

# Contract Provisions Guide

Navigating Appendix II to Part 200—Contract Provisions  
for Non-Federal Entity Contracts Under Federal Awards

Procurement Disaster Assistance Team (PDAT)

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**FEMA**

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# Introduction

FEMA grant recipients and subrecipients (also known as non-federal entities or NFEs)<sup>1</sup> will often use contractors to help them carry out work under their awards. These contracts are a commercial transaction between the NFE and its contractor, and FEMA has no contractual relationship with NFEs' contractors. Although FEMA is not a party to the contract, if an NFE is using federal funding to pay for the contract, the NFE must comply with federal laws, including the [federal procurement standards](#).

This Guide is applicable to *all* NFEs purchasing in support of declarations and FEMA awards issued on or after November 12, 2020 and reflects [Office of Management and Budget \(OMB\) revisions](#) to the federal procurement standards.

For FEMA declarations and awards issued between December 26, 2014 and November 11, 2020 please refer to the [Contract Provisions Template](#). While the *Contract Provisions Template* is only directly applicable to FEMA's Public Assistance (PA) Program, all FEMA grant recipients and subrecipients are encouraged to review this resource since it provides guidance on the federal procurement under grants regulations.

The federal procurement standards for NFEs 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 “the non-federal entity's contracts *must contain the applicable provisions* described in [Appendix II to this part](#)” (emphasis added).

This Guide is designed to help FEMA grant recipients and subrecipients navigate Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, including providing mandatory language and/or suggested language for each required contract provision. This Guide also describes contract clauses that FEMA *recommends* in addition to those required by 2 C.F.R. Part 200.

This Guide provides:

- Sample language or references to find sample language for some of the federally required clauses.
- Required language for clauses that require exact language.

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<sup>1</sup> Non-federal entity is defined as a state, local government, Indian tribe, institution of higher education, or nonprofit organization carrying out a federal award as a recipient or subrecipient. 2 C.F.R. § 200.1. State is defined as “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.” 2 C.F.R. § 200.1. The term “non-state entity” therefore refers to a non-federal entity other than a state, which includes local and tribal governments as well as nonprofit organizations.

- Sample language for some of the federally recommended clauses.

This Guide does *not* provide:

- Sample language for certain federally required or recommended clauses that must be included in accordance with the NFE's applicable laws, rules, and procedures.
- Provisions required by applicable state, tribal, or local laws or rules separate from the federal provisions.

Many of the provisions described in this Guide 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.

**NOTE:** The NFE 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. While the Contract Provisions Guide provides general guidance, NFEs 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. NFEs are encouraged to visit [www.fema.gov](http://www.fema.gov) for additional information regarding FEMA grant programs and [www.fema.gov/grants/procurement](http://www.fema.gov/grants/procurement) for procurement under grants reference material.

## Summary of Applicable Federal Procurement Standards

For the NFE to determine which federal procurement rules to follow, it must first determine whether it is a state entity or a non-state entity. Below are the federal procurement rules applicable to state and non-state entities effective November 12, 2020:

- [State entities](#)<sup>2</sup>, including their agencies and instrumentalities, must follow their own documented procurement policies and procedures when purchasing under a FEMA award pursuant to 2 C.F.R. § 200.317. These entities must also comply with socioeconomic affirmative steps (2 C.F.R. § 200.321), requirement for domestic preferences for procurement (2 C.F.R. § 200.322), the requirements for procurement of recovered materials (2 C.F.R. § 200.323) and ensure that all necessary contract provisions are included in their contracts (2 C.F.R. § 200.327).
- NFEs other than states (collectively referred to as non-state entities<sup>3</sup>), which include local governments, tribes and eligible private nonprofit organizations, must have documented procurement policies and procedures, which reflect applicable local, state or tribal law, and ensure compliance with the federal requirements listed at 2 C.F.R. §§ 200.318 – 200.327.

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<sup>2</sup> A state entity is “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.” 2 C.F.R. § 200.1

<sup>3</sup> A non-state entity is any non-federal entity (as defined above) other than a state (as defined above).

In the case of noncompliance with the federal procurement rules, FEMA may apply a remedy, as appropriate, in accordance with its authorities found at 2 C.F.R. § 200.339 *Remedies for Noncompliance*.

## **Policy and Guidance Document(s) Incorporated and Superseded**

This Guide supersedes the [Contract Provisions Template](#) and other provisions pertaining to the procurement under grants process in policy or guidance circulated prior to the publication date of the Contract Provisions Guide. This Guide provides the most updated and authoritative information regarding required provisions under Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and FEMA-recommended contract provisions.

## **Document Management and Maintenance**

FEMA Policy FI-207-21-0001, Contract Provisions Guide, will be reviewed, reissued, revised, and/or rescinded within four years for the issue date. The Procurement Disaster Assistance Team (PDAT), a subcomponent of FEMA's Grant Programs Directorate's (GPD) Policy Division, developed this Guide to provide accurate and updated information to assist both FEMA staff and FEMA award recipients and subrecipients navigate Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. PDAT is responsible for the management and maintenance of this Guide. Comments and feedback from FEMA personnel and stakeholders regarding this Guide should be directed to the Grants Program Directorate Policy Division at FEMA headquarters (HQ) at [FEMA-GPD-Policy@fema.dhs.gov](mailto:FEMA-GPD-Policy@fema.dhs.gov).



## Contract Provisions Quick Reference Guide

Tables A and B are designed to help FEMA grant 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 NFE’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** *(continued next page)*

	Provision (Appendix II Section)	Applicability	Sample Contract Language Included
1	<a href="#">Legal/contractual/administrative remedies for breach of contract</a>	Greater than Simplified Acquisition Threshold (SAT)- \$250,000	No. It is based on NFE’s procedures.
2	<a href="#">Termination for cause and convenience</a>	Greater than \$10,000	No. It is based on NFE’s procedures.
3	<a href="#">Equal Employment Opportunity</a>	Construction work	Yes. Exact language from 41 C.F.R. § 60-1.4(b) included.
4	<a href="#">Davis-Bacon Act</a>	Construction work	Yes, via reference to required language at 29 C.F.R. § 5.5(a).
5	<a href="#">Copeland “Anti-Kickback” Act</a>	Construction work greater than \$2,000	Yes.
6	<a href="#">Contract Work Hours and Safety Standards Act</a>	Greater than \$100,000 + mechanics or laborers	Yes. Exact language required from 29 C.F.R. § 5.5(b).
7	<a href="#">Rights to inventions made under a contract or agreement</a>	Funding agreement	Yes.
8	<a href="#">Clean Air Act and federal Water Pollution Control Act</a>	Greater than \$150,000	Yes.
9	<a href="#">Debarment and Suspension</a>	Greater than \$25,000	Yes.
10	<a href="#">Byrd Anti-Lobbying Amendment</a>	Greater than \$100,000; and Certification required for all contracts greater than \$100,000	Yes. Clause and certification.

	Provision (Appendix II Section)	Applicability	Sample Contract Language Included
11	<a href="#">Procurement of Recovered Materials</a>	NFE is a state or political subdivision of a state. Work involves the use of materials and the contract is for more than \$10,000.	Yes.
12	<a href="#">Prohibition on Contracting for Covered Telecommunications Equipment or Services</a>	All FEMA declarations and awards issued on or after November 12, 2020.	Yes.
13	<a href="#">Domestic Preferences for Procurements</a>	All FEMA declarations and awards issued on or after November 12, 2020.	Yes.

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="#">Affirmative Socioeconomic Steps</a>	State entities: all FEMA declarations and awards issued on or after November 12, 2020. Non-state entities: all procurements	Yes.
8	<a href="#">Copyright</a>	All procurements that may involve creation of copyrightable material.	Yes.

# Required Contract Provisions

## 1. Remedies

Contracts for more than the federal simplified acquisition threshold (SAT), the dollar amount below which an NFE may purchase property or services using small purchase methods, currently set at \$250,000 for procurements made on or after June 20, 2018,<sup>4</sup> 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>5</sup>

### 1.1 Applicability

This contract provision is required for contracts over the SAT, currently set at \$250,000 for procurements made on or after June 20, 2018. Although not required for contracts at or below the SAT, FEMA suggests including a remedies provision.

### 1.2 Additional Considerations

For FEMA's Assistance to Firefighters Grant (AFG) Program, recipients must include a penalty clause in all contracts for any AFG-funded vehicle, regardless of dollar amount. 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. 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, which can be accessed at [FEMA.gov](https://www.fema.gov).

## 2. Termination for Cause and Convenience

Contracts for more than \$10,000 must address termination for cause and for convenience by the non-federal entity, including how it will be carried out and the basis for settlement.<sup>6</sup>

### 2.1 Applicability

This contract provision is required for procurements exceeding \$10,000. FEMA suggests including a termination for cause and for convenience in all contracts even when not required.

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<sup>4</sup> See 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/2020-08/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>5</sup> 2 C.F.R. Part 200, Appendix II, § A.

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

## 3. Equal Employment Opportunity

Any contract that uses federal funds to pay for construction work is a “federally assisted construction contract” and must include the equal opportunity clause found in 2 C.F.R. Part 200, unless otherwise stated in 41 C.F.R. Part 60.<sup>7</sup>

### 3.1 Applicability

This contract provision is required for all procurements that meet the definition of a “federally assisted construction contract.”

### 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 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.”
- 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

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<sup>7</sup> See 2 C.F.R. Part 200, Appendix II, § C.

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.

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>8</sup> Additional requirements are listed below, and relevant definitions are at 29 C.F.R. § 5.2. NFEs 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, prime construction contracts over \$2,000 awarded by NFEs must include a provision for compliance with the Davis-Bacon Act.<sup>9</sup>

The Davis-Bacon Act only applies to the Emergency Management Performance Grant Program,<sup>10</sup> Homeland Security Grant Program,<sup>11</sup> Nonprofit Security Grant Program,<sup>12</sup> Tribal Homeland Security Grant Program,<sup>13</sup> Port Security Grant Program,<sup>14</sup> Transit Security Grant Program,<sup>15</sup> Intercity Passenger Rail Program,<sup>16</sup> and Rehabilitation of High Hazard Potential Dams Program.<sup>17</sup> Unless otherwise stated in a program's authorizing statute, it *does not* apply to other FEMA grant and cooperative agreement programs, including the PA Program. .

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<sup>8</sup> See *id.*; 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>9</sup> 2 C.F.R. Part 200, Appendix II, § D.

<sup>10</sup> See section 611(j)(9) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub. L. No. 93-288 (codified as amended at 42 U.S.C. § 5196(j)(9)).

<sup>11</sup> See section 2008(b)(4)(B)(ii) of the Homeland Security Act of 2002, Pub. L. No. 107-296 (codified as amended at 6 U.S.C. § 609(b)(4)(B)(ii)) (citing to section 611(j)(9) of the Stafford Act).

<sup>12</sup> *Id.* The Davis-Bacon Act only applies to the Nonprofit Security Grant Program (NSGP) where that program is funded as a carve-out of the appropriations for the Homeland Security Grant Program (HSGP). See, e.g., Department of Homeland Security Appropriations Act, 2020, Pub. L. No. 116-93, Title III, Protection, Preparedness, Response, and Recovery, Federal Emergency Management Agency, Federal Assistance §§ 1-2. Compare *id.* with section 2009 of the Homeland Security Act of 2002 (6 U.S.C. § 609a) (authorizing NSPG as a stand-alone program where the Davis-Bacon Act does not apply, but as of the date of publication of this document, NSGP has not been funded as a standalone program).

<sup>13</sup> See section 2008(b)(4)(B)(ii) of the Homeland Security Act of 2002.

<sup>14</sup> See section 102 of the Maritime Transportation Security Act of 2002 (MTSA), Pub. L. No. 107-295 (codified as amended at 46 U.S.C. § 70107); 46 U.S.C. § 70107(b)(2). While the MTSA requires that PSGP construction activities are carried out consistent with section 611(j)(8) of the Stafford Act, a subsequent amendment to the Stafford Act by section 3 of Pub. L. No. 109-308 in 2006 redesignated the text of section 611(j)(8) to 611(j)(9). The cross-reference in the MTSA has not been updated.

<sup>15</sup> See section 1406 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Pub. L. No. 110-53 (6 U.S.C. § 1135) (applying the requirements of section 49 U.S.C. § 5307); 49 U.S.C. § 5333 (applying the Davis-Bacon Act to grants provided under 49 U.S.C. § 5307).

<sup>16</sup> See section 1513(h) of the 9/11 Act (6 U.S.C. § 1163(h)) (citing to 49 U.S.C. § 24312, which requires compliance with the Davis-Bacon Act).

<sup>17</sup> See section 8A(d)(2)(E) of the National Dam Safety Program Act (codified as amended at 33 U.S.C. § 467f-2(d)(2)(E)) (requiring compliance with 42 U.S.C. § 5196(j)(9), which is section 611(j)(9) of the Stafford Act that applies the Davis-Bacon Act).



## 4.2 Additional Requirements

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

- 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 non-federal entity must report all suspected or reported violations to the federal awarding agency.<sup>18</sup>
- Include a provision for compliance with the Copeland “Anti-Kickback” Act for all contracts subject to the Davis-Bacon Act.<sup>19</sup> See Required Contract Provisions, Section 5. Copeland Anti-Kickback Act in this Guide 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 NFE 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 NFEs contractor and any subcontractors are required to insert, or incorporate by reference, the clauses contained at 29 C.F.R. § 5.5(a)(1)-(10)<sup>20</sup> into any subcontracts.
- Follow the other requirements of the Davis-Bacon Act and implementing regulations.<sup>21</sup>

## 4.3 Required Language<sup>22</sup>

If applicable per the standard described above, the NFE must include the provisions at 29 C.F.R. § 5.5(a)(1)-(10) in full into all applicable contracts, and all applicable contractors must include these provisions in full in any subcontracts.<sup>23</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>24</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>18</sup> 2 C.F.R. Part 200, Appendix II, § D.

<sup>19</sup> 2 C.F.R. Part 200, Appendix II, § D.

<sup>20</sup> 29 C.F.R. § 5.5(a)(6).

<sup>21</sup> 40 U.S.C. §§ 3141-3144, 3146-3148; 29 C.F.R. Part 5.

<sup>22</sup> 29 C.F.R. § 5.5(a).

<sup>23</sup> 29 C.F.R. § 5.5(a)(1), (6).

<sup>24</sup> See *id.*; 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>25</sup>

## 5.1 Applicability

For all prime construction contracts above \$2,000, when the Davis-Bacon Act also applies,<sup>26</sup> NFEs must include a provision in contracts and subcontracts for compliance with the Copeland "Anti-Kickback" Act.<sup>27</sup> This requirement applies to all prime construction contracts above \$2,000 in situations where the Davis-Bacon Act also applies.<sup>28</sup> In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act. As described in section A.4 regarding the Davis-Bacon Act, this provision only applies to certain FEMA grant and cooperative agreement programs. Please reference that list discussed above. Of note, it does not apply to the PA Program.

## 5.2 Additional Requirements

If applicable, the NFE must do the following:

- Include a provision for compliance with the Copeland "Anti-Kickback" Act.<sup>29</sup> According to the Davis-Bacon Act implementing regulations, the requirements for the Copeland "Anti-Kickback" Act are incorporated into the required contract provision for the Davis-Bacon Act by reference.<sup>30</sup> Therefore, a separate contract provision is not necessary. However, the NFE 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 NFE must report all suspected or reported violations of the Copeland "Anti-Kickback Act" to FEMA.<sup>31</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. 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>32</sup>

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<sup>25</sup> See 29 C.F.R. § 3.1.

<sup>26</sup> See 2 C.F.R. Part 200, Appendix II, § D; 29 C.F.R. §§ 3.1, 3.3(c).

<sup>27</sup> 2 C.F.R. Part 200, Appendix II, § D.

<sup>28</sup> See 2 C.F.R. Part 200, Appendix II, § D; 29 C.F.R. § 3.3(c).

<sup>29</sup> See 29 C.F.R. § 3.11.

<sup>30</sup> 29 C.F.R. § 5.5(a)(5).

<sup>31</sup> See 2 C.F.R. Part 200, Appendix II, § D.

<sup>32</sup> See 29 C.F.R. § 3.4.

- Follow the other requirements of the Copeland “Anti-Kickback” Act and implementing regulations.<sup>33</sup>

## 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 also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

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>34</sup> all contracts awarded by the NFE of more than \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with statutory requirements on work hours and safety standards.<sup>35</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 hours 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>36</sup> These requirements *do not* apply to

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<sup>33</sup> 18 U.S.C. § 874; 40 U.S.C. § 3145; 29 C.F.R. Part 3.

<sup>34</sup> See 40 U.S.C. §§ 3701-3708.

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

<sup>36</sup> 41 C.F.R. Part 60-1.3.

the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.<sup>37</sup>

## 6.2 Additional Requirements

If applicable per the standard described above, the non-federal entity must include the provisions at 29 C.F.R. § 5.5(b)(1)-(4), verbatim, into all applicable contracts, and all applicable contractors must include these provisions, in full, into any subcontracts.<sup>38</sup>

In addition to the required language from 29 C.F.R. § 5.5(b)(1)-(4), 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 NFE 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)-(4) is provided here for ease of reference:

“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. 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 (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

**(3) Withholding for unpaid wages and liquidated damages.** The **(insert name of grant recipient or subrecipient)** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other

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<sup>37</sup> 29 C.F.R. Part 200, Appendix II, § E.

<sup>38</sup> 29 C.F.R. § 5.5(b)(1), (4).

federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(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 (b)(1) through (4) of this section.”

## 6.4 Suggested Language

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

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

- (1)** The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2)** Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.”

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

This 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>39</sup> and the NFE enters into any contract involving substitution of parties, assignment or performance of experimental, developmental, or research work under that funding agreement, then the NFE must comply with the requirements of 37 C.F.R. Part 401 and any implementing regulations issued by FEMA.

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<sup>39</sup> Funding agreement definition found under 37 C.F.R. § 401.2(a).

## 7.1 Applicability

This provision *does not* apply to all FEMA grant and cooperative agreement programs. NFEs 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

For contracts over \$150,000, contracts must contain a provision requiring contractors to comply with the Clean Air Act<sup>40</sup> and the Federal Water Pollution Control Act.<sup>41</sup> Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency (EPA).<sup>42</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.*

The contractor agrees to report each violation to the **(insert name of non-federal entity entering into the contract)** and understands and agrees that the **(insert name of the non-federal entity entering into the contract)** will, in turn, report each violation as required to

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<sup>40</sup> 42 U.S.C. §§ 7401-7671q. This also includes all applicable standards, orders, or regulations issued pursuant to the Clean Air Act.

<sup>41</sup> 33 U.S.C. §§ 1251-1387, as amended.

<sup>42</sup> 2 C.F.R. Part 200, Appendix II, § G.

assure notification to the Federal Emergency Management Agency (FEMA), 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 ([insert name of the non-federal entity entering into the contract](#)) and understands and agrees that the ([insert name of the non-federal entity entering into the contract](#)) will, in turn, report each violation as required to assure notification to the ([insert name of the pass-through entity, if applicable](#)), Federal Emergency Management Agency (FEMA), 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. Debarment and Suspension

NFEs contractors and subcontractors are subject to debarment and suspension regulations.<sup>43</sup> Applicable contracts and subcontracts must include a provision requiring compliance with debarment and suspension regulations.<sup>44</sup>

### 9.1 Applicability

The debarment and suspension 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>45</sup>

NFEs, even for procurements under \$25,000, must also comply with the regulation requiring non-state entities to only award contracts to responsible vendors.<sup>46</sup>

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<sup>43</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>44</sup> 2 C.F.R. § 180; 2 C.F.R. Part 200, Appendix II, § H; 2 C.F.R. § 3000.332.

<sup>45</sup> 2 C.F.R. § 180.220(b); 2 C.F.R. § 3000.220.

<sup>46</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, non-state entities must still ensure they are only awarding contracts to responsible vendors.

## 9.2 Additional Requirements

The debarment and suspension regulations restrict awards, subawards, contracts, and subcontracts with parties that are debarred, suspended, or otherwise excluded, or declared ineligible for participation in federal assistance programs and activities.<sup>47</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 debarred, suspended, or otherwise excluded, or declared ineligible under statutory or regulatory authority other than Executive Order 12549.<sup>48</sup> SAM Exclusions can be accessed at [www.sam.gov](http://www.sam.gov).<sup>49</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 nonprocurement transaction at either a primary or secondary tier.<sup>50</sup>

Specifically, a covered transaction includes the following contracts for goods or services under FEMA grant and cooperative agreement 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.
- It is a subcontract for \$25,000 or more.<sup>51</sup>

## 9.3 Suggested Language

The following provides a debarment and suspension clause. It also incorporates an optional method of verifying that contractors are not excluded or disqualified<sup>52</sup>:

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<sup>47</sup> See 2 C.F.R. Part 200, Appendix II, § H; 2 C.F.R. § 200.213. See also 2 C.F.R. Parts 180, 3000.

<sup>48</sup> See 2 C.F.R. Part 200, Appendix II, § H.

<sup>49</sup> 2 C.F.R. § 180.530.

<sup>50</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>51</sup> See 2 C.F.R. §§ 180.220, 3000.220.

<sup>52</sup> Per 2 C.F.R. § 180.300, non-federal entity about to enter into 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.



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

This certification is a material representation of fact relied upon by **(insert name of recipient/subrecipient/applicant)**. 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/applicant)**, 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

NFEs 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. Contractors that apply or bid for a contract for more than \$100,000 must also file the required certification regarding lobbying.<sup>53</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 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.

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<sup>53</sup> See 2 C.F.R. Part 200, Appendix II, § I (citing 31 U.S.C. § 1352); 44 C.F.R. § 18.110.



The required certification form is found in FEMA regulations.<sup>54</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 awarding agency.<sup>55</sup>

## 10.1 Applicability

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

## 10.2 Suggested Language

The following provides a sample contract clause:

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

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 federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. 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 awarding agency.”

## 10.3 Required Certification

### 10.3.1 REQUIRED CERTIFICATION LANGUAGE

If applicable, contractors must sign and submit the following certification to the NFE 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

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

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<sup>54</sup> See 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>55</sup> See 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://www.grants.gov/web/grants/forms/sf-424-family.html>.

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.C. 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."

### 10.3.2 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

An NFE that is a state agency or an agency of a political subdivision of a state, and the NFE's contractors must comply with Section 6002 of the Solid Waste Disposal Act.<sup>56</sup> Applicable NFEs must include a contract provision requiring compliance with this requirement.<sup>57</sup> This includes contracts awarded by a state agency or political subdivision of a state and its contractors for certain items, as designated by the EPA, with a purchase price greater than \$10,000.<sup>58</sup> Indian Tribal Governments and nonprofit organizations are not required to comply with this provision. Additional requirements are listed below.

### 11.1 Applicability

This required contract provision applies to all procurements over \$10,000 made by a state agency or an agency of a political subdivision of a state and its contractors.

### 11.2 Additional Requirements

The requirements include:

- Procuring only items designated in EPA guidelines<sup>59</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>60</sup>

### 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—

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<sup>56</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>57</sup> See 2 C.F.R. Part 200, Appendix II, § J (citing 2 C.F.R. § 200.323).

<sup>58</sup> See 2 C.F.R. Part 200, Appendix II, § J; 2 C.F.R. § 200.323; 40 C.F.R. Part 247.

<sup>59</sup> 40 C.F.R. Part 247.

<sup>60</sup> 42 U.S.C. § 6962; 2 C.F.R. § 200.323.

Competitively within a timeframe providing for compliance with the contract performance schedule;

Meeting contract performance requirements; or

At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

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

## 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 \(FY2019 NDAA\)](#) 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 (Interim), 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 into, 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 into, 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

For purchases in support of FEMA declarations and awards issued on or after 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>61</sup> FEMA strongly encourages the use of this contract clause for any contracts where

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<sup>61</sup> 2 C.F.R. Part 200, Appendix II, § K (citing 2 C.F.R. § 200.216).

FEMA funding will be used regardless of whether the funding is from FEMA declarations or awards issued on or after November 12, 2020.

## 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 (Interim), 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 into, 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 into, 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
    - (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:
    - i. Are *not used* as a substantial or essential component of any system; and
    - ii. Are *not used* as critical technology of any system.
  - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- (d) *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

As appropriate, and to the extent consistent with law, NFEs should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products.<sup>62</sup>

### 13.1 Applicability

For purchases in support of FEMA declarations and awards 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>63</sup>

### 13.2 Suggested Language

The following provides a sample contract clause:

“Domestic Preference for Procurements

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

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.

*Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”

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<sup>62</sup> See 2 C.F.R. § 200.322.

<sup>63</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.

# FEMA Recommended Contract Provisions

Appendix II to Part 200 authorizes FEMA to require or recommend additional provisions for NFE contracts. Therefore, FEMA recommends the following:

## 1. Access to Records

NFEs and their contractors and subcontractors must give the Department of Homeland Security (DHS) and FEMA access to records associated with their awards during the federally required record retention period and as long as the records are retained.<sup>64</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>65</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>66</sup>

### 1.1 Suggested Language for All Procurements

The following provides a sample contract clause:

“The Contractor agrees to provide **(insert non-federal entity), (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>64</sup> 2 C.F.R. §§ 200.334, 200.337.

<sup>65</sup> See DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

<sup>66</sup> See 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 non-federal entity)** 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>67</sup>

### 2.1 Applicability

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 NFE 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

Recipients must obtain permission before using the DHS seal(s), logos, crests, reproductions of flags, or likenesses of DHS agency officials.<sup>68</sup>

### 3.1 Applicability

FEMA recommends that all NFEs include in their contracts a statement that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without FEMA’s pre-approval.

### 3.2 Suggested Language

The following provides a sample contract clause:

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<sup>67</sup> See 2 C.F.R. § 200.403.

<sup>68</sup> See DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

“The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The contractor shall include this provision in any subcontracts.”

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

The NFEs and its contractors are required to comply with all federal laws, regulations, and executive orders. Additionally, recipients 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>69</sup>

### 4.1 Applicability

FEMA recommends that all NFEs include in their contracts 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.

### 4.2 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 NFE and its contractor. Therefore, FEMA is not subject to any obligations or liable to any party for any matter relating to the contract between an NFE and its contractor.<sup>70</sup>

### 5.1 Applicability

FEMA recommends that the NFE 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.

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<sup>69</sup> See DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

<sup>70</sup> See, e.g., 2 C.F.R. § 200.318(k) (stating that the NFE alone is responsible for the settlement of all contractual and administrative issues arising out of procurements).

## 5.2 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 non-federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

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

NFEs must comply with the requirements of the False Claims Act which prohibits submitting false or fraudulent claims for payment to the federal government.<sup>71</sup> As a part of the contract with a NFE, contractors must acknowledge that 31 U.S.C. Chap. 38, regarding administrative remedies for false claims and statements,<sup>72</sup> applies to their actions under their contract.<sup>73</sup>

### 6.1 Applicability

FEMA recommends that contracts include a provision prohibiting making false or fraudulent claims to the federal government.

### 6.2 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. Affirmative Socioeconomic Steps

For procurements under FEMA declarations and awards issued on or after November 12, 2020, all NFEs are required to take the six affirmative steps to ensure use of small and minority businesses, women’s business enterprises, and labor surplus area firms when possible. One of the six steps is to require the prime contractor, if subcontracts are to be let, to take the five other affirmative steps,<sup>74</sup> For procurements under FEMA declarations and awards issued between December 26, 2014, and November 12, 2020, this requirement *only* applies to non-state entities.

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<sup>71</sup>31 U.S.C. §§ 3729-3733.

<sup>72</sup> 31 U.S.C. §§ 3801-3812 (detailing the administrative remedies for false claims and statements made).

<sup>73</sup> See DHS Standard Terms and Conditions, available at <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

<sup>74</sup> See 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).

## 7.1 Applicability

FEMA recommends that applicable NFEs include in their contracts a statement requiring prime contractors, if subcontracts are to be let, to take the required affirmative socioeconomic steps.

## 7.2 Suggested Language

The following provides a sample contract clause:

“If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.”

# 8. Copyright and Data Rights

An NFE is required by 2 C.F.R. § 200.315 to provide certain licenses with respect to copyright and data to the federal awarding agency. 2 C.F.R. § 200.315(b) provides to the federal awarding agency “a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use [any work that is subject to copyright] for federal purposes, and to authorize others to do so.” 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 an NFE enters into a contract requiring a contractor or subcontractor to produce copyrightable subject matter and/or data for the NFE under the award, the NFE should include appropriate copyright and data licenses to meet its obligations under 2 C.F.R. § 200.315(b) and (d), respectively. 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>75</sup>

## 8.2 Suggested Language

The following provides a sample contract clause:

“License and Delivery of Works Subject to Copyright and Data Rights”

The Contractor grants to the **(insert name of the non-federal entity)**, 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

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<sup>75</sup> See 17 U.S.C. § 102.

such data and grant to the **(insert name of the non-federal entity)** 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 non-federal entity)** 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 non-federal entity).**”

# Appendix

## Acronyms

**AFG:** Assistance to Firefighter Grants

**CAGE:** Commercial and Government Entity

**CFR:** Code of Federal Regulations

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

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

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

**FEMA:** Federal Emergency Management Agency

**GPD:** Grant Programs Directorate

**HQ:** FEMA Headquarters

**NDAA:** National Defense Authorization Act

**NFE:** Non-Federal Entity

**NOFO:** Notice of Funding Opportunity

**OMB:** Office of Management and Budget

**PA:** Public Assistance Program

**PNP:** Private Non-Profit

**PDAT:** Procurement Disaster Assistance Team

**SAM:** System for Award Management

**SAT:** Simplified Acquisition Threshold

**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>76</sup> A contract, for the purposes of this Guide, does not mean a federal award or subaward.
- **Contractor:** *Contractor* means an entity that receives a contract.<sup>77</sup>
- **Cooperative agreement:** A legal instrument of financial assistance between a federal awarding agency or pass-through entity and a non-Federal entity, that is consistent with 31 U.S.C. 6302-6305.<sup>78</sup>
- **Federal awarding agency:** The federal agency that provides a federal award directly to a non-Federal entity (NFE). The federal awarding agency discussed in this Guide is FEMA.
- **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>79</sup> Among other things:
  - FEMA administers its programs and carries out its activities through its headquarters offices in Washington, D.C.; ten 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 for on a regular basis to increase the Nation's preparedness, readiness and resilience to all hazards. These assistance programs are typically available to NFEs 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 awarding 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 NFEs that receive FEMA financial assistance, consistent with the requirements at 2 C.F.R. Part 200.

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

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

<sup>78</sup> 2 C.F.R. § 200.1 *Cooperative agreement*.

<sup>79</sup> See Homeland Security Act of 2002, Pub. L. No. 107-296, § 503 (2002) (codified as amended at 6 U.S.C. § 313).

- **Federal award:** The financial assistance that an NFE receives either directly from a Federal awarding agency or indirectly from a pass-through entity.<sup>80</sup> In this Guide, the term is used interchangeably with “FEMA Award,” “grant,” and “financial assistance.”
- **Grant agreement:** A legal instrument of financial assistance between a Federal awarding agency or pass-through entity and an NFE that, consistent with 31 U.S.C. §§ 6302, 6304: Is used to transfer anything of value from the Federal awarding agency or pass-through entity to the NFE 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.
- **Indian tribe (or “federally recognized Indian tribe”):** *Indian tribe* means 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 (25 U.S.C. 450b(e)).<sup>81</sup> See annually published [Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services](#). For the purposes of this Guide, used interchangeably with “Indian Tribal government”.
- **Local government:** *Local government*<sup>82</sup> means 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

<sup>80</sup> 2 C.F.R. § 200.1 *Federal award*.

<sup>81</sup> 2 C.F.R. § 200.1 *Indian tribe*.

<sup>82</sup> 2 C.F.R. § 200.1 *Local government*.



- **Non-Federal Entity (NFE):** A state, local government, Indian tribe, Institution of Higher Education, or eligible private nonprofit organization that carries out a federal award as a recipient or subrecipient.<sup>83</sup> In this Guide, NFEs include state and non-state entities.
- **Non-State Entity:** A *non-state entity* is an eligible FEMA award recipient or subrecipient that does not meet the definition of a “state under 2 CFR 200.1.
- **Nonprofit organization** (in this Guide, it is used interchangeably with “Private Nonprofit Organization or PNP”): *Nonprofit organization*<sup>84</sup> means any corporation, trust, association, cooperative, or other organization, not including Institutions of Higher Education, that:
- **Recipient:** An NFE that receives a federal award directly from a Federal awarding agency to carry out an activity under a federal program. The term recipient does not include subrecipients.<sup>85</sup> A recipient is responsible for administering the federal award in accordance with applicable federal laws. Examples of recipients include state, Indian tribe, or territorial governments.
- **Pass-through entity:** A recipient that provides a subaward to a subrecipient to carry out part of a federal program is known as the pass-through entity.<sup>86</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:** A *political subdivision* means the unit of government that the State determines to have met the State’s legislative definition of a political subdivision.<sup>87</sup>
- **Simplified Acquisition Threshold (SAT):** *Simplified acquisition threshold* means the dollar amount below which an NFE may purchase property or services using small purchase methods. NFEs adopt small purchase procedures to expedite the purchase of items costing less than the simplified acquisition threshold. The federal SAT is set by the FAR at 48 C.F.R. Subpart 2.1 (Definitions) and in accordance with [41 U.S.C. 1908](#).<sup>88</sup> As of June 2018, the federal SAT is \$250,000,<sup>89</sup> but is periodically adjusted for inflation.
- **State:** *State* means 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”.

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<sup>83</sup> 2 C.F.R. § 200.1 *Non-Federal entity*.

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

<sup>85</sup> 2 C.F.R. § 200.1 *Recipient*.

<sup>86</sup> 2 C.F.R. § 200.1 *Pass-through entity*.

<sup>87</sup> 40 C.F.R. § 35.6015(a) *Political subdivision*

<sup>88</sup> 2 C.F.R. § 200.1 *Simplified acquisition threshold*.

<sup>89</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>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.

- **Subaward:** An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.<sup>91</sup> In this Guide, the term is used interchangeably with “subgrant.”
- **Subrecipient:** An NFE that receives a subaward from a pass-through entity to carry out part of a federal program but does not include an individual that is a beneficiary of such program.<sup>92</sup>
- **Uniform Rules:** The series of regulations found at 2 C.F.R. Part 200 that establishes *Uniform Administrative Requirements, Cost Principles, and Audit Requirements* for federal awards to NFEs. The *Uniform Rules* are referred to by several names throughout the remaining portions of this Guide. Some of the names include standards, requirements, rules, and regulations.

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

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