

# Contract Provisions Guide

Navigating Contract Provisions for Recipient and Subrecipient  
Contracts Under FEMA Awards

*Version 2, Effective October 1, 2024*

*(FI-207-21-0001)*

*Procurement Under Grants Division*



**FEMA**

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# Introduction

Recipients and subrecipients of grant funding from the Federal Emergency Management Agency (FEMA) will often use contractors to help them carry out work under their awards. These contracts are a commercial transaction between the recipients and subrecipients and their contractor, and FEMA has no contractual relationship with the recipient's or subrecipient's contractors. Although FEMA is not a party to the contract, if a recipient or subrecipient is using federal funding to pay for the contract, the recipient or subrecipient must comply with applicable federal laws, including the federal procurement standards.

The [federal procurement standards](#) for recipients and subrecipients are described in Title 2 of the Code of Federal Regulations (C.F.R.), Part 200, sections 200.317- 200.327. [2 C.F.R. § 200.327](#) states that “recipient's or subrecipient's contracts *must contain the applicable provisions* described in [Appendix II of this part](#)” (emphasis added).

Prior to purchasing goods and services under a FEMA award, recipients and subrecipients must be mindful of the date the federal award is made or the disaster declared because this date determines the applicable federal procurement standards including the required contract provisions in 2 C.F.R. Part 200. This document applies to all FEMA awards made or disasters declared on or after October 1, 2024, and includes the Office of Management and Budget (OMB) Revisions to the federal procurement standards effective on October 1, 2024. For [FEMA financial assistance programs subject to BABAA](#), recipient and subrecipient contracts for infrastructure projects must include a BABAA provision. The BABAA provision is applicable to FEMA awards made on or after October 23, 2023.

For FEMA awards made or disasters declared between November 12, 2020, through September 30, 2024, please refer to the [Contract Provisions Guide](#) dated June 2021 for the required federal contract provisions. For FEMA awards made or disasters declared *before* November 12, 2020, please refer to the [Contract Provisions Template](#) for required federal contract provisions. For questions regarding applicable federal procurement standards including the required contract provisions, please contact the FEMA Procurement Under Grants Division.

This document is designed to help FEMA recipients and subrecipients navigate Appendix II to Part 200 —Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. Additionally, this document also describes contract clauses where 2 C.F.R. Part 200 requires clauses to be included but does not mandate specific language. In those cases, FEMA has provided suggested language in this document. In addition to the contract clauses [required](#) by 2 C.F.R. Part 200, this document includes [recommended](#) contract clauses that are pursuant to FEMA's authorities. **FEMA does not recommend incorporating by reference.** FEMA recommends including the name of the recipient or subrecipient conducting the purchase under a FEMA award in the blank sections when using sample language from this Guide.

This document provides:

- Suggested language or references to find suggested language for some of the federally required clauses.
- Required language for clauses that require recipient and subrecipient contracts to include specific language.
- Sample language for some of the federally recommended clauses.

This document does *not* provide:

- Sample language for certain federally required or recommended clauses that must be drafted in accordance with the recipient's or subrecipient's applicable laws, rules, and procedures.
- Contract provisions required by applicable state, tribal, or local laws or rules separate from the federal procurement standards.

Many of the provisions described in this document only apply when certain circumstances are present, such as the type of work being procured, the dollar amount, or the date when it is procured. Each section will describe the applicable requirements. See [Table A](#) for applicability of required contract provisions and [Table B](#) for *recommended* contract provisions by FEMA.

**NOTE:** The recipient or subrecipient is solely responsible for ensuring that all language included in its contracts meets the requirements of 2 C.F.R. Part 200, including 2 C.F.R. § 200.327 and Appendix II. Additionally, the required language noted below is current as of the date of the publication of this document and it is the recipient's and subrecipient's responsibility to ensure the required language used in the contract is consistent with applicable statutes. While the Contract Provisions Guide provides general guidance, recipients or subrecipients should reach out to their applicable FEMA grant program representative(s) if they have specific questions on the applicability of the contract provisions to a particular FEMA grant program.

# Contract Provisions Quick Reference Guide

[Table A](#) and [Table B](#) are designed to help FEMA recipients and subrecipients conduct a quick reference of the applicability of a specific contract provision and whether sample contract language is included within this Guide to incorporate within the recipient’s or subrecipient’s contract.

The Tables are divided between the [required](#) contract provisions set forth under 2 C.F.R. Part 200 Appendix II and those that FEMA [recommends](#) in addition to those required by 2 C.F.R. Part 200.

**Table A: Required Contract Provisions**

	Provision (Appendix II Section)	Applicability	Sample Contract Language Included	Grant Program Applicability
1	<a href="#">Legal/contractual /administrative remedies for breach of contract (A)</a>	Contract is greater than the Federal simplified acquisition threshold (SAT), currently \$250,000.	No. Based on the recipient’s or subrecipient’s procedures.	All. <b>NOTE:</b> <a href="#">AFG</a> must include a penalty clause in all contracts for any AFG-funded vehicle.
2	<a href="#">Termination for cause and convenience (B)</a>	Contract is greater than \$10,000.	No. Based on the recipient’s or subrecipient’s procedures.	All
3	<a href="#">Equal Employment Opportunity (C)</a>	Contracts and subcontracts for construction work; exact language from 41 C.F.R. § 60-1.4(b) required.	Yes. Exact language from 41 C.F.R. § 60-1.4(b) included.	All
4	<a href="#">Davis-Bacon Act (D)</a>	Contracts and subcontracts for construction work over \$2,000; required language at 29 C.F.R. § 5.5(a).	Yes, via reference to required language at 29 C.F.R. § 5.5(a).	Required for <a href="#">EMPG</a> , <a href="#">HSGP</a> , <a href="#">NSGP</a> , <a href="#">THSGP</a> , <a href="#">PSGP</a> , <a href="#">TSGP</a> , <a href="#">IPR</a> , and <a href="#">HHPD</a> .
5	<a href="#">Copeland “Anti-Kickback” Act (D)</a>	Contracts and subcontracts for construction work over \$2,000.	Yes	Required for <a href="#">EMPG</a> , <a href="#">HSGP</a> , <a href="#">NSGP</a> , <a href="#">THSGP</a> , <a href="#">PSGP</a> , <a href="#">TSGP</a> , <a href="#">IPR</a> , and <a href="#">HHPD</a> .

	Provision (Appendix II Section)	Applicability	Sample Contract Language Included	Grant Program Applicability
6	<a href="#">Contract Work Hours and Safety Standards Act (E)</a>	Contracts and subcontracts over \$100,000 and if for mechanics or laborers; exact language required from 29 C.F.R. § 5.5(b).	Yes. Exact language required from 29 C.F.R. § 5.5(b).	All
7	<a href="#">Rights to inventions made under a contract or agreement (F)</a>	Funding agreement.	Yes	This clause is <b>not</b> required under the <a href="#">PA</a> , <a href="#">HMGP</a> , <a href="#">FMA</a> , <a href="#">BRIC</a> , <a href="#">PDM</a> , <a href="#">FMAG</a> , <a href="#">HMGP Post Fire</a> , <a href="#">CCP</a> , <a href="#">DCM</a> , <a href="#">IHP-ONA</a> , or <a href="#">Safeguarding Tomorrow RLF</a> programs, as FEMA Awards under these programs do not meet the definition of “ <a href="#">funding agreement</a> ”.
8	<a href="#">Clean Air Act and federal Water Pollution Control Act (G)</a>	Contracts and subcontracts greater than \$150,000.	Yes	All
9	<a href="#">Debarment and Suspension (H)</a>	Contracts and subcontracts greater than \$25,000.	Yes	All
10	<a href="#">Byrd Anti-Lobbying Amendment (I)</a>	Contracts and subcontracts greater than \$100,000. Clause and certification required.	Yes. Clause and certification.	All
11	<a href="#">Procurement of Recovered Materials (J)</a>	Only applies if a recipient or subrecipient is a state or political subdivision of a state; work involves the use of materials, and the contract is for more than \$10,000. <b>NOTE:</b> Not applicable for Indian Tribal governments and nonprofit organizations.	Yes	All

	Provision (Appendix II Section)	Applicability	Sample Contract Language Included	Grant Program Applicability
12	<a href="#">Prohibition on Contracting for Covered Telecommunications Equipment or Services (K)</a>	Contracts and subcontracts under FEMA declaration or grant award issued on or after November 12, 2020.	Yes	All
13	<a href="#">Domestic Preferences for Procurements (L)</a>	Contracts under FEMA declaration or grant award issued on or after November 12, 2020.	Yes	All
14	<a href="#">Build America, Buy America Act (BABAA) (M)</a>	<a href="#">Infrastructure projects under applicable grant awards issued on or after January 2, 2023.</a>	Yes	<a href="#">FEMA financial assistance programs subject to BABBA.</a>

**Table B: Recommended Contract Provisions**

	Provision	Applicability	Sample Contract Language Included
1	<a href="#">Access to Records</a>	All	Yes
2	<a href="#">Contract Changes or Modifications</a>	All	No. It depends on nature of contract and end-item procured.
3	<a href="#">DHS Seal, Logo, and Flags</a>	All	Yes
4	<a href="#">Compliance with Federal Law, Regulations, and Executive Orders</a>	All	Yes
5	<a href="#">No Obligation by Federal Government</a>	All	Yes
6	<a href="#">Program Fraud and False or Fraudulent Statements or Related Acts</a>	All	Yes
7	<a href="#">Socioeconomic Contracting</a>	All	Yes
8	<a href="#">Copyright</a>	All procurements that may involve creation of copyrightable material.	Yes
9	<a href="#">Build America, Buy America Act (BABAA) for Architectural and/or Engineering Contracts</a>	<a href="#">FEMA financial assistance programs subject to BABAA.</a>	Yes
10	<a href="#">Providing Good, Safe Jobs to Workers</a>	All	Yes
11	<a href="#">Buy Clean</a>	PA, BRIC, and HMGP	Yes

# Required Contract Provisions

## 1. Remedies

Contracts must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and must provide for sanctions and penalties as appropriate.<sup>1</sup>

### 1.1 Applicability

This contract provision is required for contracts over the SAT,<sup>2</sup> currently set at \$250,000 for procurements made on or after June 20, 2018.<sup>3</sup> For all other contracts at or below the SAT under FEMA programs, FEMA suggests including a remedies provision, but this is not required.

### 1.2 Additional Considerations

For FEMA's Assistance to Firefighters Grant Program (AFG), recipients must include a penalty clause in all contracts for any AFG-funded vehicle, regardless of dollar amount.<sup>4</sup> In that situation, the contract must include a clause addressing that non-delivery by the contract's specified date or other vendor nonperformance will require a penalty of no less than \$100 per day until such time that the vehicle, compliant with the terms of the contract, has been accepted by the recipient.<sup>5</sup> This penalty clause should, however, account for *force majeure* or acts of God. AFG recipients should refer to the applicable year's Notice of Funding Opportunity (NOFO) for additional information.

## 2. Termination for Cause and Convenience

Contracts must address termination for cause and for convenience by the recipient or subrecipient, including the manner by which it will be carried out and the basis for settlement.<sup>6</sup>

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<sup>1</sup> 2 C.F.R. Part 200, Appendix II, § A.

<sup>2</sup> FEMA Grant Programs Directorate Information Bulletin No. 434, Increases and Changes to the Micro-Purchase and Simplified Acquisition Thresholds (Aug. 28, 2018),

[https://www.fema.gov/sites/default/files/2020-](https://www.fema.gov/sites/default/files/2020-08/ib_434_changes_micro_purch_simp_acquisition_thresholds.pdf)

[08/ib\\_434\\_changes\\_micro\\_purch\\_simp\\_acquisition\\_thresholds.pdf](https://www.fema.gov/sites/default/files/2020-08/ib_434_changes_micro_purch_simp_acquisition_thresholds.pdf). For procurements subject to 2 C.F.R. Part 200 that were made before June 20, 2018, the SAT was \$150,000.

<sup>3</sup> 2 C.F.R. Part 200, Appendix II, § A.

<sup>4</sup> E.g., Fiscal Year 2023 Assistance to Firefighters Grant Program Notice of Funding Opportunity, available at <https://www.grants.gov/search-results-detail/351954>.

<sup>5</sup> *Id.*

<sup>6</sup> 2 C.F.R. Part 200, Appendix II, § B.



## 2.1 Applicability

This contract provision is required for contracts and purchase orders exceeding \$10,000.<sup>7</sup> For contracts at or below \$10,000, FEMA suggests including a termination for cause provision, but this is not required.

## 2.2 Additional Considerations

FEMA recommends that termination clauses be actionable and specific. For example, a termination clause that allows for 60-day notice of termination for a contract with a 30-day duration may not be actionable. Additionally, if a contract allows for due oral or written notice of termination, it should specify what is considered due oral or written notice.

# 3. Equal Employment Opportunity

This contract provision promotes and ensures equal opportunity for all persons, without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin under federally assisted construction contracts.<sup>8</sup>

## 3.1 Applicability

This contract provision is required for all procurements that meet the definition of a “federally assisted construction contract,” unless otherwise stated in 41 C.F.R. Part 60.<sup>9</sup>

## 3.2 Key Definitions

- **Federally Assisted Construction Contract:** The regulation at 41 C.F.R. § 60-1.3 defines a federally assisted construction contract as “any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.”
- **Construction Work:** The regulation at 41 C.F.R. § 60-1.3 defines construction work as “the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility

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<sup>7</sup> *Id.*

<sup>8</sup> [Executive Order 11246](#), “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. Part. 1964-1965 Comp., p. 339), as amended by [Executive Order 11375](#), “Amending [Executive Order 11246](#) Relating to Equal Employment Opportunity.”

<sup>9</sup> 2 C.F.R. Part 200, Appendix II, § C.

services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.”

- **Contract:** The regulation at 41 C.F.R. § 60-1.3 defines contract as “any Government contract or subcontract or any federally assisted construction contract or subcontract.”

**NOTE:** Additional definitions pertaining to this contract provision can be found at 41 C.F.R. § 60-1.3.

### 3.3 Required Language

The regulation at 41 C.F.R. § 60-1.4(b) requires, except as otherwise provided or exempted in 41 C.F.R. Part 60, the insertion of the following contract clause:

“During the performance of this contract, the Contractor agrees as follows:

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

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

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

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided

advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

The Applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of

Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.”

## 4. Davis-Bacon Act

This statute requires that contractors must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in the Secretary of Labor’s wage determination. Additionally, contractors are required to pay wages at least once per week.<sup>10</sup> Additional requirements are listed below, and relevant definitions are at 29 C.F.R. § 5.2. Recipients and subrecipients should refer to the applicable NOFO or other program guidance or contact their applicable FEMA grant representative for additional information on how to implement this requirement.

### 4.1 Applicability

When required by the federal program legislation, all prime construction contracts over \$2,000 awarded by recipients or subrecipients must include a provision for compliance with the Davis-Bacon Act.<sup>11</sup>

The Davis-Bacon Act does not apply to all FEMA financial assistance programs. Recipients and subrecipients should refer to applicable NOFO or other program guidance or contact their applicable FEMA grant representative to determine if this provision is required for the procurement. However, the Davis-Bacon Act clause is not federally required for procurements under FEMA’s Public Assistance (PA) or Hazard Mitigation Assistance (HMA) Programs.

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<sup>10</sup> 40 U.S.C. §§ 3141-3144 and 3146-3148. The Davis-Bacon Act is supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction).

<sup>11</sup> 2 C.F.R. Part 200, Appendix II, § D.

## 4.2 Additional Requirements

If applicable, in addition to the requirements mentioned in the beginning of this section, the recipient or subrecipient must do the following:

- The recipient or subrecipient must place a copy of the Department of Labor’s current prevailing wage determination in each solicitation. Contracts or subcontracts must be awarded on the condition that the prevailing wage determination is accepted. The recipient or subrecipient must report all suspected or reported violations to the federal agency.<sup>12</sup>
- Contracts subject to the Davis-Bacon Act, must also include a provision for compliance with the Copeland “Anti-Kickback” Act.<sup>13</sup> See Required Contract Provisions, Section 5. Copeland Anti-Kickback Act in this document for additional information. According to 29 C.F.R. § 5.5(a)(5), the regulatory requirements for the Copeland “Anti-Kickback” Act are incorporated by reference into the required contract provision, so a separate contract provision is not necessary. However, the recipient or subrecipient may include a separate contract provision specific to the Copeland “Anti-Kickback” Act.
- Per Department of Labor’s implementing regulations for the Davis-Bacon Act, the recipient’s or subrecipient’s contractor and any subcontractors are required to insert, or incorporate by reference, the clauses contained at 29 C.F.R. § 5.5(a)(1)-(11)<sup>14</sup> into any subcontracts.
- Follow the other requirements of the Davis-Bacon Act and implementing regulations.<sup>15</sup>

## 4.3 Required Language<sup>16</sup>

If applicable per the standard described above, the recipient or subrecipient must include the provisions at 29 C.F.R. § 5.5(a)(1)-(11) in full into all applicable contracts, and all applicable contractors must include these provisions in full in any subcontracts.<sup>17</sup>

# 5. Copeland “Anti-Kickback” Act

The Copeland “Anti-Kickback” Act prohibits workers on construction contracts from giving up wages that they are owed.<sup>18</sup> Additional requirements are listed below, and relevant definitions are at 29 C.F.R. § 3.2. The applicable implementing regulations are intended to assist with enforcement of the

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<sup>12</sup> 29 C.F.R. Part 200, Appendix II, § D.

<sup>13</sup> *Id.*

<sup>14</sup> 29 C.F.R. § 5.5(a)(6).

<sup>15</sup> 40 U.S.C. §§ 3141-3144, 3146-3148; 29 C.F.R. § Part 5.

<sup>16</sup> 29 C.F.R. § 5.5(a).

<sup>17</sup> 29 C.F.R. § 5.5(a)(6).

<sup>18</sup> 40 U.S.C. § 3145. The Copeland “Anti-Kickback” Act is supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States).

Davis-Bacon Act's minimum wage provisions as well as various statutes with similar minimum wage provisions for federally assisted construction.<sup>19</sup>

## 5.1 Applicability

For all prime construction contracts above \$2,000, when the Davis-Bacon Act also applies,<sup>20</sup> recipients or subrecipients must include a provision in contracts and subcontracts for compliance with the Copeland "Anti-Kickback" Act.<sup>21</sup> The Copeland "Anti-Kickback" Act does not apply to all FEMA financial assistance programs. Recipients or subrecipients should refer to applicable NOFO or other program guidance or contact their applicable FEMA grant representative to determine if this provision is required for the procurement. However, the Copeland "Anti-Kickback" Act clause is not federally required for procurements under FEMA's PA or HMA Programs.

## 5.2 Additional Requirements

If applicable, the recipient or subrecipient must do the following:

- Include a provision for compliance with the Copeland "Anti-Kickback" Act.<sup>22</sup> According to the implementing regulations for the Davis-Bacon Act, the regulatory requirements for the Copeland "Anti-Kickback" Act are incorporated by reference into the required contract provision for the Davis-Bacon Act. Therefore, a separate contract provision is not necessary. However, the recipient or subrecipient may include a separate contract provision specific to the Copeland "Anti-Kickback" Act with language suggested below.
- The Copeland "Anti-Kickback Act" prohibits each contractor or subcontractor from any form of persuading a person employed in construction, completion, or repair of public work to give up any part of their rightful compensation. The recipient or subrecipient must report all suspected or reported violations of the Copeland "Anti-Kickback Act" to FEMA.<sup>23</sup>
- Each contractor and subcontractor must provide weekly reports of the wages paid during the prior week's payroll period to each employee covered by the "Copeland Anti-Kickback" Act and the Davis-Bacon Act.<sup>24</sup> The reports must be delivered to a representative of a federal or state agency in charge at the building or work site by the contractor or subcontractor within seven days of the payroll period's payment date.<sup>25</sup>
- Follow the other requirements of the Copeland "Anti-Kickback" Act and implementing regulations.<sup>26</sup>

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<sup>19</sup> 29 C.F.R. § 3.1.

<sup>20</sup> 2 C.F.R. Part 200, Appendix II, § D; 29 C.F.R. §§ 3.1, 3.3(c).

<sup>21</sup> 2 C.F.R. Part 200, Appendix II, § D.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> 29 C.F.R. § 3.3(b).

<sup>25</sup> 29 C.F.R. § 3.4(a).

<sup>26</sup> 40 U.S.C. § 3145; 29 C.F.R. Part 3.

## 5.3 Suggested Language

The following provides a sample contract clause:

### **“Compliance with the Copeland “Anti-Kickback” Act.**

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

*Subcontracts.* The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these contract clauses.

*Breach.* A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

## 6. Contract Work Hours and Safety Standards Act

Where applicable,<sup>27</sup> contracts must include a provision for compliance with statutory requirements on work hours and safety standards.<sup>28</sup> Under 40 U.S.C. § 3702, each contractor must base wages for every mechanic and laborer on a standard 40-hour work week. Work over 40 hours is allowed, so long as the worker is paid at least one and a half times the base pay rate for all hours worked over 40 in the work week. Additionally, for construction work, under 40 U.S.C. § 3704, work surroundings and conditions for laborers and mechanics must not be unsanitary or unsafe. Relevant definitions are at 40 U.S.C. § 3701 and 29 C.F.R. § 5.2.

### 6.1 Applicability

This required contract provision applies to all procurements over \$100,000 that involve the employment of mechanics, laborers, and construction work.<sup>29</sup> These requirements do not apply to the purchase of supplies, materials, or articles ordinarily available on the open market, contracts for transportation or transmission of intelligence.<sup>30</sup>

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<sup>27</sup> 40 U.S.C. §§ 3701-3708.

<sup>28</sup> 40 U.S.C. §§ 3702, 3704. The Contract Work Hours and Safety Standards Act is supplemented by Department of Labor regulations at 29 C.F.R. Part 5, 2 C.F.R. Part 200, Appendix II, §E.

<sup>29</sup> 2 C.F.R. Part 200, Appendix II, § E.

<sup>30</sup> *Id.*

## 6.2 Additional Requirements

If applicable per the standard described above, the recipient or subrecipient must include the provisions at 29 C.F.R. § 5.5(b)(1)-(5), verbatim, into all applicable contracts, and all applicable contractors must include these provisions, in full, into any subcontracts.<sup>31</sup>

In addition to the required language from 29 C.F.R. § 5.5(b)(1)-(5), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any other statutes cited in 29 C.F.R. § 5.1, the recipient or subrecipient must also insert a clause meeting the requirements of 29 C.F.R. § 5.5(c). Specific language is not required, but FEMA has provided suggested language below.

## 6.3 Required Language

For the required contract provision, the language from 29 C.F.R. § 5.5(b)(1)-(5) is provided below for ease of reference. The language provided is current as of the date of publication of the Contract Provisions Guide. However, 29 C.F.R. § 5 may be updated periodically, such that recipients and subrecipients are encouraged to reference the regulations for the most current language.

### **“Compliance with the Contract Work Hours and Safety Standards Act.**

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

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$32 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).

**(3) Withholding for unpaid wages and liquidated damages—**

**(i) Withholding Process.** The **(insert name of recipient or subrecipient)** may, upon its own action, or must, upon written request of an authorized representative of the Department of

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<sup>31</sup> 29 C.F.R. § 5.5(b)(1), (4).



Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, any other federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

**(ii) Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

- (A)** A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B)** A contracting agency for its reprocurement costs;
- (C)** A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (D)** A contractor's assignee(s);
- (E)** A contractor's successor(s); or
- (F)** A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

**(4) Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (5). In the event of any violations of these clauses, the prime contractor, and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

**(5) Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- (ii) Filing any complaint, initiating, or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- (iv) Informing any other person about their rights under CWHSSA or this part.”

## 6.4 Suggested Language

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

### **“Further Compliance with the Contract Work Hours and Safety Standards Act.**

(1) The contractor or subcontractor must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of three years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker’s correct classification(s) of work performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made; and actual wages paid.

(2) Records to be maintained under this provision must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.”

## 7. Rights to Inventions Made Under a Contract or Agreement

This contract provision outlines the rules governing the ownership of inventions created using federal funds. If the FEMA award meets the definition of funding agreement<sup>32</sup> and the recipient or subrecipient enters any contract involving substitution of parties, assignment, or performance of

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<sup>32</sup> Funding agreement definition found under 37 C.F.R. § 401.2(a).

experimental, developmental, or research work under that funding agreement, then the recipient or subrecipient must comply with the requirements of 37 C.F.R. Part 401 and any implementing regulations issued by FEMA.

## 7.1 Applicability

This provision does not apply to all FEMA financial assistance programs. Recipients and subrecipients should refer to applicable NOFO or other program guidance or contact their applicable FEMA grant representative to determine if this provision is required for the procurement. However, the Rights to Inventions Made Under a Contract or Agreement clause is not required for procurements under FEMA's PA Program.

## 7.2 Key Definitions

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

# 8. Clean Air Act and Federal Water Pollution Control Act

Contracts must contain a provision requiring contractors to comply with the Clean Air Act<sup>33</sup> and the Federal Water Pollution Control Act.<sup>34</sup> Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency.<sup>35</sup>

## 8.1 Applicability

This contract provision is required for all procurements over \$150,000.

## 8.2 Suggested Language

The following provides a sample contract clause:

**“Clean Air Act.**

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

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<sup>33</sup> 42 U.S.C. §§ 7401-7671q. This also includes all applicable standards, orders, or regulations issued pursuant to the Clean Air Act.

<sup>34</sup> 33 U.S.C. §§ 1251-1387, as amended.

<sup>35</sup> 2 C.F.R. Part 200, Appendix II, § G.

The contractor agrees to report each violation to the (name of recipient or subrecipient entering the contract) and understands and agrees that the (name of the recipient or subrecipient entering the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

### **Federal Water Pollution Control Act**

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*

The contractor agrees to report each violation to the (name of the recipient or subrecipient entering the contract) and understands and agrees that the (name of the recipient or subrecipient entering into the contract) will, in turn, report each violation as required to assure notification to the (name of the pass-through entity, if applicable), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.”

## **9. Suspension and Debarment**

Recipients, subrecipients, contractors, and subcontractors are subject to suspension and debarment regulations.<sup>36</sup> Applicable contracts and subcontracts must include a provision requiring compliance with suspension and debarment regulations.<sup>37</sup>

### **9.1 Applicability**

The suspension and debarment clause is required for all contracts and subcontracts for \$25,000 or more, all contracts that require the consent of an official of a federal agency, and all contracts for federally required audit services.<sup>38</sup>

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<sup>36</sup> 2 C.F.R. Part 180 (implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989)); 2 C.F.R. Part 3000 (Department of Homeland Security regulations for Nonprocurement Debarment and Suspension, implementing 2 C.F.R. Part 180).

<sup>37</sup> 2 C.F.R. § 180; 2 C.F.R. Part 200, Appendix II, § H; 2 C.F.R. § 3000.332.

<sup>38</sup> 2 C.F.R. § 180.220(b); 2 C.F.R. § 3000.220.

Local governments and nonprofits, even for procurements under \$25,000, must also comply with the regulation requiring local governments and nonprofits to only award contracts to responsible vendors.<sup>39</sup>

## 9.2 Additional Requirements

The suspension and debarment regulations restrict awards, subawards, contracts, and subcontracts with parties that are suspended, debarred, or otherwise excluded, or declared ineligible for participation in federal assistance programs and activities.<sup>40</sup>

If applicable, a contract or subcontract must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM). SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties that are suspended, debarred, or otherwise excluded, or declared ineligible under statutory or regulatory authority other than Executive Order 12549.<sup>41</sup> SAM Exclusions can be accessed at [www.SAM.gov](http://www.SAM.gov).<sup>42</sup>

In general, an “excluded” party cannot receive a federal grant award or a contract considered to be a “covered transaction,” which includes parties that receive federal funding indirectly such as subawards and subcontracts. The key to the exclusion is whether there is a covered transaction. A covered transaction is a non-procurement transaction at either a primary or secondary tier.<sup>43</sup>

Specifically, a covered transaction includes the following contracts for goods or services under FEMA financial assistance programs:

- The contract is at least \$25,000;
- The contract requires the approval of FEMA, regardless of amount;
- The contract is for federally required audit services; or,
- It is a subcontract for \$25,000 or more.<sup>44</sup>

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<sup>39</sup> 2 C.F.R. § 200.318(h). For contracts and subcontracts under \$25,000, a contract provision is only required if those contracts or subcontracts are for federally required audit services or require the consent of a federal agency. However, even where a contract provision is not required, local governments and nonprofits must still ensure they are only awarding contracts to responsible vendors.

<sup>40</sup> 2 C.F.R. Part 200, Appendix II, § H; 2 C.F.R. § 200.213; 2 C.F.R. Parts 180, 3000.

<sup>41</sup> 2 C.F.R. Part 200, Appendix II, § H.

<sup>42</sup> 2 C.F.R. § 180.530.

<sup>43</sup> The regulations at 2 C.F.R. Parts 180 and 3000 are titled “nonprocurement” because they do not apply to procurements by the Federal Government but rather to federal financial assistance. There are separate debarment and suspension regulations covering procurements by the Federal Government. However, although the term “covered transactions” under 2 C.F.R. Parts 180 and 3000 does not include contracts awarded by the Federal Government, it does include some contracts awarded by recipients and subrecipients.

<sup>44</sup> 2 C.F.R. §§ 180.220, 3000.220.

## 9.3 Suggested Language

The following provides a suspension and debarment clause. It also incorporates an optional method of verifying that contractors are not excluded or disqualified:<sup>45</sup>

### “Suspension and Debarment

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

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

This certification is a material representation of fact relied upon by **(insert name of recipient/subrecipient)**. If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to **(insert name of recipient/subrecipient)**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 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.”

## 10. Byrd Anti-Lobbying Amendment

Recipients or subrecipients who intend to award contracts of more than \$100,000, and their contractors who intend to award subcontracts of more than \$100,000, must include a contract provision prohibiting the use of federal appropriated funds to influence officers or employees of the Federal Government.<sup>46</sup> Contractors that apply or bid for a contract for more than \$100,000 must also file the required certification regarding lobbying.<sup>47</sup>

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 employee of a federal

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<sup>45</sup> Per 2 C.F.R. § 180.300, a recipient or subrecipient about to enter an applicable contract, or a contractor about to enter into an applicable subcontract, must verify that the contractor or subcontractor is not excluded or disqualified by doing one of three things: 1) check SAM Exclusions; 2) collect a certification from the contractor or subcontractor; or 3) add a clause or condition to the contract or subcontract. The additional suggested language in this sample clause is for purposes of this requirement.

<sup>46</sup> 31 U.S.C. §1352(a), (b), (d)(1)(c)(2).

<sup>47</sup> 2 C.F.R. Part 200, Appendix II, § I (citing 31 U.S.C. § 1352); 44 C.F.R. § 18.110.

agency, a Member of Congress, an employee of Congress, or an employee of a Member of Congress in connection with receiving any federal contract, grant, or other award covered by 31 U.S.C. § 1352.

The required certification form is found in FEMA regulations.<sup>48</sup> Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal funding. These disclosures are forwarded from tier to tier, all the way up to the federal agency.<sup>49</sup>

## 10.1 Applicability

The Byrd Anti-Lobbying Amendment clause and certification are required for contracts and subcontracts of more than \$100,000.

## 10.2 Suggested Language

The following provides a sample contract clause:

**“Byrd Anti-Lobbying Amendment, as amended, 31 U.S.C. § 1352.**

Contractors who apply or bid for an award of more than \$100,000 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 who in turn will forward the certification(s) to the federal agency.”

## 10.3 Required Certification

### 10.3.1 REQUIRED CERTIFICATION LANGUAGE

If applicable, contractors must sign and submit the following certification to the recipient or subrecipient with each bid or offer exceeding \$100,000:

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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<sup>48</sup> 44 C.F.R. §§ 18.100, 18.110; 44 C.F.R. Part 18, Appendix A. FEMA’s regulations at 44 C.F.R. Part 18 implement the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352.

<sup>49</sup> 44 C.F.R. §§ 18.100, 18.110; 44 C.F.R. Part 18, Appendix B. The specific form for disclosures is referenced in Appendix B to 44 C.F.R. Part 18 and is SF-LLL, also available at [https://apply07.grants.gov/apply/forms/readonly/SFLLL\\_2\\_0-V2.0.pdf](https://apply07.grants.gov/apply/forms/readonly/SFLLL_2_0-V2.0.pdf).

The undersigned certifies, to the best of his or her knowledge and belief, that:

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.

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.

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."

#### 10.4 Recommended Signature Line:

At the end of the certification language, FEMA recommends including the following signature line:

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

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Signature of Contractor's Authorized Official

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Name and Title of Contractor's Authorized Official

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Date

## 11. Procurement of Recovered Materials

Applicable recipients or subrecipients must comply with Section 6002 of the Solid Waste Disposal Act<sup>50</sup> and include a contract provision requiring compliance with this requirement.<sup>51</sup> Additional requirements are listed below.

### 11.1 Applicability

This required contract provision applies to all procurements made by a state agency or political subdivision of a state and its contractors for certain items, as designated by the Environmental Protection Agency, with a purchase price greater than \$10,000.<sup>52</sup>

### 11.2 Additional Requirements

The requirements include:

- Procuring only items designated in EPA guidelines<sup>53</sup> that contain the highest practical percentage of recovered materials consistent with maintaining competition, where the purchase price of the item is greater than \$10,000, or the value of the amount of items purchased in the preceding fiscal year was greater than \$10,000;
- Procuring solid waste management services in a way that maximizes energy and resource recovery; and
- Establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.<sup>54</sup>

In addition, recipients and subrecipients should, to the greatest extent practicable, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable.<sup>55</sup>

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<sup>50</sup> Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). 2 C.F.R. § 200.323.

<sup>51</sup> 2 C.F.R. Part 200, Appendix II, § J (citing 2 C.F.R. § 200.323).

<sup>52</sup> 2 C.F.R. Part 200, Appendix II, § J; 2 C.F.R. § 200.323; 40 C.F.R. Part 147.

<sup>53</sup> 40 C.F.R. Part 247.

<sup>54</sup> 42 U.S.C. § 6962; 2 C.F.R. § 200.323.

<sup>55</sup> 2 C.F.R. § 200.323(b); Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability (2021).

## 11.3 Suggested Language

The following provides a sample contract clause:

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

- a) Competitively within a timeframe providing for compliance with the contract performance schedule;
- b) Meeting contract performance requirements; or
- c) At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at [Comprehensive Procurement Guideline \(CPG\) Program | US EPA](#). The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

The Contractor should, to the greatest extent practicable and consistent with the law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable.”

## 12. Prohibition on Contracting for Covered Telecommunications Equipment or Services

Section 889(b)(1) of the [John S. McCain National Defense Authorization Act for Fiscal Year 2019 \(FY 2019 NDAA\)](#) and [2 C.F.R. § 200.216](#), as implemented by [FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services](#), prohibit the obligation or expending of federal award funds on certain telecommunication products or from certain entities for national security reasons. Effective August 13, 2020, FEMA recipients and subrecipients, as well as their contractors and subcontractors, may not obligate or expend any FEMA award funds to:

- a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- b. Enter, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or
- c. Enter, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

## 12.1 Applicability

As of November 12, 2020, all FEMA recipients and subrecipients, and their contractors and subcontractors, are required to include this contract provision in all FEMA-funded contracts and subcontracts, including any purchase orders.<sup>56</sup>

## 12.2 Suggested Language

The following provides a sample contract clause:

### **“Prohibition on Contracting for Covered Telecommunications Equipment or Services.**

(a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services, as used in this clause—

(b) *Prohibitions.*

- 1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- 2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
  - i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
  - ii. Enter, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
  - iii. Enter, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

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<sup>56</sup> 2 C.F.R. Part 200, Appendix II, § K (citing 2 C.F.R. § 200.216).

- iv. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service 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.

(c) *Exceptions.*

- 1) This clause does not prohibit contractors from providing—
  - i. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
  - ii. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- 2) By necessary implication and regulation, the prohibitions also do not apply to:
  - i. Covered telecommunications equipment or services that:
    - a. Are not used as a substantial or essential component of any system; and
    - b. Are not used as critical technology of any system.
  - ii. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- 3) *Reporting requirement.*
  - 1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
  - 2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
    - i. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

- ii. Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- (e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.”

## 13. Domestic Preferences for Procurements

The recipient or subrecipient should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products.<sup>57</sup>

### 13.1 Applicability

For procurements made under grant awards or declarations issued on or after November 12, 2020, all FEMA recipients and subrecipients are required to include in all contracts and purchase orders for work or products a contract provision encouraging domestic preference for procurements.<sup>58</sup> Programs receiving federal financial assistance for infrastructure projects may also be subject to the Build America, Buy America Act preferences set forth in 2 C.F.R. Part 184.

### 13.2 Suggested Language

The following provides a sample contract clause:

**“Domestic Preference for Procurements.**

The Contractor should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

*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.”

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<sup>57</sup> 2 C.F.R. § 200.322.

<sup>58</sup> 2 C.F.R. Part 200, Appendix II, § L (citing 2 C.F.R. § 200.322). The requirements of 2 C.F.R. § 200.322 must also be included in all subawards.

## 14. Build America, Buy America Act

The Build America, Buy America Act (BABAA) requires all federal agencies, including FEMA, to ensure that no federal financial assistance for “infrastructure” projects is provided unless all the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.<sup>59</sup>

### 14.1 Applicability

The BABAA domestic preference requirements are applicable to infrastructure projects funded under subject FEMA financial assistance program awards issued on or after Jan. 2, 2023, as well as new funding FEMA obligates to existing awards or through renewal awards where the new funding is obligated on or after Jan. 2, 2023.<sup>60</sup>

The BABAA contract provision and self-certification are required for contracts and subcontracts for infrastructure projects that are subject to the BABAA requirements unless the requirement is waived.<sup>61</sup> For additional information on types of BABAA waivers, please refer to FEMA’s website at ["Buy America" Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov](https://www.fema.gov/buy-america-preference-in-fema-financial-assistance-programs-for-infrastructure).

### 14.2 Suggested Language

The following provides a sample contract clause:

**“Build America, Buy America Act (BABAA).**

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the Build America, Buy America Act shall file the required certification to **(insert name of recipient/subrecipient)** with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA. Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirements. Such disclosures shall be forwarded to the recipient who, in turn, will forward the disclosures to FEMA, the federal agency; subrecipients will forward disclosures to the pass-through entity, who will, in turn, forward the disclosures to FEMA.”

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<sup>59</sup> 2 C.F.R. § 184.1(b).

<sup>60</sup> FEMA Policy: *Buy America Preference in FEMA Financial Assistance Programs for Infrastructure*, April 25, 2024.

<sup>61</sup> 2 C.F.R. § 184.4(b).

### 14.3 Required Self-Certification

For FEMA financial assistance programs subject to BABAA, contractors and subcontractors must sign and submit the following certification to the next tier (e.g., subcontractors submit to the contractor; contractors submit to the recipient or subrecipient) each bid or offer for an infrastructure project that has not been waived by a BABAA waiver:<sup>62</sup>

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

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

The undersigned certifies that for the **(insert name of project)** that the iron, steel, manufactured products, and construction materials used in this contract are in full compliance with the BABAA requirements including:

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

The **(insert name of contractor or subcontractor)**, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the **(insert name of contractor or subcontractor)** 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.”

Esad Bajric

Signature of **(insert name of contractor or subcontractor)** Authorized Official

President

Name and Title of **(insert name of contractor or subcontractor)** Authorized Official

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<sup>62</sup> *Id.*

1/22/2025  
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Date



# FEMA Recommended Contract Provisions

The federal procurement standards authorize FEMA to require or recommend additional provisions for recipient and subrecipient contracts. Therefore, FEMA recommends the following:

## 1. Access to Records

A recipient or subrecipient and its contractors and subcontractors must give the Department of Homeland Security and FEMA access to records associated with their awards during the required record retention period and as long as the records are retained.<sup>63</sup> All parties agree to comply with DHS provisions about accessing people, places, and things related to the federal financial award as necessary or as required by DHS regulations or other applicable laws and policies.<sup>64</sup> Additionally, for contracts entered into after August 1, 2017, under a major disaster or emergency declaration under Titles IV or V of the Robert T. Stafford Disaster Relief Act, FEMA is prohibited from funding any contracts that prevent audits or internal reviews by the FEMA Administrator or Comptroller General.<sup>65</sup>

### 1.1 Suggested Language for All Procurements

The following provides a sample contract clause:

“The Contractor agrees to provide (**insert recipient or subrecipient**), (**insert name of pass-through entity, if applicable**), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

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

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

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<sup>63</sup> 2 C.F.R. §§ 200.334, 200.337.

<sup>64</sup> DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/dhs-standard-terms-and-conditions>.

<sup>65</sup> Sections 1202 and 1225 of the Disaster Recovery Reform Act of 2018, Pub. L. No. 115-254.

## 1.2 Additional Suggested Language Applicable to Contracts Entered into After August 1, 2017, Under a Major Disaster or Emergency Declaration

The following provides a sample contract clause:

“In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the **(insert name of the recipient or subrecipient)** and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.”

## 2. Changes

To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.<sup>66</sup> FEMA recommends that all contracts include a changes clause that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may depend on the nature of the contract and the procured item(s) or service(s). The recipient or subrecipient should also consult their servicing legal counsel to determine whether and how contract changes are permissible under applicable state, local, or tribal laws or regulations.

## 3. DHS Seal, Logo, and Flags

All recipients and subrecipients and their contractors and subcontractors must obtain permission before using the DHS seal(s), logos, crests, reproductions of flags, or likenesses of DHS agency officials.<sup>67</sup>

### 3.1 Suggested Language

The following provides a sample contract clause:

“**(Insert name of the recipient or subrecipient)** must obtain written permission from DHS prior to using the DHS seals, logos, crests, or reproductions of flags, or likenesses of DHS agency officials. This includes use of DHS component (e.g., FEMA, CISA, etc.) seals, logos, crests, or reproductions of flags, or likenesses of component officials.”

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<sup>66</sup> 2 C.F.R. § 200.403.

<sup>67</sup> DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/dhs-standard-terms-and-conditions>.

## 4. Compliance with Federal Law, Regulations, and Executive Orders and Acknowledgement of Federal Funding

The recipient or subrecipient and its contractors are required to comply with all applicable federal laws, regulations, and executive orders. Additionally, recipients and subrecipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.<sup>68</sup> FEMA recommends that all recipients and subrecipients include a statement acknowledging that FEMA funding will be used in the contract, as well as a requirement that contractors will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

### 4.1 Suggested Language

The following provides a sample contract clause:

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

## 5. No Obligation by Federal Government

FEMA is not a party to any transaction between a recipient or subrecipient and its contractor. Therefore, FEMA is not subject to any obligations or liable to any party for any matter relating to the contract between a recipient or subrecipient and its contractor.<sup>69</sup> FEMA recommends that the recipient or subrecipient include a statement in its contract that the Federal Government is not a party to the contract and, thus, is not subject to any obligations or liabilities to any party resulting from the contract.

### 5.1 Suggested Language

The following provides a sample contract clause:

“The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the recipient or subrecipient, contractor, or any other party pertaining to any matter resulting from the contract.”

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<sup>68</sup> DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/dhs-standard-terms-and-conditions>.

<sup>69</sup> E.g., 2 C.F.R. § 200.318(k) (stating that the recipient or subrecipient alone is responsible for the settlement of all contractual and administrative issues arising out of procurements).

## 6. Program Fraud and False or Fraudulent Statements or Related Acts

Recipients and subrecipients must comply with the requirements of the False Claims Act, which prohibits submitting false or fraudulent claims for payment to the Federal Government.<sup>70</sup> As part of the contract with a recipient or subrecipient, contractors must acknowledge that 31 U.S.C. Chap. 38, regarding administrative remedies for false claims and statements, applies to their actions under their contract.<sup>71</sup> FEMA recommends that contracts include a provision prohibiting making false or fraudulent claims to the Federal Government.

### 6.1 Suggested Language

The following provides a sample contract clause:

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

## 7. Socioeconomic Contracting

When possible, recipients and subrecipients are encouraged to take the six socioeconomic contracting steps listed in [2 C.F.R. § 200.321](#) to ensure small businesses, minority businesses, women’s business enterprises, veteran-owned businesses, and labor surplus area firms are considered. One of the six steps is to ensure a contractor under a federal award applies the five other socioeconomic steps to subcontracts.<sup>72</sup> FEMA recommends that contracts include a statement encouraging contractors to apply the socioeconomic steps to subcontracts.

### 7.1 Suggested Language

The following provides a sample contract clause:

“The Contractor is encouraged to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure small businesses, minority businesses, women’s business enterprises, veteran-owned businesses, and labor surplus area firms are considered when possible.”

## 8. Copyright

Regarding intangible property, [2 C.F.R. § 200.315](#) requires that a recipient or subrecipient provide certain licenses with respect to copyright to the federal agency. 2 C.F.R. § 200.315(b) provides to the federal agency “a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or

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<sup>70</sup> 31 U.S.C. §§ 3729-3733.

<sup>71</sup> DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

<sup>72</sup> 2 C.F.R. § 200.321; compare 2 C.F.R. § 200.317 (2019), with 2 C.F.R. § 200.317 in Office of Management and Budget, Guidance for Grants and Agreements, 85 Fed. Reg. 49,506, 49,552 (Aug. 13, 2020).

otherwise use (any work that is subject to copyright) for federal purposes and to authorize others to do so.” This includes the right to require recipients and subrecipients to make such works available through agency-designated public access repositories. 2 C.F.R. § 200.315(d) provides to the Federal Government the rights to “obtain, reproduce, publish, or otherwise use” data produced under a federal award and to authorize others to do the same.

## 8.1 Applicability

When a recipient or subrecipient enters a contract requiring a contractor or subcontractor to produce copyrightable subject matter for the recipient or subrecipient under the award, the recipient or subrecipient should include appropriate copyright licenses to meet its obligations under 2 C.F.R. § 200.315(b) and (d). Work that is subject to copyright, or copyrightable subject matter, includes any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works.<sup>73</sup>

## 8.2 Suggested Language

The following provides a sample contract clause:

### **“License and Delivery of Works Subject to Copyright.**

The Contractor grants to the **(insert name of the recipient or subrecipient)**, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the **(insert name of the recipient or subrecipient)** or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the **(insert name of the recipient or subrecipient)** data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the **(insert name of the recipient or subrecipient)**.”

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<sup>73</sup> 17 U.S.C. § 102.

## 9. Build America, Buy America Act (BABAA) for Architectural and/or Engineering Contracts

In accordance with the Build America, Buy America Act (BABAA), FEMA must ensure that no federal financial assistance for infrastructure projects is awarded unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.<sup>74</sup> Although architectural and/or engineering (A/E) professional services are not considered infrastructure, FEMA recommends that A/E contracts under FEMA grants that are subject to BABAA include a statement requiring contractors and subcontractors to implement a Buy America Preference in their planning and design of an infrastructure project.

### 9.1 Applicability

For [FEMA grants subject to BABAA](#), FEMA recommends that recipients and subrecipients include a Buy America Preference clause in A/E contracts.

### 9.2 Suggested Language

The following provides a sample contract clause:

**"Build America, Buy America Act Preference.**

Contractors and subcontractors agree to incorporate the Buy America Preference into planning and design when providing architectural and/or engineering professional services for infrastructure projects. Consistent with the Build America, Buy America Act (BABAA) Pub. L. 117-58 §§ 70901-52, no federal financial assistance funding for infrastructure projects will be used unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States."

## 10. Providing Good, Safe Jobs to Workers

Recipients and subrecipients should pursue additional steps that improve the quality of jobs on FEMA-funded projects and encourage fair labor practices and a highly skilled workforce in FEMA-funded projects by ensuring that contractors comply with applicable worker protection laws. By encouraging these practices, contractors can create high-quality, good-paying jobs, attract and retain skilled workers, increase productivity, and produce high-quality outcomes for federal projects. FEMA strongly encourages all recipients and subrecipients using FEMA financial assistance to include in their contracts a statement that contractors will comply with all applicable worker protection laws.

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<sup>74</sup> Section 70914 of Pub. L. 117-58 §§ 70901-52; 2 C.F.R. § 200.322(c); 2 C.F.R. Part 184.1(b).

## 10.1 Suggested Language

The following provides a sample contract clause:

### **“Creating Good Jobs.**

Pursuant to [FEMA Information Bulletin No. 520](#), the contractor will comply with all applicable federal labor and employment laws. To maximize cost efficiency and quality of work, the contractor commits to strong labor standards and protections for the project workforce by creating an effective plan for ensuring high-quality jobs and complying with federal labor and employment laws. The contractor acknowledges applicable minimum wage, overtime, prevailing wage, and health and safety requirements, and will incorporate [Good Jobs Principles](#) wherever appropriate and to the greatest extent practicable.”

## 11. Buy Clean

On August 16, 2022, the President signed the Inflation Reduction Act (IRA) into law. The IRA is applicable for disasters declared, or Notice of Funding Opportunities published, on or after August 16, 2022, and the authority expires on September 30, 2026. FEMA is authorized by Section 70006 to provide financial assistance through its Public Assistance (PA), Building Resilient Infrastructure and Communities (BRIC), Hazard Mitigation Grant Program (HMGP), HMGP Post Fire, and Congressionally Directed Pre-Disaster Mitigation (PDM) for: "(1) costs associated with low-carbon materials; and (2) incentives that encourage low-carbon and net-zero energy projects." For low carbon materials, this assistance is applicable even if those costs are higher than that of conventional materials.

The use of low carbon materials may be eligible under other FEMA grant programs provided the recipient or subrecipient follows all applicable legal and programmatic requirements.

For more information about the IRA's authorization of the use of clean, climate resilient materials see [Building Clean, Climate-Resilient Communities through FEMA's Grant Programs | FEMA.gov](#).

### 11.1 Applicability

For PA, HMGP, HMGP Post Fire, BRIC and PDM grants, FEMA recommends that recipients and subrecipients include a provision encouraging the consideration of low-carbon materials. Recipients and subrecipients for other FEMA grant programs may also use this provision if they wish to encourage environmentally friendly construction practices.

### 11.2 Suggested Language

The following provides a sample contract clause:

“(Insert name of the recipient or subrecipient) encourages the use of environmentally friendly construction practices in the performance of this Agreement. In particular, (Insert name of the recipient or subrecipient) encourages that the performance of this agreement include considering the use of low-carbon materials which have substantially lower levels of embodied greenhouse-gas emissions associated with all relevant stages of production, use, and disposal, as compared to estimated industry averages of similar materials or products as demonstrated by their environmental product declaration.”



# Acronyms

**AFG:** Assistance to Firefighter Grants

**BABAA:** Build America Buy America Act

**BRIC:** Building Resilient Infrastructure and Communities

**CAGE:** Commercial and Government Entity

**CCP:** Crisis Counseling Assistance & Training Program

**CFR:** Code of Federal Regulations

**DCM:** Disaster Case Management

**DHS:** U.S. Department of Homeland Security

**DRRA:** Disaster Recovery and Reform Act of 2018

**EMPG:** Emergency Management Performance Grant

**EPA:** U.S. Environmental Protection Agency

**FAR:** Federal Acquisition Regulation

**FEMA:** Federal Emergency Management Agency

**FMAG:** Fire Management Assistance Grant Program

**HHPD:** High Hazard Potential Dam Grant Program

**HMA:** Hazard Mitigation Assistance

**HMGP:** Hazard Mitigation Grant Program

**HSGP:** Homeland Security Grant Program

**IHE:** Institution of Higher Education

**IHP-ONA:** Individuals and Households Program – Other Needs Assistance

**IPR:** Intercity Passenger Rail Program

**IRA:** Inflation Reduction Act

**JFO:** Joint Field Office

**NDAA:** National Defense Authorization Act

**NOFO:** Notice of Funding Opportunity

**NSGP:** Nonprofit Security Grant Program

**OMB:** Office of Management and Budget

**PA:** Public Assistance Program

**PSGP:** Port Security Grant Program

**RLF:** Revolving Loan Fund

**SAM:** System for Award Management

**SAT:** Simplified Acquisition Threshold

**THSGP:** Tribal Homeland Security Grant Program

**TSGP:** Transit Security Grant Program

**USC:** United States Code

# Definitions

- **Contract:** A legal instrument by which a FEMA award recipient or subrecipient purchases property or services needed to carry out the project or program under a federal award.<sup>75</sup> A contract, for the purposes of this Guide, does not mean a federal award or subaward.
- **Contractor:** An entity that receives a contract.<sup>76</sup>
- **Cooperative agreement:** A legal instrument of financial assistance between a federal agency and a recipient or between a pass-through entity and subrecipient, consistent with 31 U.S.C. 6302-6305:
  - Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the federal government or pass-through entity's direct benefit or use;
  - Is distinguished from a grant in that it provides for substantial involvement of the federal agency or pass-through entity in carrying out the activity contemplated by the federal award.

The term does not include:

- A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

An agreement that provides only:

- Direct United States Government cash assistance to an individual;
  - A subsidy;
  - A loan;
  - A loan guarantee; or Insurance.<sup>77</sup>
- **Federal agency:** An “agency” as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f). The term generally refers to the agency that provides a federal award directly to a recipient unless the context indicates otherwise. See also definitions of federal award and recipient.<sup>78</sup> The federal agency discussed in this Guide is FEMA.

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<sup>75</sup> 2 C.F.R. § 200.1 *Contract*.

<sup>76</sup> 2 C.F.R. § 200.1 *Contractor*.

<sup>77</sup> 2 C.F.R. § 200.1 *Cooperative agreement*.

<sup>78</sup> 2 C.F.R. § 200.1 *Federal agency*.

- **Federal award:** In this Guide, the term is used interchangeably with “FEMA Award” and means the federal financial assistance that a recipient receives directly from a federal agency or indirectly from a pass-through entity, as described in 2 C.F.R. § 200.101. The financial assistance that a recipient or subrecipient receives either directly from a federal agency or indirectly from a pass-through entity.<sup>79</sup>
- **Federal Emergency Management Agency (FEMA):** FEMA’s statutory mission is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.<sup>80</sup> Among other things:
  - FEMA administers its programs and carries out its activities through its headquarters offices in Washington, D.C.; 10 Regional Offices; Area Offices for the Pacific, Caribbean, and Alaska; various Recovery Offices; and temporary Joint Field Offices (JFO).
  - FEMA administers numerous assistance programs annually on a regular basis to increase the Nation’s preparedness, readiness, and resilience to all hazards. These assistance programs are typically available to recipients or subrecipients, including, but not limited to, states, local governments, Indian Tribes, universities, hospitals, and certain private nonprofit organizations.
  - Each program is governed by the applicable federal law, regulations, executive orders, and FEMA program-specific policies. As the federal agency for these programs, FEMA is responsible for the proper management and administration of these programs as otherwise required by law and enforcing the terms of the agreements it enters with recipients or subrecipients that receive FEMA financial assistance, consistent with the requirements at 2 C.F.R. Part 200.
- **Grant agreement or grant:** A legal instrument of financial assistance between a federal agency and a recipient or between a pass-through entity and a subrecipient, consistent with 31 U.S.C. § 6302, 6304: Is used to transfer anything of value from the federal agency or pass-through entity to the recipient or subrecipient to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. § 6101(3)); and does not include an agreement that provides only:
  - Direct United States government cash assistance to an individual;
  - A loan;
  - A loan guarantee; or
  - A subsidy;
  - Insurance.<sup>81</sup>

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<sup>79</sup> 2 C.F.R. § 200.1 *Federal award*.

<sup>80</sup> Homeland Security Act of 2002, Pub. L. No. 107-296, § 503 (2002) (codified as amended at 6 U.S.C. § 313).

<sup>81</sup> 2 C.F.R. § 200.1 *Grant agreement or grant*.

- **Indian Tribe (or “federally recognized Indian tribe”):** Any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. See 25 U.S.C. 5304(e). This includes any Indian Tribe identified in the annually published Bureau of Indian Affairs list of [“Indian Entities Recognized and Eligible to Receive Services”](#) and other entities that qualify as an Alaska Native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act.<sup>82</sup>
  
- **Local government:**<sup>83</sup> Any unit of government within a state, including a:
  - County
  - Borough
  - Municipality
  - City
  - Town
  - Township
  - Parish
  - Special district
  - School District
  - Intrastate district
  - Council of governments, whether incorporated or not as a nonprofit corporation under state law
  - Local public authority, including any public housing agency under the United States Housing Act of 1937
  - Any other agency or instrumentality of a multi-regional, or intra-state or local government.
  
- **Nonprofit organization:** Any organization that:

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<sup>82</sup> 2 C.F.R. § 200.1 *Indian Tribe*.

<sup>83</sup> 2 C.F.R. § 200.1 *Local government*.

- Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
  - Is not organized primarily for profit;
  - Uses net proceeds to maintain, improve, or expand the organization's operations; and
  - Is not an IHE.<sup>84</sup>
- **Pass-through entity:** A recipient or subrecipient that provides a subaward to a subrecipient (including lower tier subrecipients) to carry out part of a federal program. The authority of the pass-through entity under this part flows through the subaward agreement between the pass-through entity and subrecipient.<sup>85</sup> Pass-through entities are responsible for processing subawards to subrecipients and ensuring subrecipient compliance with the terms and conditions of the FEMA award agreement.
  - **Political Subdivision:** The unit of government that the State determines to have met the State's legislative definition of a political subdivision.<sup>86</sup>
  - **Recipient:** An entity that receives a federal award directly from a federal agency to carry out an activity under a federal program. The term recipient does not include subrecipients or individuals that are participants or beneficiaries of the award.<sup>87</sup> A recipient is responsible for administering the federal award in accordance with applicable federal laws. Examples of recipients include state, local, Indian tribal, and territorial governments.
  - **Simplified Acquisition Threshold (SAT):** The dollar amount below which a recipient or subrecipient may purchase property or services using small purchase methods (see 2 C.F.R. § 200.320). Recipients and subrecipients adopt small purchase procedures to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold set in the FAR at 48 C.F.R. part 2, subpart 2.1 is used in this part as the simplified acquisition threshold for secondary procurement activities administered under Federal awards. The recipient or subrecipient is responsible for determining an appropriate simplified acquisition threshold, which is less than or equal to the dollar value established in the FAR, based on internal controls, an evaluation of risk, and its documented procurement procedures. Recipients and subrecipients should also determine if local government purchasing laws apply.<sup>88</sup> This threshold must never exceed the dollar value established in the FAR. Presently and as of June 2018, the federal SAT is \$250,000,<sup>89</sup> but is periodically adjusted for inflation.

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<sup>84</sup> 2 C.F.R. § 200.1 *Nonprofit organization*.

<sup>85</sup> 2 C.F.R. § 200.1 *Pass-through entity*.

<sup>86</sup> 40 C.F.R. § 35.6015(a) *Political subdivision*

<sup>87</sup> 2 C.F.R. § 200.1 *Recipient*.

<sup>88</sup> Section 805 codified at 41 U.S.C. § 134; OMB Memo (M-18-18), available at <https://www.whitehouse.gov/wp-content/uploads/2018/06/M-18-18.pdf>.

<sup>89</sup> 2 C.F.R. § 200.1 *Simplified acquisition threshold*.

- **State:** Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.<sup>90</sup> In this Guide, state is used interchangeably with “state entity”.
- **Subaward:** An award provided by a pass-through entity to a subrecipient for the subrecipient to contribute to the goals and objectives of the project by carrying out part of a federal award received by the pass-through entity. It does not include payments to a contractor, beneficiary, or participant. A subaward may be provided through any legal agreement consistent with criteria in 2 C.F.R. § 200.331, including an agreement the pass-through entity considers a contract.<sup>91</sup> In this Guide, the term is used interchangeably with “subgrant.”
- **Subrecipient:** An entity that receives a subaward from a pass-through entity to carry out part of a federal award. The term subrecipient does not include a beneficiary or participant. A subrecipient may also be a recipient of other federal awards directly from a federal agency.<sup>92</sup>

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<sup>90</sup> 2 C.F.R. § 200.1 *State*. Some hospitals and IHEs as defined by 2 C.F.R. § 200.1 *Hospitals* and 2 C.F.R. § 200.1 *Institutions of Higher Education* respectively, may meet the definition of a State.

<sup>91</sup> 2 C.F.R. § 200.1 *Subaward*.

<sup>92</sup> 2 C.F.R. § 200.1 *Subrecipient*.