

CONCHO VALLEY COUNCIL OF GOVERNMENTS
PROCUREMENT GENERAL TERMS & CONDITIONS

GENERAL PROVISIONS

1. APPROVAL OF CONTRACT

This contract is subject to the written approval of the Concho Valley Council of Governments (CVCOG) Executive Director and shall not be binding until so approved unless the signing and execution thereof has been expressly delegated to another officer, employee, and/or agent of CVCOG.

2. SIGNATURE AUTHORITY

By submitting the Response, Contractor represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Contractor and to bind the Contractor under any contract that may result from the submission of this Response.

3. APPLICABLE LAWS

The Contractor agrees to conduct all activities under this Agreement in accordance with all federal laws, executive orders, policies, procedures, applicable rules, regulations, directives, standards, ordinances, and laws, in effect or promulgated during the term of this Agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish CVCOG with satisfactory proof of its compliance therewith.

4. INSPECTION AND ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this Contract. The Concho Valley Council of Governments (CVCOG) reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The CVCOG may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. The CVCOG must exercise its post-acceptance rights -- (1) Within a reasonable time after the defect was discovered or should have been discovered; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

5. SUSPENSION OF WORK

- a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-
 - a. Cancel the stop-work order; or
 - b. Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-
 - a. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

- b. The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

6. RISK OF LOSS

Unless the agreement specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Concho Valley Council of Governments upon: (1) Delivery of the supplies to a carrier, if transportation is F.O.B. origin; or (2) Delivery of the supplies to the Concho Valley Council of Governments at the destination specified in the contract, if transportation is F.O.B. destination.

7. WARRANTY, MATERIAL, AND WORKMANSHIP

- a) The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.
- b) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for 365 calendar days— (i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and (ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.
- c) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this contract and the Contractor's plant, and return.
- d) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.
- e) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the CVCOG, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- f) The Contractor shall obtain the CVCOG's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the CVCOG the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the CVCOG, the Contractor shall also obtain the CVCOG's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall

submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- g) All work under this contract shall be performed in a skillful and workmanlike manner. The CVCOG may require, in writing, that the Contractor remove from the work any employee the CVCOG deems incompetent, careless, or otherwise objectionable.
- h) The CVCOG may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor— (A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or (B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the CVCOG may authorize in writing) after receipt of notice from the CVCOG specifying such failure. (ii) Instead of correction or replacement by the Government, the CVCOG may require an equitable adjustment of the contract price. In addition, if the Contractor fails to furnish timely disposition instructions, the Concho Valley Council of Governments may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

8. ANTI-COMPETITIVE BEHAVIOR

Contractor will not collude, in any manner, or engage in any practice which may restrict or eliminate competition or otherwise restrain trade.

9. GRATUITIES

- a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the CVCOG head or a designee determines that the Contractor, its agent, or another representative— (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Concho Valley Council of Governments; and (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- c) If this contract is terminated under paragraph (a) of this clause, the Concho Valley Council of Governments is entitled— (1) To pursue the same remedies as in a breach of the contract; and (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the CVCOG head or a designee. (This paragraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)
- d) The rights and remedies of the Concho Valley Council of Governments provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

10. PATENT INDEMNITY

The Contractor shall indemnify CVCOG and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

11. GOAL FOR CONTRACTING WITH DBE AND HUB VENDORS

CVCOG's goal is to assure that small and minority businesses, women's business enterprises, and labor surplus area firms are used, when possible, in providing services under a contract. In accordance with federal procurements requirements of 2 CFR §200.321, if subcontracts are to be let, the prime contractor must take the affirmative steps listed below:

- a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- c) Dividing total requirements, when economically feasible, into smaller task or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- e) Using the services and assistance as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Nothing in this provision will be construed to require the utilization of any firm that is either unqualified or unavailable.

NOTE: The term DBE as used in this solicitation is understood to encompass all programs/business enterprises such as: Small Disadvantaged Business (SDB), Historically Underutilized Business (HUB), Minority Owned Business Enterprise (MBE), Women Owned Business Enterprise (WBE) and Disabled Veteran Business Enterprise (DVBE) or other designation as issued by a certifying agency.

12. SOCIAL SECURITIES ACT

Contractor shall be and remain an Independent Contractor for all services performed hereunder and agrees to and does as a result of this accept total and exclusive liability for payment of all contributions or taxes for social security, unemployment insurance, and old age retirement benefits or annuities now or hereafter imposed under any State. Federal law is measured by the wages, salaries, or other remunerations paid to persons by the Contractor on work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all legal requirements which are now or may be issued or promulgated under said respective laws by any duly authorized State or Federal officials; and said Contractor also agrees to indemnify and save harmless the CVCOG from any contributions or liability therefor.

13. NON-DISCLOSURE OF DATA

Data provided by CVCOG either before or after the Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize or distribute CVCOG data in any form without the prior express written approval of CVCOG.

14. NON-DISCLOSURE OF OBLIGATION

While providing the work required under this Contract, the Contractor might encounter licensed technology, software, documentation, drawings, schematics, manuals, data, or other materials marked "Confidential," "Proprietary," or "Business Secret." The Contractor shall, with regard to such information and material received or used in the performance of this Contract, employ practices no less than those used for the protection of the Contractor's confidential information.

The Contract imposes no obligation upon the Contractor concerning confidential information which the Contractor can establish that: a) was in possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality before receipt from CVCOG or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to CVCOG's or the third-party's records.

15. PUBLIC DISCLOSURE REQUEST

Contracts shall be considered public documents and, with exceptions provided under public disclosure laws, will be available for inspection and copying by the public.

Suppose a Contractor considers any portion of any documents which may be delivered to CVCOG pursuant to this Contract to be protected under the law. In that case, the Contractor shall identify each such item with words such as “Confidential,” “Proprietary,” or “Business Secret.” Suppose a request is made for disclosure of any such document. In that case, CVCOG will determine whether the document should be made available under the law. Suppose CVCOG determines the document or parts thereof to be exempt from public disclosure. In that case, CVCOG will not release the exempted document.

16. OWNERSHIP OF DOCUMENTS

CVCOG shall be the owner of all plans, scope of work and related documents prepared pursuant to this Contract or provided to the Contractor by CVCOG. Any re-use of the plans, scope of work or related documents by CVCOG for other than the purpose intended by this Contract shall impose no liability on the Contractor.

17. PATENTS AND ROYALTIES

The Contractor is responsible for paying all license fees, royalties, or the costs of defending claims for the infringement of any intellectual property that may be used in performing this Contract. Before final payment is made on this Contract, the Contractor shall, if requested by CVCOG, furnish acceptable proof of a proper release from all such fees or claims.

18. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach of violation of this warranty, CVCOG shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

19. SAFETY

Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees and subcontractors appropriate to the nature of the Services and the conditions under which the Services are to be performed. Safety precautions as applicable shall include, but shall not be limited to: (1) adequate life protection and lifesaving equipment and procedures; (2) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (3) adequate facilities for the proper inspection and maintenance of all safety measures. Contractor shall be responsible for all costs of clean up and/or removal of spilled regulated substances as a result of Contractor’s services or operations performed under this Agreement, including, but not limited to: • Hazardous and toxic substances, • Hazardous waste, • Universal waste, • Medical waste, • Biological waste, • Sharps waste.

20. ACCIDENT PREVENTION

1. When applicable, the Contractor shall provide and maintain work environments and procedures which will (1) safeguard the public and CVCOG personnel, property, materials, supplies, and equipment exposed to the Contractor operations and activities; (2) avoid interruptions of CVCOG operations and delays in project completion dates; and (3) control costs in the performance of this contract.
2. For these purposes of contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall:
 - a. Provide appropriate safety barricades, signs, and signal lights;

- b. Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
 - c. Ensure that any additional measures the Project Manager determines to be reasonably necessary for the purposes are taken.
3. If this contract is for construction or dismantling, demolition, or removal of improvements with any Department of Transportation agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.
4. Whenever the Owner or its representatives become aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or CVCOG personnel, the Project Manager shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Owner may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.
5. The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of parties, in subcontracts.

21. COMPLIANCE WITH SECURITY MEASURES

All Contractors are required to display an identification badge supplied by Contractor while on CVCOG premises. If applicable, badges must be worn where they can be seen at all times. This requirement applies to every employee of all Contractors and/or Subcontractors. All Contractor employees are also required to wear clothing which identifies the company for which they work (i.e., uniform, hard hat, jacket, etc.).

22. SITE ACCESS

When applicable, CVCOG shall give the Contractor access to the Site as necessary to enable performance of this Contract. The Contractor does not, by virtue of this Contract, acquire any interest in the Site. The Contractor must permit CVCOG, or a person authorized by CVCOG, to have reasonable access to the Site, under the Contractor's supervision, to inspect the Contract Work.

While at the job site, such CVCOG or authorized persons shall provide sufficient identification and observe Contractor's standard safety precautions and shall conduct themselves in a manner that will not interfere with performance of this Agreement.

23. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, AND UTILITIES AND IMPROVEMENTS

A. When applicable, the Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which was not to be removed and which do not unreasonably interfere with the work required under the contract. The Contractor shall only remove trees when specifically authorized to do so and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Project Manager.

B. When applicable, the Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of the contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, CVCOG may have the necessary work performed and charge the cost to the Contractor.

24. ASSIGNABILITY

This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the parties hereto and their respective successors and assigns; provided, however, that neither this Agreement nor any of a party's rights or obligations hereunder may be assigned or delegated by such party without the prior written consent of the other parties hereto, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by such party without the other party's prior written consent shall be void and of no effect. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the parties hereto) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

25. ANTITRUST AFFIRMATION

The undersigned affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response, neither I nor any representative of the Contractor have violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Response, neither I nor any representative of the Contractor have violated any federal antitrust law; and (3) neither I nor any representative of the Contractor have directly or indirectly communicated any of the contents of this Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

26. ASSIGNMENT

Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the Agency. Any attempted assignment in violation of this provision is void and without effect.

27. BUY TEXAS AFFIRMATION

To the extent applicable, in accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

28. CHILD SUPPORT OBLIGATION AFFIRMATION

Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

29. CONTRACTING INFORMATION RESPONSIBILITIES

In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Agency for the duration of the contract, (2) promptly provide to the Agency any contracting information related to the contract that is in the custody or possession of the Contractor on request of the Agency, and (3) on termination or expiration of the contract, either provide at no cost to the Agency all contracting information related to the contract as provided by the records retention requirements applicable to the Agency. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

30. COVID-19 VACCINE PASSPORT PROHIBITION

Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.

31. CRITICAL INFRASTRUCTURE AFFIRMATION

Pursuant to Government Code Section 2274.0102, Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.

32. DATA MANAGEMENT AND SECURITY CONTROLS

In accordance with Section 2054.138 of the Texas Government Code, Contractor certifies that it will comply with the security controls required under this contract and will maintain records and make them available to Agency as evidence of Contractor's compliance with the required controls.

33. DEALINGS WITH PUBLIC SERVANTS' AFFIRMATION

Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response.

34. DEBTS AND DELINQUENCIES AFFIRMATION

Contractor agrees that any payments due under the contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

35. DISASTER RECOVERY PLAN

Upon request of Agency, Contractor shall provide descriptions of its business continuity and disaster recovery plans.

36. DISCLOSURE OF PRIOR STATE EMPLOYMENT

In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Contractor certifies, to the best of its knowledge, that it does not employ an individual who has been employed by Agency or another agency at any time during the two years preceding the submission of the Response or, in the alternative, Contractor has disclosed in its Response the following: (i) the nature of the previous employment with Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

37. DISPUTE RESOLUTION

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract.

38. ENERGY COMPANY BOYCOTTS

If Contractor is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Contractor verifies that Contractor does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Contractor does not make that verification, Contractor must so indicate in its Response and state why the verification is not required.

39. ENTITIES THAT BOYCOTT ISRAEL

If Contractor is required to make a certification pursuant to Section 2271.001 of the Texas Government Code, Contractor certifies that Contractor does not boycott Israel and will not boycott Israel during the term of the

contract resulting from this solicitation. If Contractor does not make that certification, Contractor must indicate that in its Response and state why the certification is not required.

40. EXCESS OBLIGATIONS PROHIBITED

Contractor understands that all obligations of the Agency under the contract are subject to the availability of state or federal funds. If such funds are not appropriated or become unavailable, the contract may be terminated either in whole or in part by Agency, without penalty to Agency.

41. EXCLUDED PARTIES

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.

42. EXECUTIVE HEAD OF A STATE AGENCY AFFIRMATION

Under Section 669.003 of the Texas Government Code, relating to contracting with an executive head of an agency, Contractor represents, to the best of its knowledge, that no person who served as an executive of Agency, in the past four (4) years, was involved or has any interest in the contract.

43. FALSE STATEMENTS

Contractor represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.

44. FINANCIAL PARTICIPATION PROHIBITED AFFIRMATION

Under Section 2155.004(b) of the Texas Government Code, Contractor certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.

45. FIREARM ENTITIES AND TRADE ASSOCIATIONS DISCRIMINATION

If Contractor is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Contractor verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Contractor does not make that verification, Contractor must so indicate in its Response and state why the verification is not required.

46. FOREIGN TERRORIST ORGANIZATIONS

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

47. FORMER AGENCY EMPLOYEES

Contractor represents and warrants, to the best of its knowledge, that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of the Agency during the twelve (12) month period immediately prior to the date of execution of the contract.

48. GOVERNING LAW AND VENUE

The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Tom Green County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency.

49. HUMAN TRAFFICKING PROHIBITION

Under Section 2155.0061 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

50. NO CONFLICTS OF INTEREST

Contractor represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

51. PRIOR DISASTER RELIEF CONTRACT VIOLATION

Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

52. PUBLIC INFORMATION ACT

Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the “Public Information Act”). In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

53. STATE AUDITOR’S RIGHT TO AUDIT

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

54. SUSPENSION AND DEBARMENT

Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor’s subcontracts, if any, if payment in whole or in part is from federal funds.

55. AGENCY’S RIGHT TO AUDIT

Contractor will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Contractor pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Agency and the State of Texas.

56. ASSIGNMENT

Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the Agency. Any attempted assignment in violation of this Section is void and without effect.

57. BINDING EFFECT

The contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees and delegates.

58. CHANGE IN LAW AND COMPLIANCE WITH LAWS

Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.

59. CRITICAL INFRASTRUCTURE SUBCONTRACTS

For purposes of this Paragraph, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Governor as a threat to critical infrastructure. Pursuant to Section 113.002 of the Business and Commercial Code, Contractor shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes to any subcontractor unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. Contractor will notify the Agency before entering into any subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business & Commerce Code, in this state.

60. DAMAGE TO GOVERNMENT PROPERTY

Contractor shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Contractor shall notify the Agency in writing of any such damage within one (1) calendar day. Contractor is responsible for the removal of all debris resulting from work performed under the contract.

61. FORCE MAJEURE

Neither Contractor nor Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

62. INDEPENDENT CONTRACTOR

Contractor acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Contractor and its personnel are not employees of the Agency or the State of Texas.

63. LEGAL AND REGULATORY ACTIONS

Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Contractor or any of the individuals or entities that would or could impair Contractor's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to the Agency. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has submitted to CVCOG a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to the Agency.

64. LIMITATION ON AUTHORITY

Contractor shall have no authority to act for or on behalf of Agency or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Contractor may not incur any debt, obligation, expense or liability of any kind on behalf of Agency or the State of Texas.

65. LOBBYING PROHIBITION

Contractor represents and warrants that Agency's payments to Contractor and Contractor's receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.

66. MEDIA RELEASES

Contractor shall not use Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without Agency's prior written approval. Agency does not endorse any vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response or the services to which they relate without Agency's prior written consent, and then only in accordance with explicit written instructions from Agency.

67. NO FELONY CRIMINAL CONVICTIONS

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised Agency in writing of the facts and circumstances surrounding the convictions.

68. NO IMPLIED WAIVER

Failure of a Party to require performance by another Party under the contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the contract will not be construed as a waiver of any continuing or successive breach.

69. NO QUANTITY GUARANTEES

Agency makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the contract.

70. NO THIRD-PARTY BENEFICIARIES

The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

71. PERMITS, CERTIFICATIONS, AND LICENSES

Contractor represents and warrants that it has determined what licenses, certifications and permits are required under the contract and has acquired all applicable licenses, certifications, and permits.

72. PROMPT PAYMENT

Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

73. RECORDS RETENTION

Contractor shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of

Texas requirements. These records will be maintained and retained by Contractor for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

74. REFUND

Contractor will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by Agency which are not expressly authorized under the contract.

75. SECURE ERASURE OF HARD DISK CAPABILITY

All equipment provided to Agency by Contractor that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC § Chapter 202.

76. SEVERABILITY

If any provision of the contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

77. SOVEREIGN IMMUNITY

The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the Agency or the State of Texas of any immunities from suit or from liability that the Agency or the State of Texas may have by operation of law.

78. SUBCONTRACTORS

Contractor may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the Agency. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the contract. Should Contractor subcontract any of the services required in the contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), Agency is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.

79. SURVIVAL

Expiration or termination of the contract for any reason does not release Contractor from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

80. TAXES

Purchases made by Agency are exempt from the State Sales Tax and Federal Excise Tax. Agency will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. Agency shall not be liable for any taxes resulting from the contract.

81. TERMINATION FOR CONVENIENCE (APPLIES TO ALL CONTRACTS IN EXCESS OF \$10,000)

Agency reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if Agency determines that such termination is in the best interest of the organization. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Agency shall be

liable for payments limited only to the portion of work Agency authorized in writing and which Contractor has completed, delivered to Agency, and which has been accepted by Agency. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. Agency shall have no other liability, including no liability for any costs associated with the termination.

82. TERMINATION FOR CAUSE (APPLIES TO ALL CONTRACTS IN EXCESS OF \$10,000)

Agency may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Agency, upon request, with adequate assurances of future performance. In the event of termination for cause, the Agency shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Agency for any and all rights and remedies provided by law. If it is determined that the Agency improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

83. TERMINATION FOR NON-APPROPRIATIONS

Notwithstanding any contrary provision of this Agreement, each payment obligation of Agency or any of its programs created by this Agreement is conditioned upon the availability of funds that are appropriated or allocated for the goods and/or services under this Agreement. If such funds are not allocated, this Agreement may be terminated by Agency. Agency shall notify Contractor at the earliest possible time before such termination. No penalty shall accrue to Agency in the event this provision is exercised, and Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

84. UNFAIR BUSINESS PRACTICES

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

85. USE OF STATE PROPERTY

Contractor is prohibited from using State Property for any purpose other than performing Services authorized under the contract. State Property includes, but is not limited to, Agency's office space, identification badges, Agency information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Agency issued software, and the Agency Virtual Private Network (VPN client)), and any other resources of Agency. Contractor shall not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access Agency's network or e-mail while outside of the continental United States. Contractor shall not perform any maintenance services on State Property unless the contract expressly authorizes such services. During the time that State Property is in the possession of Contractor, Contractor shall be responsible for (i) all repair and replacement charges incurred by Agency that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Contractor's use of State Property that exceeds the contract scope. Contractor shall fully reimburse such charges to Agency within ten (10) calendar days of Contractor's receipt of Agency's notice of amount due. Use of State Property for a purpose not authorized by contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to Agency under contract, at law, or in equity.

86. AMERICANS WITH DISABILITIES ACT

Contractor represents and warrants its compliance with the requirements of the Americans with Disabilities Act (ADA) and its implementing regulations, as each may be amended.

87. EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

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

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

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

88. FEDERAL OCCUPATIONAL SAFETY AND HEALTH LAW

Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

89. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

The AGENCY and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the AGENCY, Contractor or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the Contract. Contractor shall include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

90. VETERAN'S EMPLOYMENT PREFERENCE

Veterans Employment - Recipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

91. DAVIS-BACON ACT

When applicable, Contractor agrees to comply with all applicable provisions of 40 USC § 3141 – 3148.

92. COPELAND "ANTI-KICKBACK" ACT

The Contractor shall comply with the requirements of 18 USC 874 and 40 USC 3145, which are hereby incorporated by reference in this contract.

93. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- a) Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- b) Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- c) The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- d) The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act.

Compliance with the Contract Work Hours and Safety Standards Act.

- 1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- 3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- 4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

94. PROMPT PAYMENT TO SUBCONTRACTORS

The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The Contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

95. DOMESTIC PREFERENCE

In accordance with 2 CFR 200.322, as appropriate and to the extent consistent with law, when using federal grant award funds CVCOG should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). CVCOG must include this requirement in all subawards including all contracts and purchase orders for work or products under the federal grant award. If Contractor intends to qualify for Purchase Orders using federal grant money, the it shall work with the CVCOG to provide all required certifications and other documentation needed to show compliance.

96. BUY AMERICA, BUILD AMERICA

The Contractor agrees that it will comply with the requirements of Public Law 117-58, Build America, Buy America, Public Law 117-58 (November 15, 2021), Section 70901, et seq., the requirements of 49 USC 5323(j)(1), and the applicable regulatory provisions in 49 CFR Part 661.

97. CLEAN AIR ACT

For any project of \$150,000 or more, 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. sections 7401-7671q. The Contractor agrees to report each violation to CVCOG.

98. FEDERAL WATER POLLUTION CONTROL ACT

For any project of \$150,000 or more, 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. sections 1251-1387. The CONTRACTOR agrees to report each violation to CVCOG.

99. CARGO PREFERENCE

When applicable, the Contractor agrees to comply with the shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference - U.S.-Flag Vessels,” 46 C.F.R. part 381. The Contractor agrees:

- a. To use privately owned United States-Flag commercial vessels to ship at least 50 % of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. To furnish within TWENTY (20) working days following the date of loading for shipments originating within the United States or within THIRTY (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in Section (a) above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to CVCOG; (through the Contractor in the case of a lower-tier participating Subcontractor’s bill of lading); and
- c. To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

100.FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America Act”) in accordance with the General Services Administration’s regulations at 41 C.F.R part 301- 10, which provide that recipients and subrecipients of Federal funds and their Contractors are required to use U.S. Flag Air Carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag Air Carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

101.RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

Any discovery or invention that arises during the course of the contract shall be reported to the non-Federal entity. Contractor/Vendor must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

102.ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

103.RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

104.SAFE OPERATIONS OF MOTOR VEHICLES

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

105.PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

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

- a) Procure or obtain;
- b) Extend or renew a contract to procure or obtain; or
- c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure

replacement equipment and services, and to ensure that communications service to users and customers is sustained.

See Public Law 115-232, section 889 for additional information.

See also § 200.471.

106. COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES REPRESENTATION

Definitions. As used in this provision, "covered telecommunications equipment or services" and "reasonable inquiry" have the meaning provided in the above clause, Prohibition Certain Telecommunications and Video Surveillance Services or Equipment.

Procedures. The Contractor shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(1) *Representation.* The Contractor represents that it does, does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(2) After conducting a reasonable inquiry for purposes of this representation, the Contractor represents that it does, does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

107. INDEMNIFICATION

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CVCOG, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND CVCOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.