS OF CONTACT FOR INQUIRIES:	<p>Bidders and their representatives are prohibited from contacting City employees or officials about this invitation to bid prior to the Bid Deadline.</p> <p><u>If the bidder violates the established prohibition on communications, the City may disqualify its bid package.</u></p> <p>For Purchasing and DBE related inquires, the bidder shall submit its question(s) in writing to the appropriate point of contact no later than 7 business days prior to the Bid Deadline.</p>
1. PURCHASING	<p>For all inquiries (except DBE), please direct them to the following Designated Purchasing Official: Name: Stephanie Warren, Address: 1300 Perdido Street, Rm 4W07, New Orleans, LA 70112, Telephone (504) 658-1550. E-mail:sawarren@nola.gov .</p> <p><i>Note: If the bidder contacts the Designated Purchasing Official via email, please include in the email the following subject line: "Bid No. 3719– question(s)".</i></p>
2. DBE	<p>Please direct inquiries via email to supplierdiversity@nola.gov , or via mail to the City of New Orleans, Office of Supplier Diversity, 1340 Poydras Street, Suite 1000, New Orleans La, 70112, or by telephone at: (504) 658-4200.</p> <p><i>Note: If the bidder contacts the Office of Supplier Diversity via email, please include in the email the following subject line: "Bid No.3719 – DBE - question(s)".</i></p>

**INVITATION TO BID
CITY OF NEW ORLEANS**

ATTACHMENT “A”

BID SPECIFICATIONS

1. General Specifications

- 1) The City of New Orleans (“City”) solicits bids to obtain a requirements contract for Physical Fitness Equipment .
- 2) The Contractor must receive an approved Purchase Order from the City’s Department of Finance - Bureau of Purchasing prior to providing goods and/or services. Only Purchasing Agent or authorized deputies have authority to place orders chargeable to City funds. The Contractor may contact City’s department personnel listed on the purchase order to verify the authorization of the employee placing the call.
- 3) Purchase Order Number. The Purchase Order Number issued by the City shall be shown on all documents, including, but not limited to, invoices and correspondence.
- 4) Taxes. The City is exempt from state and local taxes.
- 5) Free On Board (“FOB”). Bid prices shall include delivery be based on FOB Destination.
- 6) Freight Charges. All freight charges shall be prepaid and included by vendor unless otherwise specified by the City.

2. Technical Specifications

The New Orleans Police Department (NOPD) Academy department is in the process of purchasing physical training equipment.

Line#	Item	Description
1	Turf includes installation	Turf Installation *10,999 sf Green Perfect Turf PT 55 *3,658 sf Green White PT 55 *Excavation *Install Rock Base *Includes Nailer Boards *Includes extra concrete required for staircase installation
2	INDOOR/OUTDOOR DRIVE SLED	Indoor/outdoor device sled w/pull-straps features: Varied handle grip positions. 1000lbs, 24” L x 61” W x 42”H, Front D-ring for attaching pull straps. Outdoor use ideal on grass or turf, Indoor use ideal on turf or carpet. Pull straps included.
3	FUNCTIONAL TIRE	80kg-Full size 80kg tire for functional strength training
4	FUNCTIONAL FITNESS TIRE	120kg Full size 120kg tire for functional strength training
5	OUTDOOR BARBELL	Outdoor barbell and sledge bell storage rack
6	T-REX 5 LINE POST INLINE BASE	T-Rex In-Ground Mount 5 Post In-Line includes: (4) T-Rex Standard Post (1) T-Rex Rex cent Post Assembly (2) T-Rex Standard Pull up Bars (2)T-Rex Ergo Grip Pull-up Bars (2) T-Rex Post Extension Hangers Includes Top caps and Hardware
7	FIR GROUND HEAVY BAG	MoveStrong weather resistant heavy bag with added Velcro closure to reduce bag moisture. All bags made with a vinyl weather resistant cover. Universal hanging strap included.
8	FUNCTIONAL FITNESS STAIRCASE	Movestrong functional fitness staircase includes: (1) Set of Stairs and (1) fitness ramp pull-up and push-up bars underneath includes safety rails around steps, ramps and platform. (3) Dual Height pull-up bars (2) Adjustable Step-up attachment

		(2) Adjustable Dip Bar attachment (1) Kickplate (2) Vertical Rope Anchor (2) 24' Grab Ropes for Ramp (1) 12' Climbing Rope ***SURFACEMOUNT ONLY*** Dimensions: 44'-9.58 Long x 5"-076" Wide x 12'-0.22" Tall to top of ramp- 15'-0.22" to the top of the Safety Rail.
9	STEEL TREATMENT	Steel treatment and prep for outdoor use
10	TURF FOR STAIRCASE RAMP	Movestrong standard turf for functional staircase ramp green turf/ w logo. Hashmarks and number. 22'7.24" long x 5' wide Turf Adhesive included.
11	OUTDOOR FARMER CARRY LOG SET	Outdoor farmer Carry Log Set with Bar ends for weight plates. Farmer Carry Log is 36" (includes 2 logs) weight per log 28 lbs. Can be sand or shot filled for added weight.
12	IN-GROUND MOUNT BATTLE ROPE STAT	Fitground In-ground mount battle rope station package includes: (1) battle rope w (2) rope storage hooks (inground mount) (1) swivel anchor assembly fro battle ropes (2) 20' Battle ropes 1 ½ diameter with 3/8 x 2 spliced in ring for attaching to swivel anchor.
13	MOVE STRONG MOBILE TRAINER	Works only mobile-no need to download anther fitness app. In moments of arrival your customers can refer to the instructional decal or quickly scan QR code and watching the instructional videos.

WARRANTY:

- The playground turf 10 years warranty
- Lifetime structure warranty
- Routine inspection

DELIVERY INSTRUCTIONS:

- All equipment should be delivered and installed at:
New Orleans Police Department
Municipal Training Academy
4650 Paris Avenue
New Orleans, LA 70122

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ATTACHMENT “B”

CONTRACT TERMS AND CONDITIONS

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1. **ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S COMPENSATION COVERAGE.** The Contractor herein expressly agrees and acknowledges that it is an independent contractor as defined in R.S. 23:1021 (6) and as such, it is expressly agreed and understood between the parties hereto, in entering into this Contract, that the City shall not be liable to the Contractor for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana, and further, under the provisions of R.S. 23:1034 anyone employed by the Contractor shall not be considered an employee of the City for the purpose of Worker's Compensation coverage.

2. **ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE.** The Contractor herein expressly declares and acknowledges that it is an independent contractor, and as such is being hired by the City under this Contract for hire as noted and defined in R.S. 23:1472 (E), and therefore, it is expressly declared and understood between the parties hereto, in entering into this Contract, or agreement for hire, and in connection with unemployment compensation only, that:

- a. The Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this contract; and
- b. Services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and
- c. The Contractor has been independently engaged in performing the services listed herein prior to the date of this Contract.

Consequently, neither the Contractor nor anyone employed by the Contractor shall be considered an employee of the City for the purpose of unemployment compensation coverage, the same being hereby expressly waived and excluded by the parties hereto.

3. **ASSIGNABILITY.** The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same without prior written consent of the City.

4. **AMENDMENT.** The Contract shall not be modified except by written amendment executed by duly authorized representatives of the parties.

5. **AUDIT AND INSPECTION:**

- a. The Contractor will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Contract maintained by or under the control of the Contractor, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the City.
- b. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the Contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

6. **CHOICE OF LAWS.** This Contract shall be construed and enforced in accordance with the laws of the State of Louisiana, without regard to its conflict of laws provisions.

7. **COMPLIANCE WITH CITY'S HIRING REQUIREMENTS - BAN THE BOX.**

- a. The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Contract, Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary.
- b. Failure to maintain compliance with the City's hiring requirements throughout the term of the Contract, or to provide sufficient written reasons for deviation, is a material breach of this Contract. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow Contractor 30 days to come into compliance. If, after providing notice and 30 days to cure, the Contractor remains noncompliant, the City may move to suspend payments to Contractor, void the Contract, or take any such legal action permitted by law or this Contract.

- c. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Contract will remain in full force and effect.
- d. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

8. CONFLICT OF INTEREST. In the interest of ensuring that efforts of the Contractor do not conflict with the interests of the City, and in recognition of the Contractor's responsibility to the City, the Contractor agrees to decline any offer of employment if its independent work on behalf of the City is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with the Contractor. It is incumbent upon the Contractor to notify the City and provide full disclosure of the possible effects of such employment on the Contractor's independent work in behalf of the City. Final decision on any disputed offers of other employment for the Contractor shall rest with the City.

9. CONSTRUCTION OF AGREEMENT. Neither party will be deemed to have drafted the Contract. The Contract has been reviewed by all parties and will be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of the Contract will be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of the Contract are provided for convenience only and are not intended to have effect in the construction or interpretation of the Contract. Where appropriate, the singular includes the plural, and neutral words and words of any gender include the neutral and other gender.

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

11. COST RECOVERY. In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations.

12. PIGGYBACK/COOPERATIVE PROCUREMENT. To the extent permitted by law, the City through the Bureau of Purchasing may permit piggybacks to this contract from other city, county/parish, local authority, agency, or public agency if the Contractor will extend the same prices, terms, and conditions to the City. This provision shall not apply to any contract where otherwise prohibited or mandated by state law

13. DECLARED DISASTER.

A. Declaration. During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the materials/equipment/supplies/services to be provided by the Contractor will vary and may need to be adjusted as needs are identified. The Contractor may be requested to provide a range of materials/equipment/supplies/services. Said materials/equipment/supplies/services may need to be rendered on a continual basis (24 hours / 7 days per week) during the declaration of an emergency.

B. Task Order. Notification and Personnel. Prior or during the declaration of an emergency, the City will notify the Contractor via task order if the City requires the Contractor's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

C. Purchase Order. Once services are identified, the City will issue a purchase order to the Contractor. The City will issue a subsequent purchase order in case of additional needs for materials/equipment/supplies/services, or may issue a modified purchase order if changes are made to the initial purchase order.

D. The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

14. DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM.

A. In General. The Contractor agrees to abide by the City Code sections 70-496, *et seq.*, to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity ("**OSD**") oversees the DBE Program and assigns a DBE Compliance Officer ("**DBECO**") to ensure compliance.

B. Monitoring. To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Contractor' use of DBE subcontractors/suppliers ("**DBE Entities**") through the following actions:

1. Job site visits;
2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
3. Routine audits of contract payments to all subcontractors;
4. Reviewing of records and reports; and/or
5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Contractor or DBE Entities.

C. Cooperation. The Contractor shall:

1. Designate an individual as the "DBE Liaison" who will monitor the Contractor's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE Entities.
2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
 - a. The Contractor shall provide the DBECO with copies of said contracts within thirty (30) days from the date this Contract is fully executed between the City and the Contractor.
 - b. The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
3. Establish and maintain the following records for review upon request by the OSD:
 - a. Copies of written contracts with DBE Entities and purchase orders;
 - b. Documentation of payments and other transactions with DBE Entities;
 - c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of "Post-Award Good Faith Efforts" for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;
 - d. Any other records required by the OSD.

The Contractor is required to maintain such records for 3 years after completion or closeout of this Contract. Such records are necessary to determine compliance with their DBE obligations.

4. Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.
 - a. The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth (15th) day of each month until all DBE subcontracting work is completed.
 - b. Reports are required even when no activity has occurred in a monthly period.
 - c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
 - d. The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.
5. Conform to the established percentage as approved by the OSD.

- a. The total dollar amount of the Contract shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
- b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
- c. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

D. Post-Award Modification. The OSD may grant a post-award modification request if:

- a. for a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Contract will also apply to the substitution of DBE subcontractors during the performance of the Contract; or
- b. the Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Contract.

15. DURATION. The services to be provided under the terms of this Contract shall begin upon execution of Contract and shall end no later than 12 months after. It is understood and acknowledged by all signers to this Contract that work described under these terms is to be accomplished during the time period specified herein.

16. EMPLOYEE VERIFICATION. The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Contract, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Contract to termination, and may further result in the Contractor being ineligible for any public contract for a period of three years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Contract or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Contract for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

17. ENTIRE AGREEMENT. This Contract, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Contract and are without effect to vary or alter any terms or conditions of this Contract.

18. NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Contract, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. This requirement shall apply to, 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. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Contract, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex,

gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. The City may terminate this Contract for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Contract.

19. EXCLUSIVE JURISDICTION AND VENUE. For all claims arising out of or related to this Contract, the Contractor hereby consents and yields to the jurisdiction of the Civil District Court for the Parish of Orleans, and expressly waives any (A) pleas of jurisdiction based upon Contractor's residence and (B) right of removal to federal court based upon diversity of citizenship.

20. EXTENSION. This Contract may be extended at the option of the City, provided that funds are allocated by the Council of the City and the extension of the Contract facilitates the continuity of services provided herein. This Contract may be extended by the City for 4 additional one-year terms.

21. INCORPORATION INTO SUBCONTRACTS. The Contractor will incorporate these Contract Terms and Conditions into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

22. INDEMNIFICATION.

A. To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "Indemnified Parties") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Contractor, its agents or employees while engaged in or in connection with the discharge or performance of any services under this Contract; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Contract.

B. Limitation. The Contractor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents or employees contributed to such gross negligence or willful misconduct.

C. Independent Duty. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (1) the allegations are or may be groundless, false, or fraudulent; or (2) the Contractor is ultimately absolved from liability.

D. Expenses. Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

23. INDEPENDENT CONTRACTOR STATUS. The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

24. INVOICING. The Contractor must submit invoices monthly (unless agreed otherwise between the parties to this Contract) to the City electronically, via its supplier portal, for goods or services provided under this Contract no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information: contract or purchase order number issued by the City, and the name of the city department to be invoiced. The City may require changes to the form or the content of the invoice. The City may also require additional supporting documentation to be submitted with invoices.

25. LIMITATIONS OF THE CITY'S OBLIGATIONS. The City has no obligations not explicitly set forth in this Contract or any incorporated documents or expressly imposed by law.

26. LIVING WAGES (applicable to non-professional services solicitation). To the fullest extent permitted by law, the Contractor agrees to abide by City Code sections 70-801, *et seq.*, which requires payment of a wage to covered employees equal to the amounts defined in the Code ("**Living Wage**"). If the Contractor fails to

comply with the requirements of the Living Wage during the term of the Contract, said failure may result in termination of the Contract or the pursuit of other remedies by the City.

A. Definitions. Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

B. Compliance. To the fullest extent permitted by law, the Contractor agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code (“**Living Wage**”);
2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

C. Current Living Wage. In accordance with the Living Wage Ordinance, the current Living Wage per the Consumer Price Index data is equal to \$15.00. The Contractor shall be responsible for confirming the Current Living Wage by visiting <https://www.nola.gov/economic-development/workforce-development/>.

D. Adjusted Living Wage. In accordance with Section 70-806(2) of the City Code, the Contractor acknowledges and agrees that the Living Wage may be increased during the term of the Agreement. Any City contract or City financial assistance agreement (a) extending from one calendar year into the next or (b) with a term of longer than one year, inclusive of any renewal terms or extensions, shall require the Covered Employer to pay the Covered Employee an Adjusted Living Wage, accounting for the annual Consumer Price Index adjustment. The indexing adjustment shall occur each year on July 1st using the Consumer Price Index figures provided for the calendar year ended December 31st of the preceding year, and thereafter on an annual basis.

E. Subcontract Requirements. As required by Section 70-804 of the City Code, the Contractor, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“**Article**”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

F. Reporting. On or before January 31st and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development
Living Wage - Compliance
1340 Poydras Street – Suite 1800
New Orleans, Louisiana 70112

G. Compliance Monitoring. Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “**OWD**”) and/or the Chief Administrative Office (“**CAO**”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (iii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

Remedies. If the Contractor fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

27. NO THIRD PARTY BENEFICIARIES. The Contract is entered into for the exclusive benefit of the City and the Contractor, and the City and the Contractor expressly disclaim any intent to benefit anyone not a party to this Contract.

28. NON-EXCLUSIVITY. This Contract is non-exclusive and the Contractor may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Contract and the City may engage the services of others for the provision of some or all of the work to be performed under this Contract.

29. NON-SOLICITATION. The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject Contract. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject Contract.

30. NON-WAIVER. The failure of the City to insist upon strict compliance with any provision of the Contract, to enforce any right or to seek any remedy upon discovery of any default or breach of the Contractor at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of the City's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

31. OWNERSHIP INTEREST DISCLOSURE. The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after thirty (30) days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.\

32. PAYMENT. Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Contract have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice via the City's supplier portal.

33. PERFORMANCE MEASURES.

A. Factors. The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Contract; staff availability; staff training; staff professionalism; staff experience; customer service; staff turnover; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. Failure to Perform. If the Contractor fails to perform according to the Contract, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Contract and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

34. PROHIBITION AGAINST FINANCIAL INTEREST IN AGREEMENT. No elected official or employee of the City shall have a financial interest, direct or indirect, in the Contract, including through any financial interest held by the spouse, child, or parent. Any willful violation of this provision, with the expressed or implied knowledge of the Contractor, will render this Contract voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the Contractor pursuant to this Contract without regard to the Contractor's satisfactory performance.

35. PROHIBITION ON POLITICAL ACTIVITY. None of the funds, materials, property, or services provided directly or indirectly under the terms of this Contract shall be used in the performance of this Contract for any partisan political activity, or to further the election or defeat of any candidate for public office.

36. REMEDIES CUMULATIVE. No remedy set forth in the Contract or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

37. SEVERABILITY. If a court of competent jurisdiction finds any provision of the Contract to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or, if reformation is not possible, the unenforceable provision will be fully

severable and the remaining provisions of the Contract will remain in full force and effect and will be construed and enforced as if the unenforceable provision was never a part the Contract.

38. SUBCONTRACTOR REPORTING. The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Contract's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Contract with the City, the Contractor must provide notice to the City within 30 days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after 30 days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

39. SURVIVAL. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, venue, choice of law, and warranties shall survive the expiration, suspension, or termination of the Contract and continue in full force and effect.

40. SUSPENSION. The City may suspend this Contract at any time and for any reason by giving 2 business day's written notice to the Contractor. The Contractor will resume work upon 5 business day's written notice from the City.

41. TERMINATION FOR CAUSE. The City may terminate this Contract immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Contract, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

42. TERMINATION FOR CONVENIENCE. The City may terminate this Contract at any time during the term of the Contract by giving the Contractor written notice of the City's intention to terminate at least 30 days before the date of termination.

43. TERMINATION FOR NON-APPROPRIATION. This Contract will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Contract without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Contract.

44. TERMS BINDING. The terms and conditions of the Contract are binding on any heirs, successors, transferees, and assigns.

45. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS. It is expressly agreed and understood between the parties entering into this Contract that the Contractor, acting as an independent agent, shall not receive any sick and annual leave benefits from the City of New Orleans.

[END OF ATTACHMENT "B"]

**INVITATION TO BID
CITY OF NEW ORLEANS**

ATTACHMENT “C”

**FEDERAL COMPLIANCE PROVISIONS
FOR AGREEMENTS WITH SUBRECIPIENTS**

From 2 CFR 200

Applies to all federal grants.

- 1. REMEDIES FOR NON-COMPLIANCE**
- 2. TERMINATION FOR CAUSE AND TERMINATION FOR CONVENIENCE**
- 3. EQUAL OPPORTUNITY ACT**
- 4. EQUAL OPPORTUNITY ACT FOR FEDERALLY-ASSISTED CONSTRUCTION CONTRACTS**
- 5. DAVIS-BACON ACT**
- 6. LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING
FEDERALLY FINANCED AND ASSISTED CONSTRUCTION**
- 7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**
- 8. COPELAND “ANTI-KICKBACK” ACT**
- 9. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**
- 10. CLEAR AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT**
- 11. DEBARMENT AND SUSPENSION**
- 12. BYRD ANTI-LOBBYING ACT**
- 13. PROCUREMENT OF RECOVERED MATERIALS**
- 14. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SERVEILLANCE
SERVICES OR EQUIPMENT**
- 15. DOMESTIC PREFERENCES FOR PROCUREMENT**
- 16. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**
- 17. ACCESS TO RECORDS**
- 18. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**
- 19. NO OBLIGATION BY FEDERAL GOVERNMENT**
- 20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

1. REMEDIES FOR NON-COMPLIANCE

[See the body of the Agreement for this language.]

2. TERMINATION FOR CAUSE AND TERMINATION FOR CONVENIENCE

[See the body of the Agreement for this language.]

3. EQUAL OPPORTUNITY ACT.

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

(1) The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Subrecipient 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 Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Subrecipient 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 Subrecipient's legal duty to furnish information.

(4) The Subrecipient 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 be provided by the agency contracting officer, advising the labor union or workers' representative of the Subrecipient's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Subrecipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Subrecipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Subrecipient's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Subrecipient may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Subrecipient will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subSubrecipient or vendor. The Subrecipient will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event the Subrecipient becomes involved in, or is threatened with, litigation with a subSubrecipient or vendor as a result of such direction, the Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.

4. EQUAL OPPORTUNITY ACT FOR FEDERALLY-ASSISTED CONSTRUCTION CONTRACTS.

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which

is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

(1) The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Subrecipient 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 Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Subrecipient 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 Subrecipient's legal duty to furnish information.

(4) The Subrecipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Subrecipient's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Subrecipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Subrecipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Subrecipient'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 Subrecipient may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Subrecipient will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules,

regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subSubrecipient or vendor. The Subrecipient will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

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

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Subrecipient 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 Subrecipients and subSubrecipients by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

5. DAVID-BACON ACT.

(For prime construction contracts in excess of \$2,000.)

Applicable contracts must comply with the Davis Bacon Act, as amended (40 U.S.C. 3141-3148). In accordance with the statute, Subrecipients must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Subrecipients must be required to pay wages not less than once a week.

6. LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION

(For construction contracts (incl. alteration and/or repair, including painting and decorating) of a public building or public work, or building or work financed in whole or part from federal funds.)

(1) *Minimum wages.*

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe

benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Subrecipient and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Subrecipient and its subSubrecipients at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Subrecipient and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Subrecipient, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Subrecipient shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Subrecipient does not make payments to a trustee or other third person, the Subrecipient may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Subrecipient, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Subrecipient to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) ***Withholding.*** The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Subrecipient under this contract or any other Federal contract with the same prime Subrecipient, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Subrecipient, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subrecipient or any subSubrecipient the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the Subrecipient, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) ***Payrolls and basic records.***

(i) Payrolls and basic records relating thereto shall be maintained by the Subrecipient during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Subrecipient shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Subrecipients employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The Subrecipient shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Subrecipient will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly

transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Subrecipient is responsible for the submission of copies of payrolls by all subSubrecipients. Subrecipients and subSubrecipients shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Subrecipient will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the Subrecipient, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Subrecipient to require a subSubrecipient to provide addresses and social security numbers to the prime Subrecipient for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Subrecipient or subSubrecipient or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Subrecipient or subSubrecipient to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Subrecipient or subSubrecipient shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Subrecipient or subSubrecipient fails to submit the required records or to make them available, the Federal agency may, after written notice to the Subrecipient, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees* -

(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship

program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Subrecipient as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Subrecipient is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Subrecipient's or subSubrecipient's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Subrecipient will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) ***Trainees.*** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Subrecipient will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) ***Equal employment opportunity.*** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements.** The Subrecipient shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts.** The Subrecipient or subSubrecipient shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subSubrecipients to include these clauses in any lower tier subcontracts. The prime Subrecipient shall be responsible for the compliance by any subSubrecipient or lower tier subSubrecipient with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Subrecipient and a subSubrecipient as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Subrecipient (or any of its subSubrecipients) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility.**

(i) By entering into this contract, the Subrecipient certifies that neither it (nor he or she) nor any person or firm who has an interest in the Subrecipient's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

(Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).)

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

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Subrecipient and any subSubrecipient responsible therefor shall be liable for the unpaid wages. In addition, such Subrecipient and subSubrecipient shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$31 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

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

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

(c) The Subrecipient or subSubrecipient 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. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Subrecipient or subSubrecipient for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the Subrecipient or subSubrecipient will permit such representatives to interview employees during working hours on the job.

Note: Section (c) is for contracts subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1

8. COPELAND “ANTI-KICKBACK” ACT

A. Subrecipient. The Subrecipient shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

B. Subcontracts. The Subrecipient or subSubrecipient shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subSubrecipients to include these clauses in any lower tier subcontracts. The prime Subrecipient shall be responsible for the compliance by any subSubrecipient or lower tier subSubrecipient with all of these contract clauses.

C. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment U. S. Department of Homeland Security Headquarters 500 C St SW Washington, D.C. 20042 Page 13 of 25 www.fema.gov/procurement-disaster-assistance-team To Table of Contents as a Subrecipient and subSubrecipient as provided in 29 C.F.R. § 5.12.”

9. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

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

10. CLEAR AIR ACT AND THE FEDERAL WATER POLLUTION CONTRACT ACT

(For contracts over, \$150,000, the Subrecipients must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Contract Act as amended (33 U.S.C. 1251-1387.)

(1) The Subrecipient 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. § 7401 *et seq*.

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

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

11. DEBARMENT AND SUSPENSION

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Subrecipient is required to verify that none of the Subrecipient's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Subrecipient must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by **(insert name of recipient/subrecipient/applicant)**. If it is later determined that the Subrecipient 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 **(insert name of recipient/subrecipient/applicant)**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

12. BYRD ANTI-LOBBYING ACT

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

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

Note: Subrecipients who apply or bid for an award of \$100,000 or more shall file the required certification found below in Appendix A.

13. PROCUREMENT OF RECOVERED MATERIALS

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

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

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

C. The Subrecipient also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

14. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SERVEILLANCE SERVICES OR EQUIPMENT

Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. 2 CFR § 200.216.

15. DOMESTIC PREFERENCES FOR PROCUREMENT

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber. 2 CFR § 200.322.

16. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

17. ACCESS TO RECORDS

The following access to records requirements apply to this contract:

(1) The Subrecipient agrees to provide any official from the federal government or the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Subrecipient which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Subrecipient agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Subrecipient agrees to provide the federal administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the City and the Subrecipient acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the federal administrator or the Comptroller General of the United States.

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

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

19. NO OBLIGATION BY FEDERAL GOVERNMENT

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

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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

Citations:

Items 1 -15 are from 2 CFR 200, Appendix II

Item 16 is prudent.

Items 17-20 are from FEMA’s Recommended Provisions.

APPENDIX A,

44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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 imposed by section 1352, title 31, U.S. Code. 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 Subrecipient, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Subrecipient 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 and Title of Subrecipient’s Authorized Official Representative

Date

**INVITATION TO BID
CITY OF NEW ORLEANS**

**ATTACHMENT "D"
BID FORM**

COMPLETE IN INK
Bidder Information:

BID NUMBER: _____

Business Name: _____

**Business Tax ID
No:** _____

**Business
Address:** _____

**Business
Phone:** _____

**Business Fax
No:** _____

Business E-mail: _____

By: _____
Signature

Printed Name

Printed Title

Date

TOTAL PRICE: \$ _____

BIDDERS MUST ACKNOWLEDGE ALL ADDENDA. THE BIDDER ACKNOWLEDGE RECEIPT OF THE FOLLOWING ADDENDA (write an "X" in the space corresponding to the addendum you acknowledge receiving)	1	2	3	4	5	6	7

Bid is valid for 90 calendar days after the bid deadline.

Attach written evidence of the authority of the person signing the bid. See Attachment G entitled "Guidelines on Proof of Authority to Sign Bid"

IMPORTANT NOTE: When completing your bid, do not alter City bid form or attach form(s) which may contain terms and conditions that conflict with those listed in the City's bid documents(s). Inclusion of additional terms and conditions such as those which may be on your company's standard forms shall result in your bid being declared non-responsive as these channels will be considered a counteroffer to the City's bid.

**INVITATION TO BID
CITY OF NEW ORLEANS**

**ATTACHMENT “D”
BID FORM CONTINUED**

Line#	Item	Quantity	Unit of Measure	Unit Cost	Extended Price
1	Turf includes Installation	1.00	EA		
2	INDOOR/OUTDOOR DRIVE SLED	2.00	EA		
3	FUNCTIONAL TIRE	1.00	EA		
4	FUNCTIONAL FITNESS TIRE	1.00	EA		
5	OUTDOOR BARBELL	1.00	EA		
6	T-REX 5 LINE POST INLINE BASE	1.00	EA		
7	FIR GROUND HEAVY BAG	2.00	EA		
8	FUNCTIONAL FITNESS STAIRCASE	1.00	EA		
9	STEEL TREATMENT	1.00	EA		
10	TURF FOR STAIRCASE RAMP	1.00	EA		
11	OUTDOOR FARMER CARRY LOG SET	2.00	EA		
12	IN-GROUND MOUNT BATTLE ROPE STAT	2.00	EA		
13	MOVE STRONG MOBILE TRAINER	1.00	EA		
14	INSTALLATION	1.00	LOT		
15	DELIVERY	1.00	LOT		
				Total Price	

“Extended Price” means “Quantity” times “Unit Price”.

“TOTAL” means the sum of extended prices.

ATTENTION: the total number must be reported on the first page of Attachment “D”.

**INVITATION TO BID
CITY OF NEW ORLEANS**

ATTACHMENT “E”

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

I - DBE PROGRAM COMPLIANCE

The requirements of the City of New Orleans (“City”) Disadvantaged Business Enterprise (“DBE”) Program apply to this Contract. It is the policy of the City to practice nondiscrimination based on social and economic disadvantage, race, color, gender, disability and national origin in the award and performance of contracts.

In consideration of this policy and pursuant to Division 2 of Article IV of Chapter 70 of the Code of the City, the City enacted the DBE Program for all City contracts.

Contractor agree to use its best efforts to fully and completely carry out the applicable requirements of the City’s DBE Program in the award and administration of this Contract, including without limitation, all reporting requirements and established DBE participation percentage. The Contractor’s failure to carry out these requirements, as determined in good faith by the City’s Office of Supplier Diversity (“OSD”), shall be deemed a material breach of this Contract. This material breach may result in the termination of this Contract and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City’s Policy Memorandum for the DBE Program

II - DBE CONTRACT GOAL

The requested DBE Contract Goal is listed in the contract section of the invitation to bid.

NOTE: All non-public works contracts have a default goal of 35% DBE participation.

Participation shall be counted toward meeting the contract goal based on the following:

1. Only business entities certified as SLDBE or LAUCP-DBE are counted toward the contract DBE participation goal.
2. The Bidder/Proposer may count only the total dollar value of the subcontract awarded to certified DBE subcontractor/supplier(s) toward the contract goal.
3. A Bidder/Proposer can count 100 % of the DBE’s participation provided that the DBE has committed to performing at least 51% of the work with its own forces.
4. Bidder/Proposer may count 100 % of DBE Manufacturer Supplier’s participation and 60 % of DBE Non-Manufacturer supplier’s participation toward its contract goal.
5. When the Bidder/Proposer is in a joint venture with one or more DBE business entities, the OSD, after reviewing the joint venture agreement, shall determine the percent of participation that will be counted toward the contract goal.
6. Bidder/Proposer may count toward its contract goal only those DBE subcontractors/suppliers performing a Commercially Useful Function.

“DBE Commercially Useful Function means” a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the DBE firm by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the DBE firm is responsible. In determining whether a certified firm is performing a commercially useful function, factors including, but not limited to, the following shall be considered:

- a. Whether the business entity has the skill and expertise to perform the work for which it is being utilized and possesses all necessary licenses;
- b. Whether the firm is in the business of performing, managing, or supervising the work for which it has been certified and is being utilized;
- c. Whether the DBE subcontractor is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract.

- d. Whether the DBE subcontractor performed at least thirty percent (30%) of the cost of the subcontract (including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own forces.

III - DBE DIRECTORY

Contractors may only utilize certified SLDBE and/or Louisiana Unified Certification Program (LAUCP) DBE firms from the following lists to meet the City's DBE Program goals.

- a. Contractors agree to utilize the City's SLDBE directory of certified firms as a first source when searching for certified DBE business entities. The SLDBE directory includes entities certified through Sewerage and Water Board of New Orleans, New Orleans Aviation Board and Harrah's New Orleans. The SLDBE directory is available at www.nola.gov.
- b. The Louisiana Unified Certification Program ("LA UCP") directory is available at www.dotd.louisiana.gov.

Information on locating these directories may also be requested from the OSD at supplierdiversity@nola.gov.

IV - GOOD FAITH EFFORT POLICY

In accordance with Sec.70-461 of the City Code, the City shall reject any bid and shall not award, enter into or amend any contract that is not supported by documentation establishing that the Bidder/Proposer has met the applicable contract DBE participation Goal or made Good Faith Efforts to the applicable contract DBE participation goal.

Good Faith Efforts are steps taken to achieve a contract DBE participation goal or other requirements which, by their scope, intensity and usefulness demonstrate the Bidder's or Proposer's responsiveness to fulfilling the City's DBE Program goals prior to the award of a contract, as well as the Contractor's responsibility to put forth measures to meet or exceed the contract DBE participation goal throughout the duration of the contract.

The OSD shall be responsible for determining whether a Bidder/Proposer has made their best efforts to achieve the DBE Program contracting objectives. In making this determination, the DBE Compliance Officer shall consider the following factors:

A. SPECIFIC PORTIONS OF WORK IDENTIFIED FOR DBE SUBCONTRACTOR:

- i. Bidder/Proposer listed all selected scopes or portions of work to be performed by DBEs in order to increase the likelihood of meeting the contract goal for the project
- ii. Bidder/Proposer listed the estimated value of each scope or portions of work identified.

B. NOTIFYING CERTIFIED DBEs OF CONTRACTING OPPORTUNITIES:

- i. Bidder/Proposer contacted the OSD to request submission of subcontracting opportunities on the DBE Opportunities page.
- ii. Bidder/Proposer included a copy of each announcement or notification.

C. INITIAL SOLICITATION & FOLLOW-UP:

- i. Bidder/Proposer listed all certified DBE firms that received written notification of work items to be subcontracted and documented the certified firm's response.
- ii. Bidder/Proposer included copies of the written notice(s) sent to certified firms.

D. NEGOTIATE IN GOOD FAITH:

- i. Bidder/Proposer provided an explanation for any rejected DBE bid or price quotation.
- ii. Bidder/Proposer included a copy of the written rejection notice including the reason for rejection to the rejected DBE firm.

If a Bidder/Proposer fails to submit documented Good Faith Efforts as outlined, the bid shall be considered non-responsive.

The OSD may take into account the performance of other Bidders/Proposers in meeting the contract DBE participation goal and may, if deemed advisable, request further information, explanation or justification from any

Bidder/Proposer. For example, Bidder's past performance on similar contracts with similar scopes and/or a Proposer's prior history utilizing DBEs will also be taken in consideration when determining Good Faith Efforts.

Good Faith Efforts shall be monitored throughout the life of the contract and evaluated on a case-by-case basis in making a determination whether a Bidder or Proposer is in compliance with the Good Faith Effort policy.

To obtain a copy of the Good Faith Effort Policy contact OSD at supplierdiversity@nola.gov.

V - REQUIRED DBE FORMS for BIDs/RFPs/RFPs

A. BIDs:

In accordance with Louisiana Public Bid Law, the two apparent lowest bidders on an invitation to bid shall complete and submit all required post bid documents within three (3) business days of the bid opening. If the required post bid documents are not received within three (3) business days of the bid opening it shall be determined that bidder was non-responsive.

The following DBE documents must be received within three (3) business days of the bid opening:

1. DBE Compliance Form-1: This form is used to establish your DBE commitment on a City of New Orleans bid, RFP or solicitation response. The Bidder shall provide a list of all proposed DBE subcontractor(s).

If the Bidder has attained the amount of DBE participation to meet the contract goal, only submit DBE Compliance Form-1.

2. DBE Compliance Form-2: This form is used to document Good Faith Efforts when the amount of DBE participation committed on DBE Compliance Form-1 is less than the Contract Goal. The Bidder shall provide all required supporting documentation of demonstrated Good Faith Efforts as specified on DBE Compliance Form-2.
3. After receipt and review of the required post-bid documents, the OSD will determine if the Bidder has provided valid DBE Compliance Forms and (if applicable) evidence of demonstrated Good Faith Efforts.

Thereafter, the Bidder/Contractor shall be bound by the established percentage, as approved by the OSD.

B. Request for Proposals ("RFP") / Request for Qualifications ("RFQs"):

To ensure the full participation of DBE's in all phases of the City's procurement activities, all Proposers at time of proposal submission shall complete and submit a DBE Participation Plan.

1. **DBE Participation Plan:** A completed DBE Participation Plan shall be considered a methodology on how the Proposer plans to meet the contract DBE participation goal if awarded the project.
 - a. If a DBE Participation Plan is not submitted, it shall be determined that the Respondent was non-responsive to the DBE provisions and the proposal will not be evaluated by the selection committee.
2. Within ten (10) days of the City's issuance of the Notice to Award letter, the selected Proposer shall complete and submit a DBE Compliance Form-1: This form is used to establish your DBE commitment on a City Bid, RFP or solicitation response. The selected Proposer shall provide a list of all proposed DBE subcontractor(s).
 - a. If the amount of DBE participation committed on DBE Compliance Form-1 is less than the Contract Goal, the selected Proposer shall complete DBE Compliance Form-2: This form is used to document Good Faith Efforts when the amount of DBE participation committed on DBE Compliance Form-1 is less than the contract DBE participation goal. The selected proposer shall provide all required supporting documentation of demonstrated Good Faith Efforts as specified on DBE Compliance Form-2.

The OSD shall review the contents of all required DBE Compliance Forms and may, if deemed advisable, request further information, explanation or justification from any Bidder/Respondent. Thereafter, the Contractor shall be bound by the established percentage, as approved by the OSD.

VI - CONTRACTOR COOPERATION

The Contractor shall:

6. Designate an individual as the “DBE Liaison” who will monitor the Contractor’s DBE participation as well as document and maintain records of “Good Faith Efforts” with DBE subcontractors/suppliers (“DBE Entities”).
7. Execute written contracts with DBE Entities that meet the applicable DBE goals.
 - c. The Contractor shall provide the DBE Compliance Officer (“DBECO”) with copies of said contracts within thirty (30) days from the date the Contract is fully executed between the City and the Contractor.
 - d. The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
8. Establish and maintain the following records for review upon request by the OSD:
 - e. Copies of written contracts with DBE Entities and purchase orders;
 - f. Documentation of payments and other transactions with DBE Entities;
 - g. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of “Post-Award Good Faith Efforts” for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;
 - h. Any other records required by the OSD.

The Contractor is required to maintain such records for three (3) years after completion or closeout of the Contract. Such records are necessary to determine compliance with their DBE obligations.

9. Post monthly payments and submit regular reports to the DBECO as required via the online “Contract Compliance Monitoring System” or other means approved by the OSD.
 - e. The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, “DBE Utilization” reports shall be due on or before the fifteenth (15th) day of each month until all DBE subcontracting work is completed.
 - f. Reports are required even when no activity has occurred in a monthly period.
 - g. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
 - h. The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.
10. Conform to the established percentage as approved by the OSD.
 - d. The total dollar amount of the Contract shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
 - e. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
 - f. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

VII - POST-AWARD MODIFICATION

The OSD may grant a post-award modification request if:

- c. for a reason beyond the Contractor’s control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document “Good Faith Efforts” to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing “Good Faith Efforts” in maximizing

the participation of DBE Entities prior to awarding the Contract will also apply to the substitution of DBE subcontractors during the performance of the Contract; or

- d. the Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and document “Good Faith Efforts” to achieve a reasonable amount of DBE participation on the remaining work on the Contract.

VIII - MONITORING DBE PARTICIPATION

To ensure compliance with DBE requirements during the term of the Contract, the DBECO will monitor the Contractor’ use of DBE subcontractors/suppliers (“**DBE Entities**”) through the following actions:

6. Job site visits;
7. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
8. Routine audits of contract payments to all subcontractors;
9. Reviewing of records and reports; and/or
10. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Contractor or DBE Entities.

IX - FAILURE TO COMPLY

If the DBECO determines in good faith that the Contractor failed to carry out the requirements of the DBE Program, such failure shall be deemed a material breach of this Contract. This material breach may result in the termination of the Contract and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City’s Policy Memorandum for the DBE Program.

All DBE Compliance forms are maintained by the OSD and are subject to change.

Please contact the OSD at supplierdiversity@nola.gov to request a copy of all DBE referenced documents.

[END OF ATTACHMENT “E”]

**INVITATION TO BID
CITY OF NEW ORLEANS**

ATTACHMENT “E” Continue

**DBE Compliance Form-1
DBE Compliance Form-2 Documentation of Good Faith Efforts**

(Attached)

[END OF ATTACHMENT “E”]

**INVITATION TO BID
CITY OF NEW ORLEANS**

ATTACHMENT "F"

NON-COLLUSION AFFIDAVIT

STATE OF _____ PARISH OF _____

_____, being first duly sworn, deposes and says that:

(1) He is (Owner) (Partner) (Office) (Representative) or (Agent), of:

_____,
the Bidder that has submitted the attached Bid:

(2) Such Bid is genuine and is not a collusive or sham Bid:

(3) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties of interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly, or indirectly with any other Bidder, firm or person to submit a collusive or sham bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly sought by agreement or collusion or communication or conference with any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other bidder, or to secure through any advantage against the City of New Orleans of any person interested in the proposed contract; and

(4) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signature of (Owner) (Partner) (Office) (Representative) or (Agent)

Subscribed and sworn to, this _____ day of _____, 20 _____

[END OF ATTACHMENT "F"]

**INVITATION TO BID
CITY OF NEW ORLEANS
ATTACHMENT "G"
TAX CLEARANCE AUTHORIZATION**

**CITY OF NEW ORLEANS
TAX CLEARANCE AUTHORIZATION**

According to Section 2-8 of the Code of the City of New Orleans, the City cannot enter into or make payments under a contract, grant or cooperative endeavor agreement with any person, corporation, or entity delinquent in City taxes. This form supplies the needed tax clearance. This clearance is issued without prejudice to any tax liabilities discovered by audit.

Please refer to the instructions on next page

BUSINESS NAME:

OWNER'S NAME:

TYPE OF BUSINESS:

BUSINESS ADDRESS:

MAILING ADDRESS:

CONTACT TELEPHONE:

FAX NUMBER:

E-MAIL ADDRESS:

REAL ESTATE TAX NUMBER:

PERSONAL PROPERTY TAX NUMBER:

SALES TAX/OCCUPATIONAL LICENSE
NUMBER:

PRINT NAME:

TITLE:

AUTHORIZED SIGNATURE:

DATE SIGNED:

I certify that I have the authority to execute this form with respect to the tax matters covered and that the above is true and correct. The City of New Orleans is authorized to inspect and/or receive confidential tax information.

BUREAU OF REVENUE (Room 1W15)

This clearance covers Occupational License and Sales/Use taxes.

I hereby assert that after review of the taxpayer's records of this date that the taxpayer **IS NOT** delinquent in any taxes owed to the city. This clearance covers the period today through March 1, 20____. The above clearance may be revoked for failure to pay sales tax.

BUREAU OF TREASURY (Room 1W37)

This clearance covers Ad Valorem taxes for Real Estate and Business Property taxes.

I hereby assert that after review of the taxpayer's records of this date that the taxpayer **IS NOT** delinquent in any taxes owed to the city. This clearance covers the period today through March 1, 20____.

COLLECTOR OF REVENUE – PRINT NAME

DATE

TREASURY CHIEF – PRINT NAME

DATE

I attest that the taxpayer named above **is not** delinquent in any taxes owed to the city.

DIRECTOR OF FINANCE – PRINT NAME

DATE

**CITY OF NEW ORLEANS
TAX CLEARANCE AUTHORIZATION**

INSTRUCTIONS

This form authorizes the City of New Orleans to inspect and/or receive your confidential tax information. This Tax Clearance Authorization will not be honored for any purpose other than contracting with the City of New Orleans.

It is recommended that all outstanding tax and business registration be completed prior to processing the form to expedite contract execution.

1. Complete this form by providing all of the information requested. Failure to fill in ALL information requested will delay processing.
2. Sign and date the authorization form and submit to the Department with whom you are contracting. If the form is not signed and dated, the form will not be processed.
3. The following requirements must be met in order for a Tax Clearance Authorization form to be approved by the City of New Orleans.

Real Estate/Personal Property Tax

- Businesses are required to be current in payment of all Real Estate Tax and Personal Property Tax.
- A business can visit the City of New Orleans' website, www.nola.gov at the Bureau of Treasury webpage to pay outstanding Real Estate and Personal Property taxes due.
- A business can mail outstanding tax payments to City of New Orleans, Bureau of the Treasury 1300 Perdido St., Room 1W38, New Orleans, La. 70112.

Sales Tax/Occupational License

- Businesses located within Orleans Parish are required to obtain an annual Occupational License. A City of New Orleans Sales Tax number will also be issued at the same time.
- If the business is domiciled outside of Orleans Parish, a registration is required to be completed to obtain a Certificate of Registration and a City of New Orleans Sales Tax number.
- If a business is not registered, a New Business Application must be completed.
- Non-profit organizations must comply with the Occupational License requirements by completing a New Business Application.
- Once exempt status is confirmed for the non-profit organization, the organization is exempt from Occupational License fees. Please be prepared to provide 501(c) documentation and/or Louisiana Secretary of State Status.
- All applications can be found on the City of New Orleans' website, www.nola.gov, at the One Stop Shop webpage.
- Any questions may be forwarded to the One Stop Shop at (504)658-7100.

[END OF ATTACHMENT "G"]

**INVITATION TO BID
CITY OF NEW ORLEANS
ATTACHMENT “H”**

**PROOF OF AUTHORITY TO SIGN BID
MATERIALS/SUPPLIES/EQUIPMENT AND NON-PROFESSIONAL SERVICES**

A. In General

At the time of the Bid Deadline (as defined in the invitation to bid), the bidder shall submit a written proof of the authority of the person signing the bid package. The name mentioned in said proof must match the name of the person signing the bid package. If a bidder fails to provide said document and/or the name on the bid package does not match the proof, the City of New Orleans (the “City”) may then consider the bid non-responsive.

B. In Particular

To assist bidders with this requirement of submitting a proof of authority, the City prepared samples which the City would deem sufficient and acceptable, provided the document is completed correctly.

Those samples are intended to be guidelines. A bidder is allowed to use a similar but different document.

C. Samples

1. If the bidder is a corporation, the bidder may submit a certified corporation resolution similar to the attached sample. This document is entitled “Sample 1 - Certified Corporate Resolution.” It contains 14 items to complete and must be notarized.

2. If the bidder is NOT a corporation but another legal entity (such as a partnership, a limited liability company, a limited liability partnership, or another legal entity), the bidder may submit a certified resolution similar to the attached sample. This document is entitled “Sample 2 - Certified Resolution.” It contains 11 items to complete and must be notarized.

3. If the bidder is a sole proprietor, the bidder may submit a certified certificate similar to the attached sample. This document is entitled “Sample 3 – Certified Certificate of Authority.” It contains 8 items to complete and must be notarized.

SAMPLE 1 - CERTIFIED CORPORATE RESOLUTION

BE IT RESOLVED by the Board of Directors of _____
_____ (1. name of corporation), a corporation organized and existing under the laws of the State of _____
_____ (2. state), in a meeting duly assembled that _____
_____ (3. full name of authorized official), _____
_____ (4. title of authorized official) of said corporation, is hereby authorized and empowered to execute on
behalf of the said corporation the proposal and/or the contract (including amendment(s)) which this corporation
might enter into in connection with Bid No. _____ (5. number
showing on the invitation to bid).

I, _____ (6. full name of official certifying this resolution), the
_____ (7. title of official certifying this
resolution) of _____ (8. name of corporation - same
as item no. 1), do hereby certify this to be a true copy of the resolution duly adopted at a _____
_____ (9. type of meeting: regular, special, else) meeting of the Board of Directors of said
corporation held on the _____ (10. day) of _____ (11. month), 201_____
(12. year), and that it has not been rescinded, amended or altered in any way, and that it remains in full force and in
effect.

(13. signature)

(14. title of official certifying this resolution- same as item no. 7)

State of _____

Parish/County of _____

Personally appeared before me this ____st/th day of _____, 201____,

_____ (official certifying this resolution), the _____

_____ (title of official certifying this resolution) of _____

_____ (name of corporation), and made oath that the above is a true copy from the
records of the corporation.

Notary Public
My commission expires on: _____

SAMPLE 2 - CERTIFIED RESOLUTION

On this _____ (1. day) of _____ (2. month), 201_____(3. year), I, _____

_____ (4. full name of official signing this certificate),
the _____ (5. title of official signing this
certificate) of _____ (6. name of corporation) (the
"Entity") hereby certify that _____ (7. full name of
authorized official), _____ (8. title of authorized official) of said
Entity, is hereby authorized and empowered to execute on behalf of the said entity the proposal and/or the
contract (including amendment(s)) which this Entity might enter into in connection with Bid No. _____
_____ (9. number showing on the invitation to bid).

(10. signature)

(11. title of official signing this certificate– same as item no. 5)

State of _____

Parish/County of _____

Personally appeared before me this _____st/th day of _____, 201____,

_____ (official certifying this resolution), the _____

_____ (title of official certifying this resolution) of _____

_____ (name of corporation), and made oath that the above is a true copy from the

records of the corporation.

Notary Public

My commission expires on: _____

SAMPLE 3 - SOLE PROPRIETOR AUTHORITY

On this _____ (1. day) of _____ (2. month), 201_____(3. year), I, _____
_____ (4. full name), do hereby certify that I am doing
business under the name of _____
(5. name of business) which said business is neither a corporation, nor a limited liability company, nor a
partnership, and I am the sole owner and proprietor of said business.

I will sign and deliver the proposal and/or the contract (including amendment(s)) which I might enter into in
connection with Bid No. _____ (6. number showing on
the invitation to bid).

(7. signature)

State of _____

Parish/County of _____

Personally appeared before me this ____st/th day of _____, 201____,

_____ (official certifying this resolution), the _____

_____ (title of official certifying this resolution) of _____

_____ (name of corporation), and made oath that the above is a true copy from the
records of the corporation.

Notary Public

My commission expires on: _____

[END OF ATTACHMENT "H"]

**INVITATION TO BID
CITY OF NEW ORLEANS
ATTACHMENT "I"**

AFFIDAVIT OF COMPLIANCE WITH CITY'S HIRING REQUIREMENTS

STATE OF _____

PARISH OF _____

Before me, the undersigned authority, came and appeared _____, who, after being duly sworn, deposed and said that:

1. He/She is the _____ (title) and authorized representative of _____ (entity), the "Bidder."

2. The Bidder submits the attached proposal in response to City of New Orleans Invitation to Bid #_____.

3. The Bidder hereby confirms that _____ (entity) is

- compliant with the City of New Orleans' hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f), unless otherwise excluded by city, state, or federal laws or regulations.
- unable to comply with the City of New Orleans' hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f) for the following reasons:

_____.

Bidder Representative (Signature)

(Print or type name) (Address)

Sworn to and subscribed before me, _____, Notary Public, this _____ day of _____, 20____.

Notary Public (signature)

Notary Public (print)

Notary ID#/Bar Roll # _____

[END OF ATTACHMENT "I"]

[END OF INVITATION TO BID]