Mississippi Department of Marine Resources

SOLICITATION:	Request for Quote Formal (RFQF) Reverse Auction
SOLICITATION NUMBER:	3140004294
DESCRIPTION:	Furnish and Deploy Approved Cultch Material
ISSUE DATE:	July 16, 2025
BID CLOSING LOCATION:	Mississippi Department of Marine Resources 1141 Bayview Avenue Biloxi, Mississippi 39530
BID COORDINATOR:	Rick Kinnard (228) 523-4147 procurement@dmr.ms.gov
CLOSING DATE AND TIME:	August 19, 2025, 2:00 PM CST

SECTION I GENERAL CONDITIONS – REVERSE AUCTIONS

ALL BIDS SUBMITTED SHALL BE IN COMPLIANCE WITH ALL CONDITIONS SET FORTH HEREIN. THE BID PROCEDURES FOLLOWED BY THIS OFFICE WILL BE IN ACCORDANCE WITH THESE CONDITIONS. THEREFORE, ALL BIDDERS ARE URGED TO READ AND UNDERSTAND THESE CONDITIONS PRIOR TO SUBMITTING A BID.

1. DEFINITIONS

The use of the word "agency" in any Bid Invitation solicitation or specification shall be intended to mean state agencies only. The words "governing authority" when used shall be intended as meaning city, county or other local entities.

2. PREPARATION OF BIDS

2.1. Bids and/or Quotes may be submitted through the State of Mississippi's e-procurement system (MAGIC) or in person to the Mississippi Department of Marine Resources, Procurement Department ("MDMR"). Paper bids are allowed. All prices and notations must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed, in ink, by the person signing bid.

2.2. To submit bids electronically, bidders must ensure they are registered in the MAGIC system and have received a login, password, and supplier number and that all technical requirements have been met.

2.3. If a bidder is unwilling or unable to participate through MAGIC, an MDMR representative can enter the Vendor's bid(s) manually (i.e. Surrogate bidding).

2.4. Bidders participating in person by surrogate bidding must so indicate in their response to the initial Request for Quote-Formal (RFQF).

2.5. Failure to examine any drawings, specifications, and instructions will be at bidder's risk.

2.6. Price each item separately. Unit prices shall be shown. Bid prices must be net.

2.7. It is understood that reference to available specifications shall be sufficient to make the terms of such specifications binding on the bidder.

2.8. Bidders must furnish all information requested in the bid specifications. Further, when required, each bidder must submit for bid evaluation cuts, sketches, descriptive literature and technical specifications covering the product offered. Reference to literature submitted with a previous bid or on file with MDMR will not satisfy this provision.

2.9. Samples of items, when requested, must be furnished free of expense, and if not destroyed in testing will, upon request, be returned at the bidder's expense. Request for the return of samples must be made within ten (10) days following opening bids. Each individual sample must be labeled with bidder's name, manufacturer's brand name and number, State of Mississippi commodity number, bid number and item reference.

2.10. Time of performance. The number of calendar days in which delivery will be made after receipt of order shall be indicated in the bid specifications.

3. BID SUBMISSION

3.1. When submitting a bid electronically, the authorized signature may be typed or be an electronic signature.

3.2. Bids and modifications or corrections received after the closing time specified will not be considered.

3.3. When submitting the response to the RFQF in MAGIC, bidder must ensure all questions have been answered within the RFQF and all proposed items in the bid have a response.

3.4. Bidders submitting paper responses should submit responses to the MDMR by the response deadline. The bid package must be sealed and must contain the following:

- Specifications Checklist (Attachment A)
- Bid Cover Sheet (Attachment B)
- Bid Form (Attachment C)
- Bidder Checklist (Attachment D)

4. ACCEPTANCE OF BIDS

MDMR reserves the right to reject any and all bids, to waive any informality in bids and unless otherwise specified by the bidders, to accept any items on the bid. The State reserves the right to modify or cancel in whole or in part its Invitation for Bids.

If a bidder fails to state the time within which a submitted bid will expire, it is understood and agreed that the MDMR shall have 60 days to accept.

5. ERROR IN BID

If a vendor is participating in a Live Auction, the vendor can notify MDMR in the event of an erroneous bid via the chat message feature. Erroneous bids, where the mistake is apparent to MDMR, may be deleted during the live auction.

6. SPECIAL DISCOUNT PERIOD

Time in connection with a special discount offered will be computed from date of delivery at destination or from the date correct invoices are received, if the latter date is later than the date of delivery. Cash discounts will not be considered in the award process.

7. AWARD

7.1. Contracts and purchases will be made or entered into with the lowest responsible bidder meeting specifications, except as otherwise specified in the bid specifications. Where more than one item is specified in the specifications, MDMR reserves the right to determine the low bidder either on the basis of the individual item(s) or on the basis of all

items included in its Invitation for Bids, or as expressly provided in MDMR's Invitation for Bids.

7.2. Unless the bidder specified otherwise in the bid, MDMR may accept any item or group of items of any kind.

7.3. A written purchase order or contract award furnished to the successful bidder within the time of acceptance specified in the Invitation for Bid results in a binding contract without further action by either party. The contract shall consist solely of these General Conditions, the Instructions and Special Conditions, the successful bidder's bid, and the written purchase order or contract award. The contract shall not be assignable in whole or in part without the written consent of MDMR.

7.4. Suppliers should be advised that no award will automatically result from a reverse auction, and that the purchasing entity will review the results of the auction and make a determination in a timely manner.

8. INSPECTION

Final inspection and acceptance or rejection may be made at delivery destination, but all materials and workmanship shall be subject to inspection and test at all times and places, and when practicable. The right is reserved by the MDMR to reject articles which contain defective material and workmanship.

Rejected material shall be removed by and at the expense of the contractor promptly after notification or rejection. Final inspection and acceptance or rejection of the materials or supplies shall be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the State or any subdivision thereof for such materials or supplies as are not in accordance with the specification. In the event necessity requires the use of materials or supplies not conforming to the specification, payment therefore may be made at a proper reduction in price.

9. TAXES

The State is exempt from federal excise taxes and state and local sales or use taxes and bidders must quote prices which do not include such taxes. Exemption certificates will be furnished upon request. Contractors making improvements to, additions to or repair work on real property on behalf of the State are liable for any applicable sales or use tax on purchase of tangible personal property for use in connection with the contracts. Contractors are likewise liable for any applicable use tax on tangible personal property furnished to them by the State for use in connection with their contracts.

10. GIFTS, REBATE, GRATUITIES

10.1. Acceptance of gifts from bidders is prohibited. No officer or employee of the MDMR, nor any head of any state department, institution or agency, nor any employee of any state department, institution or agency charged with responsibility of initiating requisitions, shall accept or receive, directly or indirectly, from any person, firm or

corporation to whom any contract for the purchase of materials, supplies, or equipment for the State of Mississippi may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future rewards or compensation.

10.2. Bidding by state employees is prohibited. It is unlawful for any state official or employee to bid on, or sell, or offer for sale, any merchandise equipment or material, or similar commodity to the State during the tenure of his or her office or employment, or for the period prescribed by law thereafter, or to have any interest in the selling of the same to the State.

11. BID INFORMATION

Bid information and documents may be examined pursuant to the Mississippi Public Records Act of 1983, MS Code 25-61-1 et seq.

12. PRECEDENCE

Bids shall be made and the contract shall be entered into in accordance with the General Conditions as hereinafter amended and modified. Should a conflict exist between the General Conditions and the Instructions and Special Conditions, the Instructions and Special Conditions shall take precedence.

13. COMPETITION

There are no federal or state laws that prohibit bidders from submitting a bid lower than a price or bid given to the U.S. Government. Bidders may bid lower than U.S. Government contract price without any liability as the State is exempt from the provisions of the Robinson-Patman Act and other related laws. In addition, the U.S. Government has no provisions in any of its purchasing arrangements with bidders whereby a lower price to the State must automatically be given to the U.S. Government.

14. WAIVER

MDMR reserves the right to waive any General Condition, Special Condition, or minor specification deviation when considered to be in the best interest of the State.

15. CANCELLATION

Any contract or item award may be canceled with or without cause by the State with the giving of 30 days written notice of intent to cancel. Cause for the State to cancel may include, but is not limited to, cost exceeding current market prices for comparable purchases; request for increase in prices during the period of the contract; or failure to perform to contract conditions. The Contractor will be required to honor all purchase orders that were prepared and dated prior to the date of expiration or cancellation if received by the Contractor within a period of 30 days following the date of expiration or cancellation. Cancellation by the State does not relieve the Contractor of any liability arising out of a default or nonperformance. If a contract is canceled by the State due to a Contractor's request for increase in prices or failure to perform,

that Contractor will be disqualified from bidding for a period of 24 months. The Contractor may cancel a contract for cause with the giving of a 30-day written notice of intent to cancel. Cause for the Contractor to cancel may include, but is not limited to, the item(s) being discontinued and/or unavailable from the manufacturer.

16. SUBSTITUTIONS DURING CONTRACT

During the term of a contract, if adequate documentation is provided that supports the claim that the contract item(s) are not available, items which meet the minimum specifications may be substituted if approved by MDMR and the substitutions are deemed to be in the best interest of the State.

17. APPLICATION

It is understood and agreed by the bidder that any contract entered into as a result of this Invitation for Bids is established for use by state agencies and all purchases made by these agencies for products included under the provisions of the contract shall be purchased from the bidder receiving the award unless exempt by special authorization from the MDMR.

Under the provisions of Section 31-7-7 Mississippi Code of 1972, Annotated, the prices offered herein shall be extended to the governing authorities. However, the governing authorities, by provisions of Section 31-7-12 Mississippi Code, may purchase products covered by state contracts from any source offering an identical product at a price that does not exceed the state contract price.

Employees of the MDMR have acted exclusively as agents of the State for the award, consummation, and administration of the contract and are not liable for any performance or nonperformance by the state agencies that utilize the contract.

18. ADDENDA

Addenda modifying plans and/or specifications may be issued if time permits. No addendum will be issued within a period of two (2) working days prior to the time and date set for the bid opening. Should it become necessary to issue an addendum within the two (2) day period prior to the bid opening, the bid date will be reset to a date not less than five (5) working days after the date of the addendum, giving bidders ample time to comply with the addendum. When replying to a bid request on which an addendum has been issued, and the specifications require acknowledgement, the bid shall indicate that provisions of the addendum have been noted and that the bid is being offered in compliance therewith. Failure to make this statement may result in the bid being rejected as not being in accordance with the revised specifications or plans.

19. NONRESPONSIVE BIDS

Nonresponsive bids will not be considered. A non-responsive bid is considered to be a bid that does not comply with the minimum provisions of the specification. Any bidder found to repeatedly offer alternated products that are not compliant with specifications in an attempt to obtain a contract on the basis of pricing only will be disqualified from bidding for a period of 24 months.

20. SPECIFICATION CLARIFICATION

It shall be incumbent upon all bidders to understand the provisions of the specifications and to obtain clarification prior to the time and date set for the live auction or bid opening. Such clarification will be answered only in response to a written request submitted in the specified amount of time set by the MDMR. The MDMR reserves the right to specify a time frame in which clarification request shall be made.

21. PRE-QUALIFICATION PROCESS

21.1. The purpose of the RFQF is to advertise the competitive procurement for solicitation of formal quotes from potential bidders to participate in the Reverse Auction. The MDMR will be responsible for defining product categories, adding bidders, and publishing all bid related documents to the procurement portal. Once the responses have been received and the Opening Date has been reached, the MDMR will review the submissions to qualify bidders and determine a starting price for reverse auction items.

21.2. The Invitation for Bids/RFQF shall be advertised in accordance with Section 3.106.05.4 of the Mississippi Procurement Manual. The MDMR shall advertise once each week for two (2) consecutive weeks in accordance with Section 31-7-13(c)(i)(1) of the Miss. Code Ann. Responses to the RFQF will be due no earlier than the 8th working day after the last day of advertisement.

21.3. The initial response to the Invitation for Bids shall include a proposed product, including specifications and/or samples, for the purchasing entity to evaluate and determine responsiveness to requirements. Responses to the RFQF will be reviewed by the MDMR for responsiveness to specifications. Once a supplier's product is determined to be responsive, the supplier may participate in the reverse auction. Price quotes received will be evaluated in conjunction with other market research to determine the starting price for the Auction.

21.4. The MDMR will accept bidder responses in MAGIC who have qualified meeting RFx specifications. Bidders not meeting specifications will not be allowed to participate in the Auction.

21.5. Once qualified, the MDMR will notify the vendor of Qualification and the date of the Live Auction via email. After receiving the confirmation email, bidders should review/ensure technical requirements for MAGIC have been met or confirm participation in person.

21.6. It is requested that bids be submitted on the basis of statewide distribution. Contractors must maintain adequate distribution capabilities and adequate stock of all items to insure prompt delivery.

22. FIRM BID PRICE

Prices accepted from bidder submissions shall be firm for the term of the contract except that the State shall receive the benefit of any price decrease in excess of five (5) percent. The

contractor must provide written price reduction information within ten (10) days of its effective date.

23. CONTRACT EXTENSION

23.1 Automatic contract renewals or extensions are not allowed. Contracts must be extended or renewed with the proper documents signed or approved by the MDMR.

23.2 The MDMR reserves the right to extend the term of a contract, when necessary, to continue a source of supply whenever new or replacement contracts are not completed prior to the expiration date. Such extensions are dependent upon agreement of the Contractor.

24. SUSPENSION AND DEBARMENT

By submitting a bid, the bidder is certifying that neither the bidder nor any potential subcontractors are debarred or suspended or are otherwise excluded from or ineligible for participation in federal assistance programs.

25. ASSIGNMENT

The Contractor shall not assign or subcontract in whole or in part, its right or obligations under this agreement without prior written consent of the MDMR.

26. INDEMNIFICATION

Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the State of Mississippi, its Commissioners, Board Members, officers, employees, agents, and representatives from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by Contractor's and/or its partners, principals, agents, employees, and/or subcontractors in the performance of or failure to perform this Agreement. In the State's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State; Contractor shall be solely liable for all reasonable costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc., without the State's concurrence, which the State shall not unreasonably withhold.

27. LIVE AUCTION

27.1. Notification of Auction Start date and time will be sent via email to qualifying bidders. If a bidder is unwilling or unable to participate through MAGIC, a representative from the MDMR can enter the Vendor's bid(s) manually (i.e. Surrogate Bidding). **If a bidder elects to participate via Surrogate Bidding, the bidder must be physically present at the public bidding location, with the means to submit written bids for each offer made and signed by an authorized agent of the Vendor**. A Bid Form will be provided

to the Vendor at the start of the auction. This form will not be returned to the bidder but will become a part of the Bid Documentation for Evaluation by the MDMR.

27.2. The Auction time may be extended at the discretion of the MDMR. Examples of reasons to extend an auction include, but are not limited to, technical difficulties experienced by the MDMR or bidder, the need to pause the Auction, or bids placed within the last few moments of bidding.

27.3. Communication with bidders participating electronically during the Auction may be done via the Live Chat Feature. The MDMR has the ability to send messages to particular bidders or broadcast to all bidders. Bidders can ONLY communicate with the MDMR and not other bidders.

27.4. Bidders may be removed from a Live Auction for improper conduct, including but not limited to profanity, threats, consistently entering erroneous or extremely low bids, or other disruptive behavior.

28. THE TIMING OF THE AUCTION (RA REQUIREMENT).

The Invitation for Bids shall be advertised in accordance with Section 3.106.05.4 of the Mississippi Procurement Manual, and the deadline to receive initial responses by suppliers shall be due no earlier than the 8th working day after the last day of advertisement. After such deadline has passed, the submissions shall be taken under advisement for prequalification. The reverse auction should occur only after the purchasing agent has had sufficient time to prequalify the suppliers. Such anticipated time shall be included in the Invitation for Bids Packet; however, the purchasing agent should reserve the right to extend the auction date if necessary to complete prequalification.

29. QUOTES (RA REQUIREMENT)

Responding suppliers must provide a quote with the initial response. Quotes are utilized by the purchasing agent to determine market pricing and set the auction parameters (e.g., Start Price).

30. FORCE MAJEURE

If the MDMR is closed for any reason, including but not limited to: acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"), which closure prevents the opening of bids at the advertised date and time, all bids received shall be publicly opened and read aloud on the next business day that the agency shall be open and at the previously advertised time. The new date and time of the bid opening, as determined in accordance with this paragraph, shall not be advertised, and all bidders, upon submission of a bid proposal, shall be deemed to have knowledge of and shall have agreed to the provisions of this paragraph. Bids shall be received by the agency until the new date and time of the bid opening as set forth herein. The MDMR shall not be held responsible for the receipt of any bids for which the delivery was attempted and failed due to the closure of the MDMR as a result of a Force Majeure Event. Each bidder shall be required to ensure the delivery and receipt of its bid by the MDMR prior to the new date and time of the live auction or bid opening.

SECTION II

INSTRUCTIONS AND SPECIAL CONDITIONS

1. PURPOSE

The Mississippi Department of Marine Resources (MDMR) manages the coastal resources for the State of Mississippi through the authority of the Commission on Marine Resources. We are dedicated to enhancing, protecting and conserving the marine interests of Mississippi for present and future generations. We manage all marine life, public trust wetlands, adjacent uplands and waterfront areas for the long-term recreational, educational, commercial, and economic benefit of everyone.

MDMR is seeking bids for the furnishing and deploying of approved cultch material (sometimes referred to herein as "cultch") The deployment of cultch material is for the enhancement of oyster beds in the Mississippi Sound. The scope of work to be performed and the deliverables required under the contract are also set forth herein.

2. SCOPE OF SERVICES

The Contractor will be responsible for furnishing and deploying cultch material by barge to the Western Mississippi Sound and Biloxi Bay. Bids should include the unit price per cubic yard of cultch material, total cubic yards of cultch material and overall price (unit price per cubic yard multiplied by total cubic yards) which will include deployment. The price of this project will not exceed $1,000,000.00.

The scope of work for the contract will include, but is not limited to, the following:

- The Contractor will plant cultch in specified areas which will be designated by MDMR personnel in advance of the day of the cultch deployment. The contractor will give the MDMR Project Manager at least twenty-four (24) hours' notice of cultch deployment.
- Types of approved cultch material are course aggregate (#4 stone) or oyster shell.
- Cultch will be clean and free of any hazardous substances or excessive dust.
- Bidders proposing any non-domestic or non-traditional cultch material must include a marked 5-gallon representative sample of the cultch material at the time of the bid submittal. This sample will be used to determine the cultch material's suitability for the project purpose.
- The Contractor will guarantee that all cultch is clean and no more than 5% of the cultch material, by volume, may consist of fragments, pieces, fines, or shells smaller than ¾" to 1 ½" (three-fourths inch to one and one-half inch) in diameter. For cultch material other than shell, the size should be in accordance with the American Society for Testing and Materials ("ASTM") C33 specifications, size #4 stone or equivalent, with no more than 5% by volume of the cultch material out of the ASTM size #4 stone specification. The MDMR reserves the right to have its representatives inspect all cultch material at the loading site before cultch material is accepted and each barge-load will be monitored at the deployment site. All small particles in excess of the allowed 5%, or otherwise outside of the specifications listed above, will be deducted from the total project cost.

- Cultch material will be transported to deployment areas on deck barges that are loaded to conform to the depth of the water at the deployment site. Tugboats and barges (loaded) will not draw more than five (5) feet of water. The deployment will be performed utilizing a grid pattern to accomplish a uniform distribution of the cultch material. To ensure proper maneuverability, the tugboat used to distribute the cultch material will not push or pull more than two (2) loaded barges at one time during deployment. MDMR employees will be onsite to monitor compliance with the terms of the contract. This will include, among other aspects, the even distribution of cultch material during the deployment at locations specified by the MDMR. The Contractor understands that this project consists of multiple deployment sites and irregular shapes ranging from 5 acres to 75 acres.
- The Contractor is responsible for ensuring that the minimal clearances are met.
- The MDMR will measure cultch material on board the barges prior to deployment and will calculate the total cubic yards of material on each barge (See Attachment E).
- Cultch material will be washed overboard using a minimum of three (3) high-pressure water hoses having not less than 90 psi. pressure on a 1.25-inch nozzle or greater. This high-pressure jet of water is directed against the cultch in a manner to spray it in a thin, even layer for a distance of 20 to 50 feet from the barge. Throughout the operation, the barge will be maneuvered over the deployment location in a fashion so that cultch will cover the entire area to the needed density as determined by authorized MDMR personnel.
- At no time, will the spray barge and tug pass over previously deployed areas unless authorized to do so by MDMR personnel.
- The barge deploying the cultch material must maintain a speed no less than one (1) knot per hour while actively deploying cultch material.
- Hopper barges must stage in a deep-water area and not over public oyster reefs. At no time will the hopper barges be allowed to pass over or anchor over existing public oyster reefs.
- The diagrams found in Attachments E, F and G illustrate the procedure and necessary equipment for deployment. The Contractor must have equipment and personnel capable of unloading two hundred and fifty (250) cubic yards of suitable cultch material within one (1) hour upon arrival at the site and have sufficient equipment and crew capable of handling a minimum of one thousand two hundred and fifty (1250) cubic yards per day. The use of multiple pumps and spray nozzles will increase the rate of unloading proportionately. Multiple pumps, spray nozzles and hoses, three or more in number, will unload a two hundred and fifty (250) cubic yard barge in approximately one (1) hour or less. This system is highly recommended.
- The Contractor must understand and agree that the deadlines in this agreement are essential to the successful planting of the cultch and must be done at a time when oyster spat is present to yield the best results, therefore, the Contractor agrees to adhere to the specified timeline.
- The Contractor will move and deploy cultch material between **October 1, 2025 and June 30, 2026, with actual deployment dates to be determined by the MDMR.**

- The Contractor agrees to commence delivery within the timeframe as stated above in this RFQF and to continue delivery without delay, unless otherwise notified by the MDMR personnel monitoring this project, or upon successful deployment of the contractual amount of cultch material.
- All deployment activities must be conducted during daylight hours Monday through Friday. No deployments may be made on weekends, or during state holidays.
- In the event that weather or other environmental conditions are deemed unsuitable for deployment by the MDMR, the MDMR reserves the right to either cancel or postpone the deployment. There will be **no** deployment activity during a Small Craft Advisory or greater.
- The Contractor must retrieve any and all debris expelled during deployment. If debris is present, the Contractor must provide vessel and personnel to achieve debris collection. The debris collection vessel must be capable of communicating with the captain in charge of the deployment barge. All personnel must wear a United States Coast Guard approved personal flotation device while on deck during deployment and while retrieving any debris.
- All equipment used on this project by the Contractor must be in compliance with Occupational Safety and Health Administration (OSHA) and United States Coast Guard requirements. The successful bidder may be required to provide MDMR with documents evidencing this compliance.
- Before a contract is signed, the successful bidder will be required to designate the exact equipment that will be used in the performance of the work and MDMR personnel may inspect the equipment which may be accepted or rejected because it is not considered to be satisfactory for the purpose of this project. The inspection will be conducted at a date and time mutually agreed upon between the successful bidder and the MDMR representative. Failure to comply with this requirement may result in rejection of the bid.
- The contractor will also provide a functioning United States Coast Guard approved marine sanitation device (MSD) on either the pump barge or the tugboat.

3. DELIVERABLES

The deliverables are to include:

- Furnishing, delivery, and deployment of approved cultch material;
- Contractor will move and deploy cultch material between **October 1, 2025 and June 30, 2026, with actual deployment dates to be determined by the MDMR.**

4. MINIMUM REQUIRED QUALIFICATIONS

The minimum qualifications for bidding include:

- Bidders must have prior experience furnishing and deploying cultch material. Bidders must submit at least one prior project of comparable scope they have successfully completed which demonstrates the required experience, including a description of the work performed and one (1) reference (customer for the project) with contact name, phone number, and

email address. Bidders may submit more than one project but are not required to do so. (See Attachment B); and,

- By submitting a bid, the bidder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision, agency of the State of Mississippi, or any other state, and that it is not an agent of a person or entity that is currently so debarred.
- Bidders are required to be electronically registered in Mississippi's Accountability System for Government Information and Collaboration (MAGIC) before submitting their bid. Instructions for registering in MAGIC can be found below and in Section II-B MAGIC Reverse Auction Bidders Instruction Guide.

The minimum qualifications for contracting include:

- Vendors which are domestic corporations, limited liability companies, or limited partnerships must be in good standing with the Mississippi Secretary of State.
- Vendors which are foreign corporations, limited liability companies, or limited partnerships may be required to register with the Mississippi Secretary of State to transact business in Mississippi. *See* Miss. Code Ann § 79-4-15.01.

5. BASIS FOR AWARD

The contract will be awarded to the responsive, responsible bidder who supplies the maximum amount of oyster shells or other approved cultch material to be deployed to the planting site(s) selected by the MDMR at the lowest price per cubic yard, not to exceed a total contract price of $1,000,000.00.

6. AMENDMENTS TO THIS RFQF

Should an amendment or amendments to this RFQF be issued by MDMR, it will be posted on the MDMR website www.dmr.ms.gov and on the Mississippi Contract Procurement Opportunity Search Board (Procurement Portal) website https://www.ms.gov/dfa/contract_bid_search/Bid in a manner that all bidders will be able to view. **Furthermore, bidders must acknowledge receipt of any amendment to this RFQF by signing and returning the amendment with the bid submission, by identifying the amendment number and date in the space provided for this purpose on the Bid Form-**Attachment C or **by letter.** The acknowledgment must be received by the MDMR by the time and at the place specified for receipt of Bids. It is the bidder's sole responsibility to monitor the website for amendments to the RFQF.

7. QUESTIONS/REQUESTS FOR CLARIFICATION

All questions and requests for clarification must be submitted by email to: procurement@dmr.ms.gov
All questions/requests for clarification must be received no later than **July 24, 2025 at 10:00 a.m. CST.**

All questions/requests for clarification and the answers thereto will be published on the MDMR website, http://dmr.ms.gov and the MAGIC Portal http://www.mmrs.state.ms.us/vendors/index.shtml in a manner that all bidders will be able to view by **July 25, 2025 at 4:00 p.m. CST.**

The MDMR will not be bound by any verbal or written information that is not specified within this RFQF unless formally noticed and issued by the contact person.

8. INSURANCE REQUIREMENTS

In order to enter into a contract, you must meet minimum insurance protection requirements. You must provide evidence of your policies **within ten (10) calendar days of a fully executed contract**.

All insurance policies must be issued by companies licensed or holding a Certificate of Authority from the Mississippi Department of Insurance. All liability insurance policies must provide coverage to the MDMR as an additional insured.

You must hold the following insurance throughout the term of the contract:

Coverage Type	**Amount**
Workers' Compensation (as required by Mississippi law)	
Accident (Per Occurrence)	$100,000
Disease-Policy Limit	$500,000
Disease-Per Employee	$100,000
General Liability	
Aggregate	$1,000,000
Personal Injury/Bodily Injury and Property Damage (Per Occurrence)	$500,000
Fire Damage (Per Fire)	$50,000
Medical Expense (Per Person)	$5,000

11. BOND REQUIREMENTS

No Bonds Required.

12. RFQF SUBMISSION INSTRUCTIONS

You are required to electronically register in Mississippi's Accountability System for Government Information and Collaboration (MAGIC) and you may submit your bid electronically through MAGIC, or you may submit your bid by paper submission via mail or hand delivery to MDMR as outlined below:

Vendor Electronic Registration in MAGIC:

- It shall be the responsibility of each bidder to ensure that its vendor profile is current in the MAGIC system. The website to register as a vendor with the State of Mississippi is: http://www.mmrs.state.ms.us/vendors/index.shtml.
- For online learning instructions on submitting your bid electronically, select "Supplier Training" from the link listed above. Select the LOG820 Supplier Self-Service Course link and then click "Launch Course."
- If you have problems getting on the website, please contact the Mash Helpdesk at (601) 359-1343 or mash@dfa.ms.gov. You must receive a User ID and Password to access the MAGIC portal. **This process could take up to 72 hours to complete.**

MAGIC Submission and Technical Requirements

- The bid submission must be submitted in MAGIC no later than **2:00 PM CST, August 19, 2025.**
- Timely submission of the bid is the responsibility of the bidder. Bids received after the specified time will be rejected and the unopened bid will be made a part of the procurement file. **It is suggested that you allow 72 hours before the due date and time for submission of the bid in MAGIC, especially if you are a first-time user.**
- Bidders are responsible for ensuring that Technical Requirements are met before participating in the Reverse Auction. The Technical Requirements can be accessed at the following link**:** http://www.dfa.ms.gov/dfa-offices/mmrs/mmrs-applications/magic-technical/
- Bidders participating in person by surrogate bidding must so indicate in their initial response to the Request for Quote-Formal (RFQF).
- For step by step instructions a MAGIC Reverse Auction Bidders Guide has been provided in Section II-B.

RFQF Paper Submission Requirements

- **The bid submission must be signed and submitted in a sealed envelope.** It must be submitted to MDMR Procurement Department, 6th Floor, at 1141 Bayview Avenue, Biloxi MS 39530 no later than **2:00 PM CST, August 19, 2025.**
- Timely submission is the responsibility of the bidder. Submissions received after the specified time will be rejected and the unopened bid will be made a part of the procurement file.
- All prices and notations must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed, in ink, by the person signing bid.
- Bidders are responsible for ensuring that Technical Requirements are met before participating in the Reverse Auction. The Technical Requirements can be accessed at the following link**:** http://www.dfa.ms.gov/dfa-offices/mmrs/mmrs-applications/magic-technical/
- The time and date of receipt will be indicated on the envelope or package by the MDMR staff.
- Bidders participating in person by surrogate bidding must so indicate in their response to the initial Request for Quote-Formal (RFQF).Submissions via facsimile (faxes) or email will not be accepted. It is suggested that if a submission is mailed to MDMR, it should be posted in

certified mail with a return receipt requested. MDMR will not be responsible for mail delays or lost mail.

- All Bids submitted by hand delivery or mail will become the property of the MDMR.
- Bids should be mailed, or hand delivered and must be labeled as follows:

"Furnish & Deploy Approved Cultch Material"
RFx No. 3140004294
Smart No. 1450-26-R-RFQF-00001
Opening Date: 2:00 PM CST, August 19, 2025
Attention MDMR Procurement Department 6th Floor
1141 Bayview Avenue Biloxi MS 39530
SEALED BID – DO NOT OPEN

The **deadline** for receiving Bids is **August 19, 2025 at 2:00 p.m.** Late submissions will not be accepted.

13. LIVE AUCTION NOTIFICATION

All qualifying bidders will be notified of the Reverse Auction Start date and time via email. The Reverse Auction will be held at MDMR, 1141 Bayview Avenue Biloxi, MS. 39530. MDMR reserves the right to extend the auction date if necessary to complete prequalification.

If a qualified bidder elects to participate via Surrogate Bidding, the bidder must be physically present at the MDMR during the Reverse Auction, with the means to submit written bids for each offer made and signed by an authorized agent of the vendor/bidder. A Bid Form will be provided to the bidder at the start of the auction. This form will not be returned to the bidder but will become a part of the Bid Documentation for Evaluation by the MDMR.

14. TIMELINE

Start Date • First Date of Advertisement: • Second Date of Advertisement	 July 16, 2025 July 23, 2025
Questions Submission Deadline Answers Posted	July 24, 2025 10:00 AM CST July 25, 2025 4:00 PM CST
Bidder Submission Deadline Date and Time	**August 19, 2025, 2:00 PM CST**
Opening Date and Time	August 19, 2025, 2:00 PM CST
Email sent to Qualified Bidders of Auction Start Date/Time	August 20, 2025
Tentative Reverse Auction Start Date/Time	August 26, 2025, 2:00 PM – 3:00 PM CST
Bid Evaluations	August 26, 2025
Contract Intent to Award	August 27, 2025
Contract Approval	Unexecuted contract will require additional approval from DFA before it is awarded.

15. TERM OF CONTRACT

The start date for the contract is the date the contract is signed by the selected bidder and the Executive Director of the MDMR. The end date is one year, or 365 days, from the start date. The contract may be extended subject to the availability of funds and at the sole discretion of the MDMR with the agreement of the Contractor. Any contract renewal or extension shall be under the same pricing, terms, and conditions as in the original contract, and shall be agreed to, in writing, by the MDMR and the Contractor.

16. REQUIREMENTS FOR BIDDING

All Bids must include the following:

- Specifications Checklist-Attachment A completed and signed
- Bid Cover Sheet-Attachment B completed and signed
- Bid Form-Attachment C completed and signed
- Bidder Checklist-Attachment D completed and signed

Use the bid form-Attachment C to identify your best price. **You must identify your company's name on each page of the bid form and each of the attachments. Complete all of the blanks and sign the form.**

You ***must*** use the bid form-Attachment C. Submissions without a bid form will be rejected as nonresponsive. Do not amend or add to the bid form, and do not alter the terms of the contract. We may reject modified bid forms as nonresponsive on a case-by-case basis.

You are responsible for the costs of preparing your bid. We do not accept liability for such expenses.

Any bidder claiming that its bid contains information exempt from the Mississippi Public Records Act (Miss. Code Ann. § 25-61-1, *et seq*.), shall segregate and mark the information as confidential and provide the specific statutory authority for the exemption. Requests to review proprietary information will be handled in accordance with the Mississippi Public Records Act.

17. CONDITIONS OF SOLICITATION

When you submit a bid, then you promise that you will accept an award if offered. You also certify that you have not communicated with any other bidder or competitor regarding your bid or the price, your intention to submit a bid, or the factors you used to calculate the bid price. You can read more about your certifications on the Bid Form, Attachment C.
The MDMR reserves the right to reject any and/or all bids and waive any minor informality.

18. BID PROTESTS

If you are an actual bidder, offeror or contractor and feel aggrieved by this RFQF or the outcome, then you may file a protest with the Executive Director of the MDMR with a copy to the State Chief Procurement Officer. The protest must be in writing and explain the specific reasons that you are protesting. The protest must be filed within seven days after you know, or

should have known, of the facts giving rise to your protest. Late protests will not be considered. *See* Section 6.101 of the Mississippi Procurement Manual available online at http://www.dfa.ms.gov/media/4002/chapter6.pdf.

19. NOTIFICATION OF INTENT TO AWARD

Notification will be sent to all bidders by mail and email of the selection of the successful bidder. We will also post the selection of the successful bidder on our website at www.dmr.ms.gov. Work is expected to begin within 15 calendar days of receipt of a fully executed contract.

20. GOVERNING LAW

This solicitation and any resulting contract shall be governed in all respects by the laws of the State of Mississippi, excluding its conflict of laws provisions, and any litigation with respect thereto shall be brought in the courts of Biloxi, Harrison County, Mississippi.

21. RELATIONSHIP OF PARTIES

It is expressly understood and agreed that if MDMR enters into a contract with a bidder, it does so based on the purchase of a commodity or commodities and not based on an employer-employee relationship or a joint venture relationship.

22. CONTRACT ADMINISTRATION

The contract awarded, if any, subsequent to this solicitation shall be administered by the MDMR. All invoices submitted by the Contractor for goods received or services provided pursuant to the contract shall be submitted as follows:

By Mail: Mississippi Department of Marine Resources, Procurement Department

1141 Bayview Avenue Biloxi, Mississippi 39530

By Email: Procurement@dmr.ms.gov

The MDMR will provide timely payment in accordance with Section 31-7-301, *et seq* of the Mississippi Code Annotated, which generally provides for payment by the MDMR within forty-five (45) days of receipt of an approved invoice. The Contractor understands and agrees that MDMR is exempt from the payment of taxes.

23. COMPENSATION FOR GOODS AND SERVICES

- **Payment.** The MDMR will pay Contractor upon satisfactory completion of the Scope of Work and Deliverables.
- **Invoice.** Contractor must submit a detailed invoice upon completion of the Scope of Work and Deliverables. In order to process payment, the Invoice must include the following information and supporting documentation:
    1. Contract number;
    2. Purchase Order Number;

3. Date(s) of delivery; and,
4. A certification signed by the Contractor that all employees working on the project, all material suppliers, and all sub-contractors, if any, have been paid in full by the Contractor.

- **Payment Processing.** The MDMR makes payments within 45 days of receiving an approved invoice. Payment will not be made for work performed before the execution or after expiration of this contract.

24. FUNDING SOURCE REQUIREMENTS

Any contract awarded under this solicitation may be paid for in whole or in part with grant funding from the Gulf Coast Ecosystem Restoration Council (RESTORE Council) and the Mississippi Department of Environmental Quality (MDEQ) under the Spill Impact Component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). Any contract resulting from this solicitation will be subject to the terms and conditions of said funding award, the Gulf Coast Ecosystem Restoration Council Financial Assistance Standard Terms and Conditions, the Standard Sub-Award Terms and Conditions, the Sub-Award Terms and Conditions for Contract Parties, the RESTORE Act, 33 U. S. C. 1321(t), Treasury Regulations 31 C. F. R. § 34 et seq., all applicable terms and conditions in 2 C. F. R. Part 200 (including Appendix II to Part 200), and all other OMB circulars, executive orders or other federal laws or regulations, as applicable. As required by the Sub-Award Agreement, the Gulf Coast Ecosystem Restoration Council Financial Assistance Standard Terms and Conditions, the Standard Sub-Award Terms and Conditions, and the Sub-Award Terms and Conditions for Contract Parties shall be incorporated into any contract resulting from this solicitation and any sub-contracts that may be issued by the selected contractor and are included herein as Attachment H, Attachment I, and Attachment J. The MDEQ, the RESTORE Council, or any of its departments, agencies or employees are not and will not be a party to this solicitation or any resulting contract. By submitting a bid, the Bidder certifies that if it is awarded the contract, it will comply with the requirements in Attachments H, I, and J, and will require its subcontractors, if any, to do the same.

25. EQUAL OPPORTUNITY STATEMENT

MDMR will select the bidder for award without regard to political affiliation, race, color, handicap, genetic information, religion, national origin, sex, religious creed, age, or disability.

26. ATTACHMENTS

The attachments to this RFQF are made a part of this RFQF as if copied herein in words and figures and include:

Attachment A – Specifications Checklist
Attachment B – Bid Cover Sheet
Attachment C – Bid Form

Attachment D – Bidder Checklist
Attachment E – Barge Measurement Method
Attachment F – Procedure and Equipment 1
Attachment G – Procedure and Equipment 2
Attachment H – MDEQ Standard Sub-Award Terms and Conditions
Attachment I – Gulf Coast Ecosystem Restoration Council Financial Assistance Terms and Conditions
Attachment J – MDEQ Terms and Conditions for Contracted Parties

SECTION II-A

CONTRACT CLAUSES

THE FOLLOWING CLAUSES Plus Attachments H,I, and J WILL BE INCLUDED IN ANY CONTRACT ARISING FROM THIS RFQF. BY SUBMITTING A BID, YOU AGREE TO BE BOUND BY THESE CLAUSES.

1. Payment

Payment Processing. The MDMR makes payments within 45 days of receiving an approved invoice. Payment will not be made for services performed before the execution or after expiration of this contract.

How Payments Are Made. The MDMR makes payments electronically through the MAGIC Accounting System. Payments are deposited into the Contractor's chosen bank account. The MDMR may require the Contractor to electronically submit invoices and supporting documentation. The Contractor understands that the MDMR is exempt from paying taxes.

2. Certifications

The Contractor certifies the following:

Representation Regarding Gratuities. The Contractor has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 9.105 of the Mississippi Procurement Manual.

Representation Regarding Contingent Fees. The Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for compensation, except as disclosed in Contractor's bid or proposal.

3. Employees and Subcontracts

Independent Contractor Status. The Contractor is an independent contractor for MDMR, not an employee, agent, or partner.

Discrimination Prohibited. The MDMR is an equal opportunity employer and maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information or any other consideration made

unlawful by federal, state, or local laws. The Contractor agrees to strictly adhere to this policy in its employment practices and provision of services.

E-Verify Program. The Contractor will ensure its compliance with the Mississippi Employment Protection Act, Miss. Code Ann. §§ 71-11-3. For anyone hired to perform work in Mississippi, the Contractor must register and participate in the E-Verify Program operated by the United States Department of Homeland Security. The Contractor agrees to maintain records of compliance and to provide a copy of verification to the MDMR on request. The Contractor further represents and warrants that any person assigned to perform services related to this contract meets the employment eligibility requirements of all immigration laws of the State of Mississippi. The Contractor understands that any breach of these warranties may subject it to the following:

a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three years, with notice of the termination being made public, or
b) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or government entity for the right to do business in Mississippi for up to one year, or
c) both. In the event of termination, Contractor is also liable for any additional costs incurred by the state due to contract cancellation or loss of license or permit.

4. Access to Records

The Contractor agrees that the MDMR, or any of its duly authorized representatives, at any time during the term of this contract, has access to, and the right to audit or examine any pertinent documents, paper, and records, related to charge and performance under this contract. The Contractor agrees to refund to the MDMR any overpayments disclosed by an audit. Records must be kept for a period of three years after final payment, unless the MDMR authorizes earlier disposal. However, if any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it.

5. Termination

The MDMR may terminate the contract for any of the following reasons:

A. for default;
B. for convenience;
C. for insufficient funds; or
D. by mutual agreement.

Termination for Default. If the MDMR determines that the Contractor has breached any provision of this contract, or it appears that the project deadlines will not be met, the MDMR may notify the Contractor in writing of the delay or nonperformance. The writing must provide a time period for cure. If the Contractor does not cure in the time specified, then the MDMR may terminate all or part of the contract. The MDMR may then procure similar supplies or services from another vendor. The Contractor must continue performance of the contract to the

extent it is not terminated and is liable for MDMR's excess costs to procure similar goods or services.

Termination for Convenience. The MDMR may, when the interests of the state so require, terminate this contract in whole or in part, for the convenience of the state.

Termination for Insufficient Funds. The MDMR's obligations under this contract are conditioned on the appropriation of funds by the state or federal government. If the anticipated funds are ever insufficient or there is a material alteration in the funded program, then the MDMR may terminate this agreement with 10 day's written notice to the Contractor. If the MDMR terminates the contract under this subsection, then it does so without any damage, penalty, cost, or expense.

Mutual Termination. Upon agreement of both parties, the contract can be terminated immediately.

Force Majeure. Each party is excused from performance of any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of the party or its contractors. Force majeure events include acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters. When such a cause arises, the Contractor must notify the MDMR immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the MDMR determines it to be in its best interest to terminate the contract.

In Case of Termination. On the date of termination, the Contractor incurs no further obligations regarding the terminated portion of the work. The MDMR will pay for completed services at the contract price. The MDMR may withhold such sums as the MDMR considers necessary to protect the state against loss because of outstanding liens or claims of former lien holders and to reimburse the MDMR for the excess costs incurred in procuring similar goods and services.

On termination, the Contractor must do all of the following:

1. Terminate outstanding orders and subcontracts as they relate to the terminated work.
2. Settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work.
3. Take timely, reasonable, and necessary action to protect and preserve property in its possession in which the state has an interest.
4. Assign the Contractor's rights, titles, and interest under terminated orders or subcontracts to the state, if requested by the MDMR.
5. If the termination is just for a portion of the work, then complete the non-terminated work duties.

6. Stop Work Order

Order to Stop Work.
The MDMR may require the Contractor to stop all work or any part of the work called for by this contract. The order must be identified as a "stop work order" and cite this section of the contract. The written stop work order must not exceed 90 days, unless the parties agree to a longer period. The MDMR may issue the order at any time and without notice to any surety. The Contractor must comply with the stop work order and take all reasonable steps to minimize costs allocable to the order. Before the stop work order expires, the MDMR may either:

a) cancel the stop work order; or
b) terminate the work covered by the order. If MDMR elects to terminate for default, it does not need to issue a new notice and may terminate immediately.

Cancellation or Expiration of the Order:
If a stop work order expires or is cancelled, the Contractor may resume work. An appropriate adjustment may be made in the delivery schedule and price if:

1. the stop work order results in an increase in the time or cost required for performance of this contract;
2. the Contractor asserts a claim for an adjustment within 30 days after the end of the period of work stoppage. The MDMR may waive this time requirement if it decides that the facts justify such an action; and,
3. the modifications are put in writing and signed by the parties.

7. Confidentiality

Confidentiality. The Contractor must not use or disclose any confidential information. However, nothing in this section precludes the Contractor from disclosing or using confidential information, if:

a) The confidential information is available to the public or in the public domain at the time of such disclosure or use, without breach of this Agreement;
b) Disclosure of the confidential information is required to be made by any law, regulation, governmental authority, or court; or,
c) The confidential information was received by the Contractor after termination of the service period from a third party that had a lawful right to disclose it to the Contractor.
d) Contractor must not disclose or discuss the contents of any personnel file except to MDMR personnel that are authorized to receive and review such information.

Transparency. This contract, including all attachments, is under the Mississippi Public Records Act of 1983 (Miss. Code Ann. §§ 25-61-1 et seq. and § 79-23-1) and the Mississippi Accountability and Transparency Act of 2008 (Miss. Code Ann. §§ 27-104-151 et seq.). Unless exempted by a court-issued protective order, a copy of this contract will be posted to the Department of Finance and Administration's website for public access at www.transparency.mississippi.gov. Information identified by the Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required to be kept confidential by state or federal law or outside the applicable freedom of information statues, will be redacted. In the event the MDMR receives

a public records request for documents containing information identified by the Contractor as trade secrets or proprietary information, the MDMR will notify the Contractor who will be given a reasonable time to obtain a court order protecting the information. See Mississippi Code Annotated § 25-61-9(1).

Trade Secrets, Commercial and Financial Information. It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

Liability and Indemnification

Liability and Indemnity. The Contractor assumes all liability for work to be performed and for breach of any of the terms of this Agreement. The Contractor agrees to indemnify, hold harmless and defend the State of Mississippi, MDMR and any and all of its affiliates, directors, officers, agents or employees from and against all loss, injury, damage and legal liability including attorneys' fees and other costs of defense, arising out of any breach of confidentiality, negligent act, error or omission of Contractor, its employees or representatives. Contractor assumes all liability for workers' compensation and employers' liability coverage for its own employees. Contractor is responsible for and holds MDMR harmless from loss of or damage to Contractor's or Contractor's tools and equipment and rented items which are used or intended for use in performing work, and for any consequential, special or indirect damages, or loss of anticipated profits sustained by Contractor or its independent contractors. Contractor must comply with all applicable laws and government regulations, including OSHA and comparable state requirements.

Attorneys' Fees and Expenses. Subject to other terms and conditions of this contract, in the event the Contractor defaults in any obligations under this contract, the Contractor must pay to the MDMR all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' fees) incurred by the MDMR in enforcing this contract or otherwise reasonably related thereto. Contractor agrees that under no circumstances is the MDMR or the State of Mississippi obligated to pay any attorneys' fees or costs of legal action to the Contractor.

8. Miscellaneous

Severability. Each provision of this Agreement must be interpreted in a way that is valid under applicable law. If any provision is held invalid, the rest of the Agreement remains in full effect.

Entire Agreement. This Agreement and its attachments are the entire understanding between the parties.

Changes. The parties can amend this Agreement only by a written document signed by both parties.

No Delegation (Subcontracting). The Contractor acknowledges that it was selected by the MDMR to perform the work based upon the Contractor's special skills and expertise. The Contractor must not delegate its duties under this Agreement in whole or in part without the prior written consent of the MDMR. The MDMR may, in its sole discretion, approve, approve with conditions, or deny consent without reason. Any attempted delegation or transfer of its

obligations without consent is null and void. No approval by the MDMR of any subcontract is consent to increase the maximum price of this contract.

Applicable Law. This Agreement is governed and interpreted by Mississippi law, excluding its conflict of laws provisions. Any lawsuit arising directly or indirectly out of this Agreement must be litigated in the state courts of Mississippi. The Agreement is further governed by the Mississippi Procurement Manual, a copy of which is available online at http://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/purchasing-and-travel/procurement-manual/

SECTION II-B

INSTRUCTIONS AND SPECIAL CONDITIONS

The following section provides a DFA MAGIC Reverse Auction Bidders Training Guide. It includes detailed instructions on how to access the reverse auction event, including how to gain access to the system utilized and what technical requirements may be involved. However, no supplier may be prohibited from participating in person by paper through surrogate bidding.

MAGIC Reverse Auction Bidders Training Guide

The MAGIC Reverse Auction Bidders Training Guide provides instructions for vendors to participate in Reverse Auctions. Vendors have the ability to submit bids electronically and view real time bid ranking. The identity of participating bidders will not be displayed to other bidders throughout the online auction process. However, bidders will be able to see the current best bid.

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Technical Requirements

Bidders are responsible for ensuring technical requirements are met. It is suggested that you allow at least 72 hours before the due date and time for submission of the bid in MAGIC, especially if you are a first-time user. Technical Requirements can be accessed at the following link: http://www.dfa.ms.gov/dfa-offices/mmrs/mmrs-applications/magic-technical/

Acceptable Internet Browser(s)

- Microsoft Internet Explorer (IE) version 11
- Google Chrome versions 49 and above (will need to download and install a Chrome Extension called "IE Tab Extension")

Unsupported Internet Browser(s)

- Microsoft Internet Explorer (IE) version 10 or below
- Microsoft Edge
- Google Chrome
- Safari
- Firefox

Note: Pop-up blocker must be turned off.

Java

- Reverse Auction requires Java version 6.30 or higher. Java can be downloaded from following Web site-https://www.java.com/en/download/

Login Procedure

Vendors must be registered in MAGIC in order to receive a User ID and password to log in. Vendors who are new to MAGIC may visit the Vendor Information page on DFA's Web Site, or register online, Vendor Registration.

To Log into MAGIC, open the following URL: https://portal.magic.ms.gov/irj/portal. Enter User ID and Password. The password is case sensitive.

View Available Reverse Auctions

Search for Auction(s)

Listed below are the steps to search for a bid response.

1.) **Bidders must first respond to the RFx (RFQF) to be able to participate in the Reverse Auction.** Instructions for creating a response to an RFx are available here, RFx Response - Supplier Self Service.

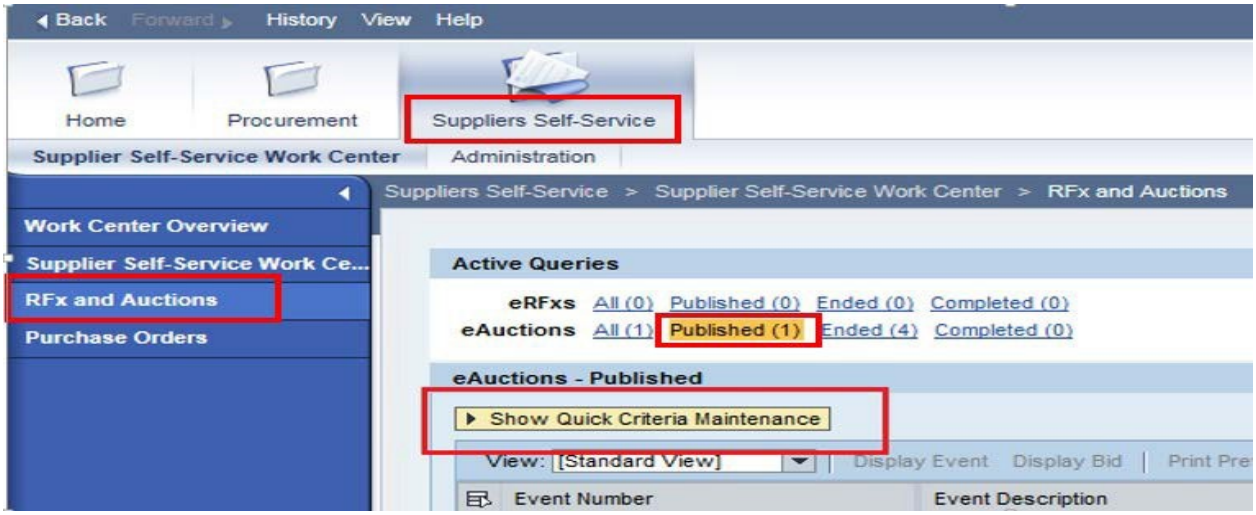
The RFx (RFQF)– Bid Specifications will provide details for qualifying criteria. Only bidders qualified through the RFx (RFQF) will be invited to participate in Reverse Auctions.

2.) To search for auctions, click on the **Suppliers Self-Service** tab.

3.) Select **RFx and Auctions** in the navigation menu on the left of the screen.

4.) Select the **Published** link on the eAuctions line of the Active Queries section.

Note: If the search fields are not visible, click the Show Quick Criteria Maintenance button to expand the search criteria.



5.) Enter the search criteria. To find all available bid opportunities, skip to step (f).

a) Select **All** or **Published** to search for available Events (eAuctions).

b) Enter the appropriate *Quick Criteria Maintenance* fields: **Event Number** (Auction number) or complete any optional relevant search criteria.

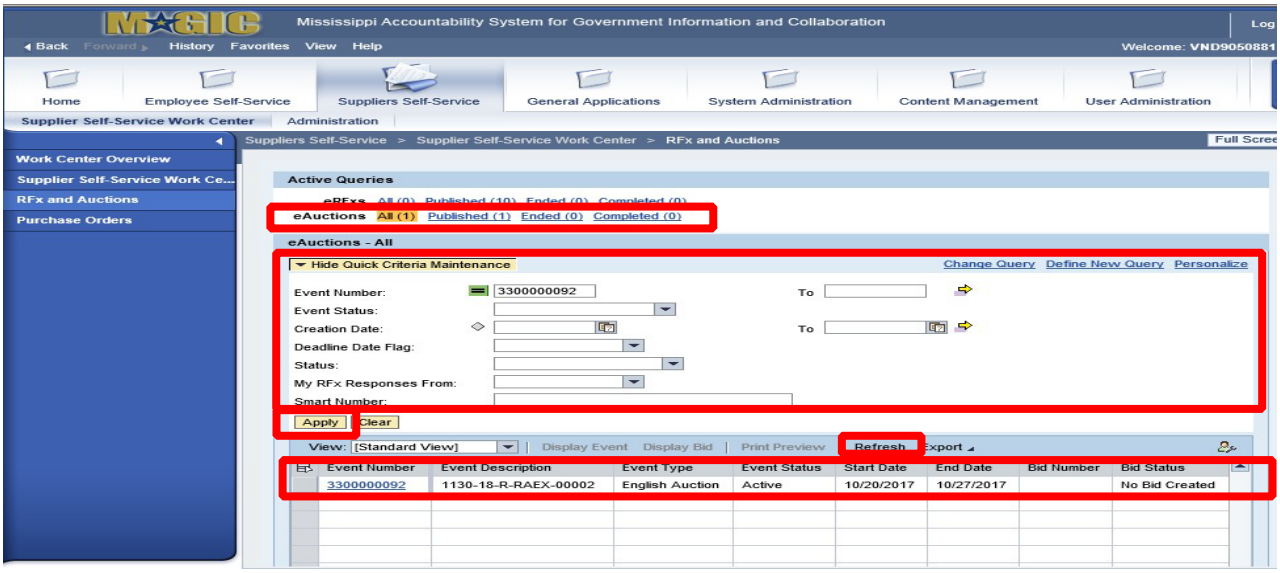
c) Click on **Apply** to view all Auctions based on your search criteria.

d) To generate an updated search using the same selection criteria, click **Refresh**

or skip to step (7).

6.) Click **Apply** to find available bid opportunities.

7.) In the results list, click on the **Event Number** to open the Auction details in a separate window. (Pop-up blocker must be turned off.)

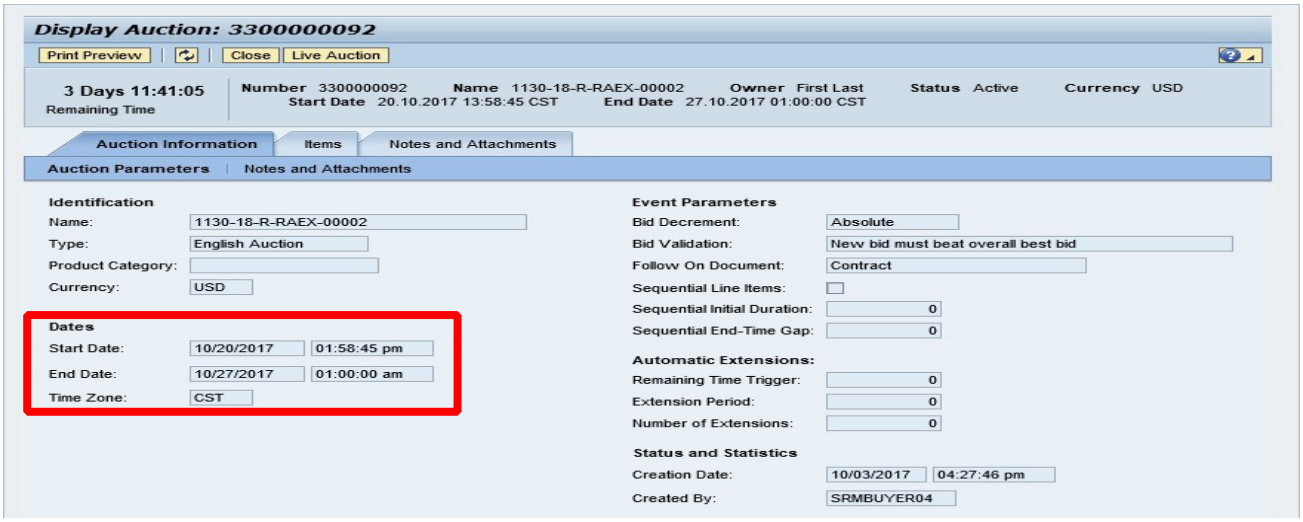


Display Auction Details

Listed below are the steps view the auction details and information regarding the auction.

1.) The Auction Details screen will be displayed. It is important to review the details prior to the Auction begin time. Bidding will not be available prior to the Auction Start Date/Time.

The table below list the fields and a brief description of the information available on the Auction Parameters sub-tab of the Auction Information tab.

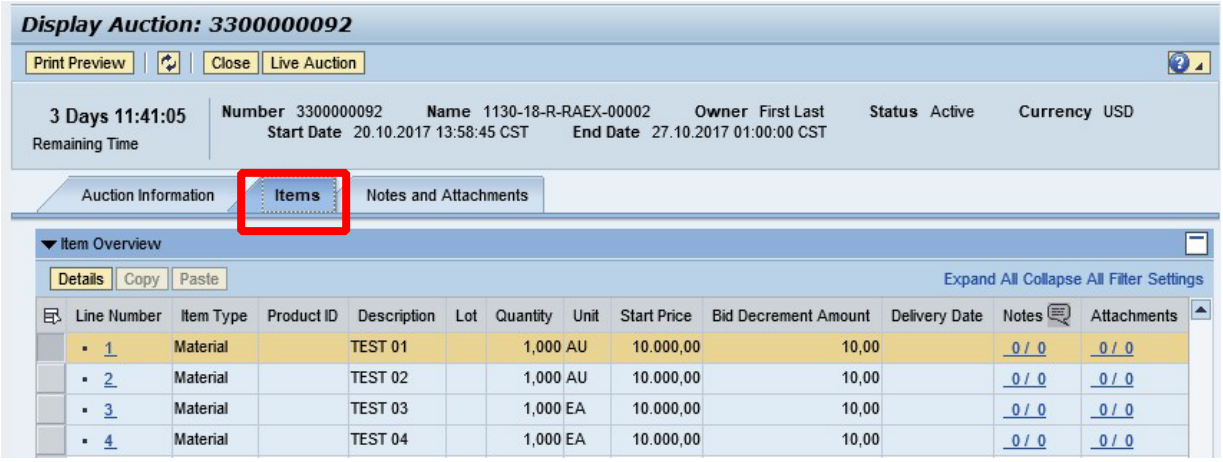


Section	Field Name	Description
Identification	Name	Smart Number with details related to the RFx
	Type	English Auction is the standard for State of Mississippi
	Product Category	The 5-digit NIGP code (optional)
	Currency	US Dollar (USD)
Dates	Start Date	Begin Date and Time for the Live Auction
	End Date	Date and Time of Live Auction completion
	Time Zone	Central Standard Time (CST)
Event Parameters	Bid Decrement	The amount/percentage by which the next bid must decrease relevant to the current lowest bid.
	Bid Validation	Logic used to determine if the bid is valid.
	Follow On Document	Contract or Purchase Order
	Sequential Line Items	Enables sequential line item functionality to stagger end times.
	Sequential Initial Duration	The amount of time in between each line item end time.
	Sequential End-Time Gap	The time between item end times.
Automatic Extensions	Remaining Time Trigger	The time period before the end of the auction where an extension can be triggered due to bid activity.
	Extension Period	Number of minutes, for which the auction will be extended if a bidder submits an offer within the Remaining Time Trigger period.
	Number of Extensions	The number of times an auction can be extended by bid activity within the Remaining Time Trigger.
Status and Statistics	Creation Date	The date and time the auction was created.
	Created By	The User ID of the Agency Buyer who created the auction.

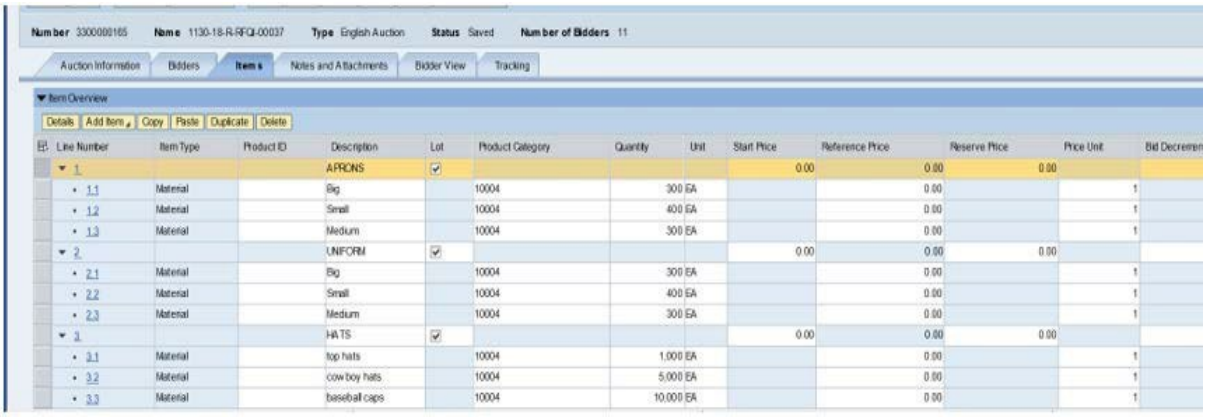
Display Line Items

Listed below is information regarding the line items associated with the auction.

1.) Click the **Items** tab to view the line items.



If the items are in **Lots**, the main items will be listed with individual lot items below.



2.) To view additional details for a line item, select the desired line and click the Details button.

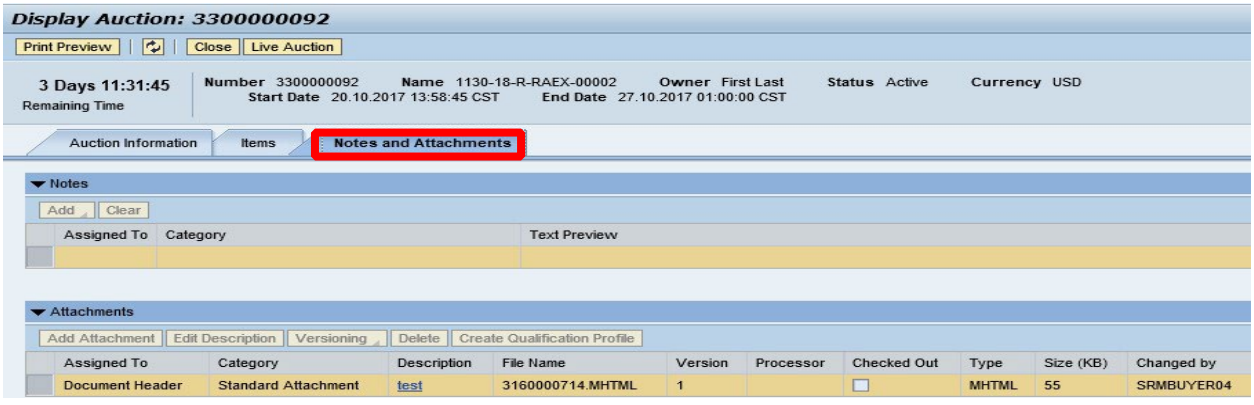
3.) The details for the line item will be displayed.

The table below list the fields and a brief description of the information available for each line item.

Section	Field Name	Description
Identification	Item Name	Type of item (Material)
	Product ID	11-digit material number
	Description	Detailed description of the item
	Product Category	The 5-digit NIGP code
Currency, Values, and Pricing	Quantity /Unit	The number of items / the Unit of Measure (i.e. EA for each)
	Price Per Unit	The individual price based on the Unit of Measure indicated.
	Start Price	Starting bid price of the item (Bids higher than the start price will not be accepted.)
	Ceiling Price	Ceiling Price is not used.
	Bid Decrement Percent	Bid decrement amount if percentage option is selected.
	Bid Decrement	Bid decrement amount if dollar amount option is selected.

Display Notes and Attachments

Click the **Notes and Attachments** tab to view supporting documents and/or notes associated with the auction.



Participating in a Live Auction

After completing the steps above to find a desired auction, the steps below can be used to participate in the Live Auction process.

1.) With the Auction displayed, click the **Live Auction** button.

2.) A pop-up window will appear containing Terms and Conditions to participate in the Live Auction. Review all terms and conditions. If you agree, click **Accept**. If you click **Decline** you will not be allowed to participate in the Live Auction.

If the agency did not establish Terms and Conditions this screen will not be displayed.

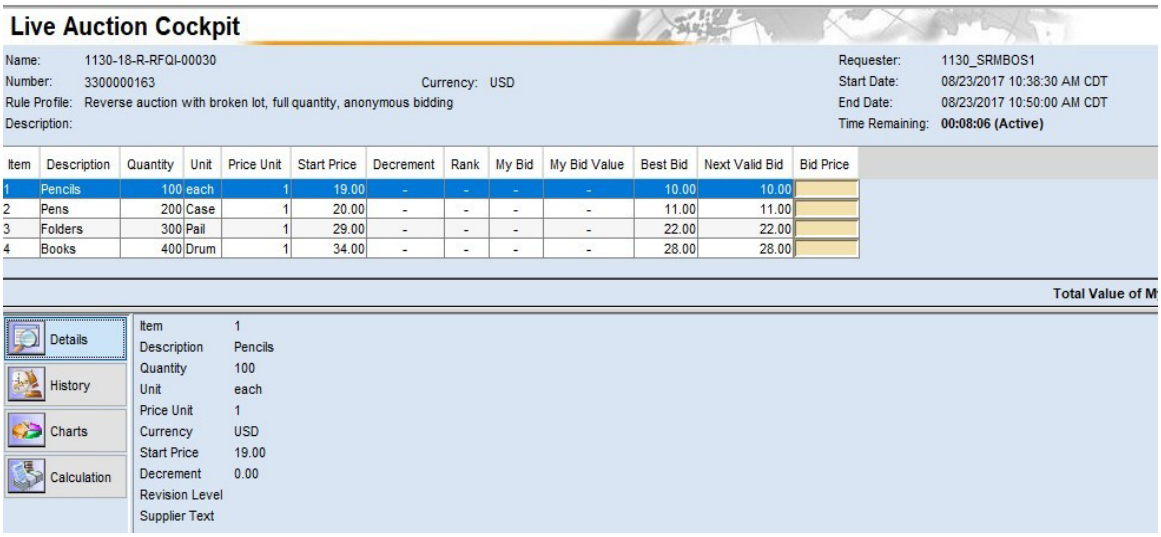
3.) If any pop-ups appear asking for a confirmation to run the JAVA application, click **Run**.

4.) The Live Auction bidding screen will be displayed. If you receive any error messages, please ask your company's system administrator to verify your computer's technical requirements.

Live Auction Cockpit

The Live Auction Cockpit will be displayed when the JAVA application has run.

Listed below is information regarding key items for the Live Auction Cockpit. The steps for submitting a response are located on the next page.



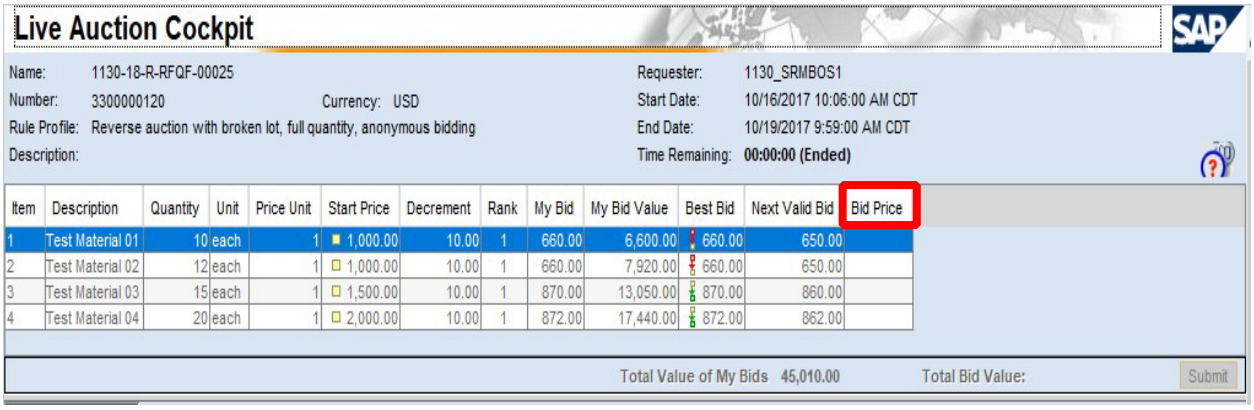
Field Name	Description
Start Date	Date and Time the Live Auction starts
End Date	Date and Time the Live Auction ends
Time Remaining	The time remaining for the Live Auction
Description	Line item description
Quantity	Line item quantity
Unit	Line item unit
Price Unit	Line item price per unit
Start Price	The initial price for the line item.
Best Bid	The lowest bid that has been submitted, to date, for that line item. This field will be blank until the first bid has been submitted.
Next Valid Bid	The next price that is allowed to be bid for that line item. It is determined by subtracting the decrement amount from the best bid amount.
Bid Price	Your bid for the item. Your bid should be equal or less than the next valid bid field. For instructions on how to enter your bid price, see the next page.

Submitting a Bid Response

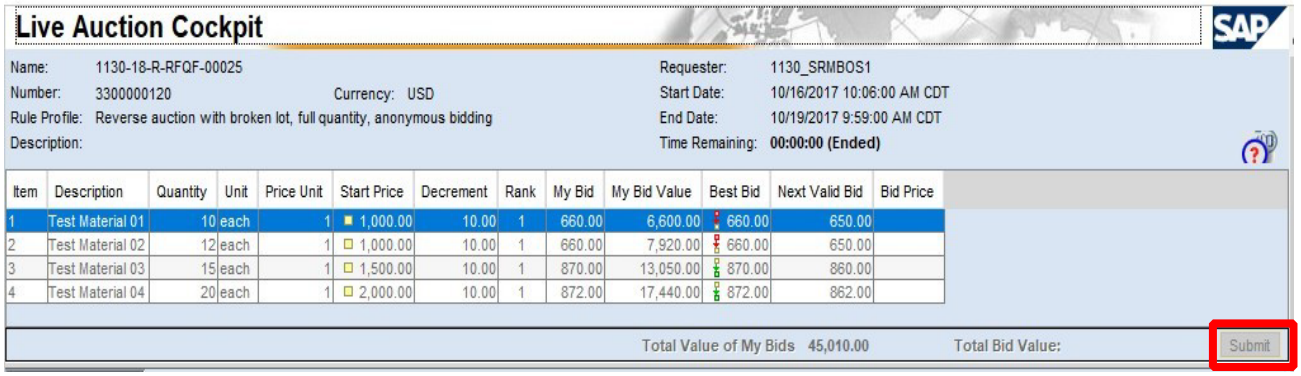
The steps below must be completed for each separate line item you wish to bid on.

1. Click desired line item.

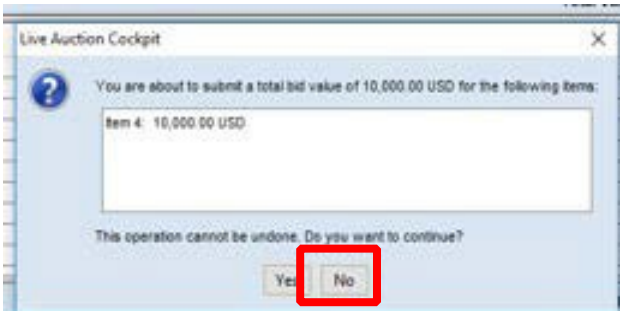
2. Enter the price in the **Bid Price** field(s) for the items you wish to bid on.



3. Click the **Submit** button. The submit button may be submitted after each line item price is entered or after you enter the price for all line items you wish to bid on.



4. A confirmation pop-up window will be displayed. The bid value (by line item) will be display
the total of the Unit Price times the Quantity for that item. If the bid amount(s) are correct, click **Yes**. If the bid amount(s) are incorrect, click **No** and repeat the steps above to enter the correct bid amounts.



5.) A confirmation of a successful bid submission will be displayed in the Chat Window.

Note: Erroneous bids may be deleted by the agency during the live auction.

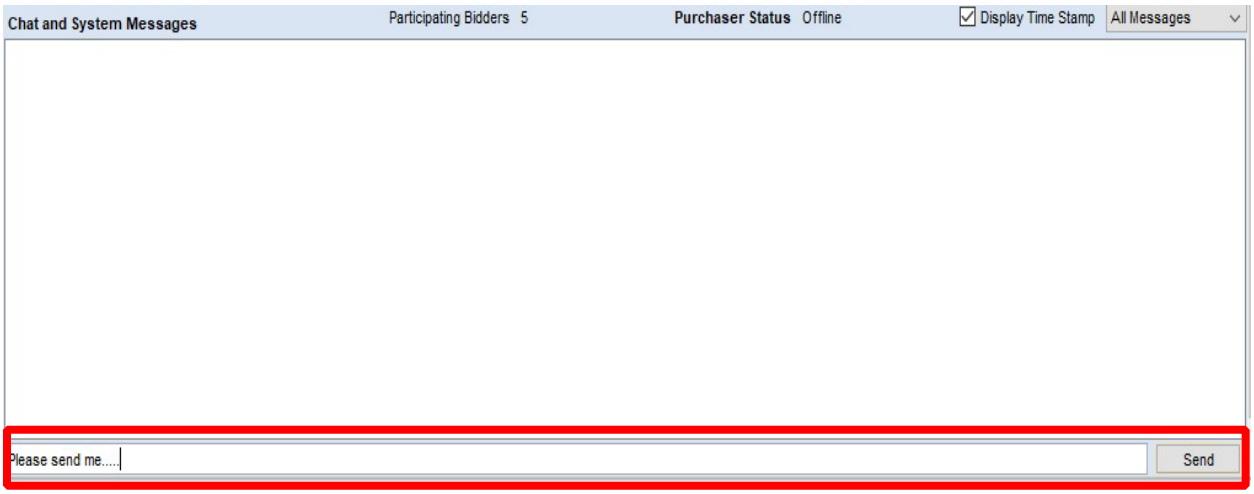
6.) Repeat steps 1 – 5 for each desired line item.

Chat and System Messages

The Chat and System Messages area is used for viewing chat messages from an agency buyer and information messages automatically generated by MAGIC.

Below are helpful hints in using the chat feature:

A bidder CAN:	Send a message to an agency buyer. Type the message in the message box and click **Send**.
	See broadcast messages from the agency buyer to ALL bidders.
	See messages regarding the status of the auction (e.g. paused, resumed, or extended)
A bidder CANNOT:	Send a message to other bidders of the auction.
	See messages sent to an agency by other bidders.
	See messages sent to other bidders from the agency buyer.

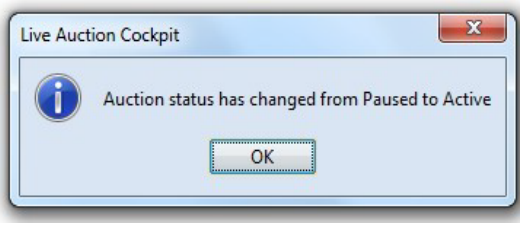


Pausing and/or Resuming an Auction

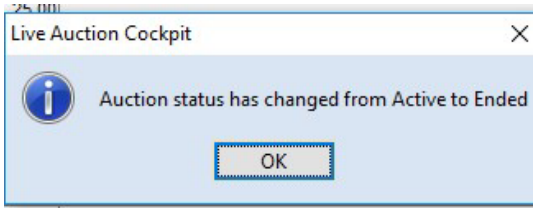
If necessary, the agency buyer can pause the Live Auction bidding. In such cases, the auction status will be changed from "Active" to "Paused". A system alert will appear on the screen.

The countdown clock will not stop running while the auction is paused. The time remaining and end date / time are not affected or extended automatically.

When the agency buyer resumes the auction the auction status will be changed from "Paused" to "Active". A system alert will appear on the screen.



Once the auction has ended, a notification will display.



SECTION III-SPECIFICATIONS

ATTACHMENT A-SPECIFICATIONS CHECKLIST

The specifications set forth herein as "Section III" represent the minimum standard of approved cultch material needs of the MDMR. The bidder may propose options above and beyond these specifications that best suit MDMR's interests as determined by the agency. The bidder agrees to complete the scope of service and all deliverables in the determined timeframe, unless additional time is approved in writing by the MDMR. Failure to do so may result in cancellation of award. If cancellation of award occurs, a new award will be made to the next lowest bidder meeting required specifications.

These specifications are intended to describe and establish minimum requirements for approved cultch material to be furnished and deployed for the enhancement of oyster beds in the Mississippi Sound.

1. Bidders must furnish all information requested in the bid specifications. Further, when required, each bidder must submit for bid evaluation cuts, sketches, descriptive literature, samples and technical specifications covering the product offered. Reference to literature submitted with a previous bid or on file with MDMR will not satisfy this provision.
2. Respond "Yes" or "No" to indicate compliance to the specifications for each listed criterion and add comments as needed. Submit completed specifications checklist with bid package.

Company Name: _____

YES	NO	Approved Cultch Material Specifications	COMMENTS
		Types of approved cultch material are course aggregate (#4 stone) or oyster shell	
		Please indicate the type(s) of cultch material	
		Course aggregate (#4 stone)	
		Course aggregate is in accordance with the American Society for Testing and Materials ("ASTM") C33 specifications, size #4 stone or equivalent, with no more than 5% by volume of the cultch material out of the ASTM size #4 stone specification	
		Oyster shell	
		Cultch is no more than 5%, by volume, consisting of fragments, pieces, fines, or shells smaller than ¾" to 1 ½" (three-fourths inch to one and one-half inch) in diameter	
		Cultch is clean and free of any hazardous substances or excessive dust	
		Bidders proposing any non-domestic or non-traditional cultch material must include a marked 5-gallon representative sample of the cultch material at the time of the bid submission. This sample will be used to determine the cultch material's suitability for the project purpose.	
		Non-domestic or non-traditional cultch material proposed	
		5-gallon representative sample provided	

_____ _____

Signature Date

_____ _____

Printed Name Title

ATTACHMENT B - BID COVER SHEET

The Mississippi Department of Marine Resources, on behalf of the State of Mississippi, is accepting bids for the furnishing and deploying of approved cultch material.

Bids must be submitted by **2:00 p.m. CST on August 19, 2025**

Name of Company: _____

Quoted by: _____

Signature: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Fax Number: _____

Email Address: _____

Name and phone number of company representative to be contacted by MDMR:

_____

In addition to providing the above contact information, please answer the following questions regarding your company:

What year was your company started? _____

Please provide the physical location and mailing address of your company's home office, principal place of business, and place of incorporation.

_____

_____

_____

_____

Company Name: _____

Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please discuss the impact both in organizational and directional terms.

_____

_____

_____

_____

_____

Prior Project(s) of Comparable Complexity
List prior experience furnishing and deploying cultch material using the methods described in this RFQF, including a description of the project, location, time-period for completion of the project, the actual completion date, and the reference (customer) for the project who may be contacted by MDMR. You must list a minimum of one project, but you may list more. You may use a supplemental sheet to describe the projects, if necessary.

Please provide current contact information as MDMR must be able to contact this reference. You may provide more than one reference, however, MDMR will only call the reference (Company Contact) listed below.

Project Reference:
Company Name: _____

Company Contact Name: _____

Company Contact's Title: _____

Telephone: _____

Email: _____

Date Completed: _____

Description of Scope: _____

_____

Location: _____

Timeframe for Completion: _____

Company Name: _____

If a bidder elects to participate via Surrogate Bidding, the bidder must be physically present at the public bidding location, with the means to submit written bids for each offer made and signed by an authorized agent of the Vendor. A Bid Form will be provided to the Vendor at the start of the auction. This form will not be returned to the bidder but will become a part of the Bid Documentation for Evaluation by the MDMR. Reverse Auction will be held at MDMR, 1141 Bayview Avenue, Biloxi, MS. 39530.

Bidders participating in person by surrogate bidding must so indicate in their response to the initial Request for Quote-Formal (RFQF).

Does your company intend to participate in person by surrogate bidding?

☐ Yes ☐ No

ATTACHMENT C - BID FORM

Company Name: _____

Unit price per cubic yard $ _____

Total cubic yards of oyster cultch _____

Bid price $_____ (Total of (A) multiplied by (B))

By signing below, you certify that you have authority to bind the company, and further acknowledge and certify on behalf of the company:

1. That you thoroughly read and understand the Request for Quotes and its attachments.
2. That the pricing includes ALL associated costs with no additional or hidden fees.
3. That you meet all requirements and acknowledge all the certifications contained in the RFQF.
4. That you agree to all provisions of the RFQF, including the contract clauses in Section II-A.
5. That you will deliver the goods and perform the services required at the prices quoted above.
6. That, to the best of your knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date.
7. **NON-DEBARMENT.** By submitting a bid, you are certifying that you are not currently debarred from bidding by the State, any political subdivision of the State (towns, cities, counties, agencies, etc.), any other state, or the federal government. You also certify that you are not submitting a bid as an agent of someone so debarred.
8. **INDEPENDENT PRICE DETERMINATION.** You certify that you have not communicated with any other bidder or competitor regarding your bid or the price, your intention to submit a bid, or the factors you used to calculate the bid price.
9. **CONTINGENT FEES.** Have you retained a person to solicit or secure a state contract upon an agreement or understanding for compensation?
   - ☐ Yes
   - ☐ No

   If yes, please explain:

   _____

   _____

Company Name: _____

10. **GRATUITIES.** You represent that you have not violated, are not violating, and promise not to violate the prohibition against gratuities set forth in Section 9.105 of the Mississippi Procurement Manual available online at http://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/purchasing-and-travel/procurement-manual/.

11. **ACKNOWLEDGMENT OF AMENDMENTS.** You acknowledge all amendments to this RFQF. Please list the amendments acknowledged by the amendment number and date:

_____

_____

_____

_____ _____

Signature Date

_____ _____

Printed Name Title

ATTACHMENT D – BIDDER CHECKLIST

	Initials
Prior Project(s) with Reference(s) Submitted	
Registered with MAGIC	
Technical Requirements met for Reverse Auction (unless planning to participate by Surrogate Bidding.)	
Amendments to RFQF acknowledged, if any	
Attachment A, Attachment B, Attachment C and Attachment D signed	

Company Name: _____

Signed: _____

Printed Name: _____

Date: _____

ATTACHMENT E

Barge Measurement Method

Materials will be measured to the nearest tenth of a foot using a tape measure for all lengths and widths and a laser level and a transit rod will be utilized for obtaining all heights.

Figure 1 illustrates the locations for obtaining measurement.

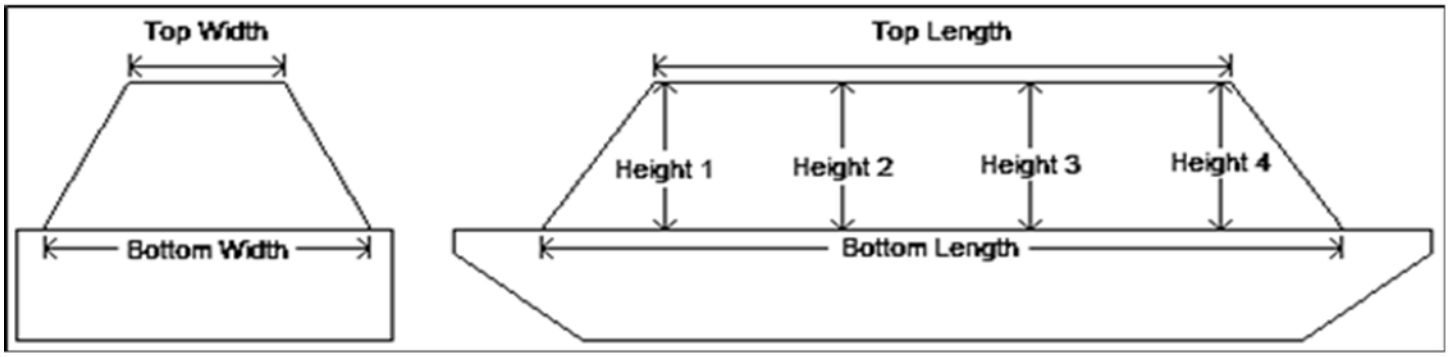


Figure 1. Typical Barge Loaded With Material Showing Measurement Locations

Eleven total measurements will be recorded. ***Bottom Length, Bottom Width, Top Length, Height 1, Top Width 1, Height 2, Top Width 2, Height 3, Top Width 3, Height 4 and Top Width 4***.

To obtain the bottom width and length the total width and length of the barge is measured first. The edge of the slope of the shell pile is then measured to the side of the barge and subtracted from the total length/width of the barge. Several measurements may be taken for an average.

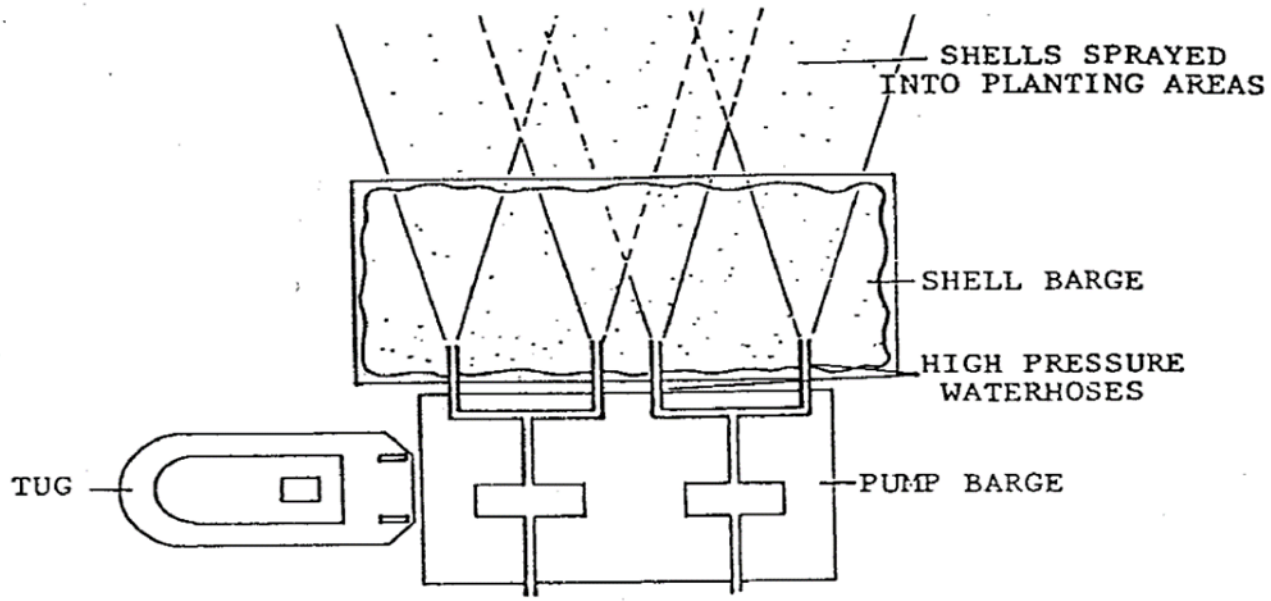
It is encouraged that the contractor witnesses all measurements and that any concerns or disputes about the measurements be resolved on site.

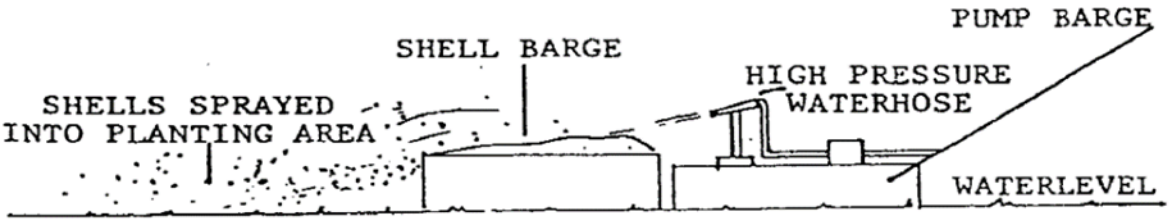
If the barge is listing, alternating sides of the barge will be measured where possible.

Prismoidal Formula: Volume = 1/6 Average Height ((Bottom Length x Bottom Width) + (Bottom Length + Top Length) x (Bottom Width + Average Top Width) + (Top Length x Top Width))

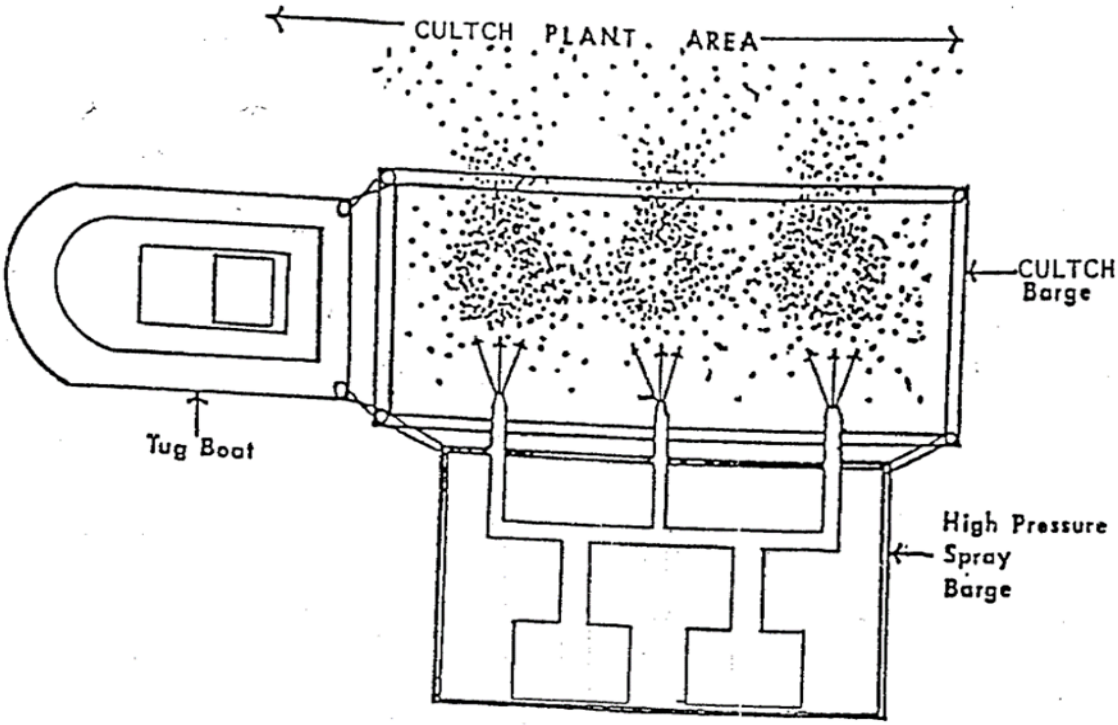
Note: The volume as calculated above is in total cubic feet. To convert to total cubic yards, the result is divided by 27, since there are 27 cubic feet in a cubic yard.

ATTACHMENT F
Procedure and Equipment 1





ATTACHMENT G
Procedure and Equipment 2



ATTACHMENT H

MDEQ STANDARD SUB-AWARD TERMS AND CONDITIONS

1. APPLICABLE LAW

The Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi and applicable federal law excluding, its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. SUB-RECIPIENT shall comply with applicable federal, state, and local laws and regulations.

2. AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of MDEQ to proceed under this Agreement is conditioned upon the availability of the funds from state, federal, and/or other funding sources. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to MDEQ, MDEQ shall have the right upon ten (10) working days written notice to the SUB-RECIPIENT, to terminate this Agreement without damage, penalty, cost or expenses to MDEQ of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

3. REPRESENTATION REGARDING CONTINGENT FEES

SUB-RECIPIENT represents that it has not retained a person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

4. REPRESENTATION REGARDING GRATUITIES

SUB-RECIPIENT represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* and Section 9.105 (Gratuities) of the Mississippi Procurement Manual.

5. PROCUREMENT REGULATIONS

The SUB-RECIPIENT shall comply with current State law in the procurement of commodities, services, construction work, real property and easement acquisition, and in any other procurement required to complete the tasks in the Scope of Work. The SUB-RECIPIENT shall comply with 2 C.F.R. §200.3187 and ensure that every purchase order or contract includes any clauses required by 2 C.F.R. § 200.327 Contract provisions, as identified in Appendix II to 2 C.F.R. Part 200.

6. SUB-AWARDS

If the SUB-RECIPIENT is authorized to make a sub-award, the SUB-RECIPIENT must include and incorporate the terms and conditions of the Federal Award, and any Special Award Conditions, the terms and conditions of this Agreement and any attachments, in all lower tier sub-awards. Further, the SUB-RECIPIENT, who makes a sub-award, must follow and carry out all the responsibilities of a pass-through entity described at 2 C.F.R. Part 200.

7. COMPLIANCE WITH LAWS

The SUB-RECIPIENT understands that MDEQ is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and the SUB-RECIPIENT agrees during the Period of Performance of the Agreement that the SUB-RECIPIENT will strictly adhere to this policy in its employment practices and work performance under this Agreement. The SUB-RECIPIENT shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified.

8. STOP WORK ORDER

A. *Order to Stop Work:* MDEQ may, by written order to SUB-RECIPIENT at any time and without notice to any surety, require SUB-RECIPIENT to stop all or any part of the work called for by this Agreement. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to SUB-RECIPIENT, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, SUB-RECIPIENT shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the Parties shall have agreed, MDEQ shall either:

i. cancel the stop work order; or,

ii. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this Agreement.

B. *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order or if the period of the order or any extension thereof expires, SUB-RECIPIENT shall have the right to resume work. An appropriate adjustment may be made in the Period of Performance or Maximum Amount, or both, and the Agreement shall be modified in writing accordingly if:

i. The stop work order results in an increase in the time required for, or in SUB-RECIPIENT's cost properly allocable to, the performance of any part of this Agreement; and

ii. SUB-RECIPIENT provides a written claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that MDEQ decides that the facts justify such action and any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

C. *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order may be allowed by adjustment or otherwise.

9. E-PAYMENT

SUB-RECIPIENT agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. MDEQ agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305.

10. E-VERIFICATION

If applicable, SUB-RECIPIENT represents and certifies that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1, *et seq*. The term "employee" as used herein means any person that is hired to perform work within the State. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. SUB-RECIPIENT agrees to maintain records of such compliance. Upon request of the State of Mississippi and after approval of the Social Security Administration or Department of Homeland Security, when required, SUB-RECIPIENT agrees to provide a copy of each such verification. SUB-RECIPIENT further represents and certifies that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws.

11. TRANSPARENCY

This Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983" and its exceptions. See Miss. Code Ann. §§ 25-61-1 et seq. and Miss. Code Ann. § 79-23-1. In addition, this Agreement is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Agreement may be posted to the Department of Finance and Administration's independent agency Agreement website for public access at

http://www.transparency.mississippi.gov. Information identified by SUB-RECIPIENT as trade secrets or other proprietary information, including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes will be redacted.

12. PAYMODE

Payments by state agencies using the statewide accounting system shall be made and remittance information provided electronically as directed by MDEQ. These payments shall be deposited into the bank account of SUB-RECIPIENT's choice. MDEQ may, at its sole discretion, require the SUB-RECIPIENT to submit invoices and supporting documentation electronically at any time during the Period of Performance of this Agreement. The SUB-RECIPIENT understands and agrees that MDEQ is exempt from the payment of taxes. All payments shall be in United States currency.

13. TERMINATION

The Agreement may be terminated as follows:

A. TERMINATION FOR CONVENIENCE

i. *Termination*. The MDEQ may, when the interests of the State so require, terminate this Agreement in whole or in part, for the convenience of the State. MDEQ shall give written notice of the termination to SUB-RECIPIENT specifying the part of the Agreement terminated and when termination becomes effective.

ii. *SUB-RECIPIENT's Obligations*. SUB-RECIPIENT shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination SUB-RECIPIENT will stop work to the extent specified. SUB-RECIPIENT shall also terminate outstanding orders and contracts as they relate to the terminated work. SUB-RECIPIENT shall settle the liabilities and claims arising out of the termination of contracts and orders connected with the terminated work. MDEQ may direct SUB-RECIPIENT to assign SUB-RECIPIENT's right, title, and interest under terminated orders or contracts to MDEQ. SUB-RECIPIENT must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

B. TERMINATION FOR DEFAULT

If SUB-RECIPIENT refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement or any extension thereof or otherwise fails to satisfy the Agreement provisions or commits any other substantial breach of this Agreement, MDEQ may notify SUB-RECIPIENT in writing of the delay or nonperformance, and if not cured in ten (10) days or any longer time specified in writing by MDEQ, MDEQ may terminate SUB-RECIPIENT's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in

whole or in part, MDEQ may procure similar supplies or services in a manner and upon terms deemed appropriate by MDEQ. SUB-RECIPIENT shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

Notwithstanding termination of the Agreement and subject to any directions by MDEQ, SUB-RECIPIENT shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUB-RECIPIENT in which the State has an interest.

14. DISPUTES

Before pleading to any judicial system at any level, the SUB-RECIPIENT must exhaust all administrative remedies. A written complaint must first be sent to the Executive Director of MDEQ. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to the SUB-RECIPIENT within fourteen (14) days after receipt of information requested by MDEQ or the Executive Director. If the decision of the Executive Director does not resolve the matter, successive administrative remedies may, at the SUB-RECIPIENT's option, include bringing the complaint before the Mississippi Commission on Environmental Quality pursuant to Miss. Code Ann. Section 49-17-35 and -41. In the alternative, at the SUB-RECIPIENT's option, the decision of the Executive Director may be deemed the final agency action on the complaint. Appeals from the decision of the Executive Director or the Commission shall follow procedures outlined in Miss. Code Ann. Section 49-17-41.

15. ANTI-ASSIGNMENT/CONTRACTING

SUB-RECIPIENT acknowledges that it was selected by MDEQ to perform the Work required hereunder based, in part, upon SUB-RECIPIENT's special skills and expertise. Unless contractors are otherwise identified and approved in accordance with the "Contracts" provision of this Agreement, SUB-RECIPIENT shall not assign, contract, or otherwise transfer this Agreement, in whole or in part without the prior written consent of MDEQ, which MDEQ may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MDEQ of any contract shall be deemed in any way to provide for the incurrence of any obligation of MDEQ in addition to the Maximum Amount agreed upon in this Agreement, nor create any contractual relationship between MDEQ and any Contracted Parties. Contracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that MDEQ may deem necessary. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the parties.

16. AUTHORITY TO PARTICIPATE IN THIS AGREEMENT

The SUB-RECIPIENT certifies that (a) it is a Mississippi state agency; (b) entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (c) notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either

voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

17. DEBARMENT AND SUSPENSION

SUB-RECIPIENT certifies to the best of its knowledge and belief, that it, and its Contracted Parties:

A. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

B. has not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or Agreement or Contract under a public transaction;

C. has not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

D. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,

E. has not, within a three-year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

18. CONFIDENTIALITY

A. *Information Designated by Contractor as Confidential*. Any disclosure of those materials, documents, data and other information, which SUB-RECIPIENT has designated in writing as proprietary and confidential shall be subject to the provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1. As provided in this Agreement, the personal or professional services to be provided, the price to be paid, and the term of the Agreement shall not be deemed to be a trade secret or confidential commercial or financial information.

B. *Public Records*. Notwithstanding any provision to the contrary contained herein, all Parties recognize that MDEQ is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq*. If a public records request is made for any information provided to MDEQ pursuant to this Agreement and designated by the SUB-RECIPIENT in writing as trade secrets or other proprietary confidential information, MDEQ shall follow provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1 before disclosing such information. MDEQ shall not be liable to SUB-RECIPIENT for disclosure of information required by court order or required by law.

C. *Disclosure of Confidential Information*. In the event that either party to this Agreement receives notice that a third party requests divulgence of Confidential Information or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of Confidential Information or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this Agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq*.

D. *Wrongful Disclosure of Confidential Information.* Any liability resulting from the wrongful disclosure of Confidential Information on the part of SUB-RECIPIENT or its contractor shall rest with SUB-RECIPIENT. Disclosure of any Confidential Information by SUB-RECIPIENT or its subcontractor without the express written approval of MDEQ may result in the immediate termination of this Agreement.

E. *Exceptions to Confidential Information*. SUB-RECIPIENT and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("**Disclosing Party**") which is:

(1) Rightfully known to the recipient prior to negotiations leading to this Agreement, other than information obtained in confidence under prior engagements;

(2) Generally known or easily ascertainable by nonparties to this Agreement;

(3) Released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;

(4) Independently developed by the recipient without any reliance on confidential information;

(5) Part or later becomes part of the public domain or may be lawfully obtained by the State or SUB-RECIPIENT from any nonparty; or

(6) Disclosed with the Disclosing Party's prior written consent; or

(7) As otherwise required to be disclosed by law.

19. FAILURE TO ENFORCE

Failure by MDEQ, at any time, to enforce the provisions of this Agreement shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of this Agreement or any part thereof or the right of MDEQ to enforce any provision at any time in accordance with its terms.

20. FORCE MAJEURE

Each Party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its contractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("force majeure events"). When such a cause arises, SUB-RECIPIENT shall notify MDEQ immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless MDEQ determines it to be in its best interest to terminate the Agreement.

21. INDEMNIFICATION

The SUB-RECIPIENT agrees to maintain responsibility for the Project and agrees to provide proper operation and maintenance of all facilities for the life of the Project. SUB-RECIPIENT's tort liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated §§ 11-46-1 *et seq*., including all defenses and exceptions contained therein. Nothing in this Agreement shall have the effect of changing or altering this liability or of eliminating any defense available to the State under statute.

22. SUB-RECIPIENT STATUS

The SUB-RECIPIENT shall, during the entire Period of Performance of this Agreement, be construed to be an independent SUB-RECIPIENT. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship or a joint venture relationship.

The SUB-RECIPIENT represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who are qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of MDEQ.

Any person assigned by the SUB-RECIPIENT to perform the services hereunder shall be an employee or independent contractor of the SUB-RECIPIENT, who shall have the sole right to hire and discharge its employees and/or independent contractors under this Agreement.

The SUB-RECIPIENT shall pay, when due, all salaries and wages of its employees and accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. This provision is solely for the benefit of MDEQ, and nothing herein shall be construed to create or

impose any contractual or agency relationship between MDEQ and SUB-RECIPIENT'S contractors, subcontractors, employees or agents.

23. INSURANCE

SUB-RECIPIENT is self-insured for liability under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1, et seq. The SUB-RECIPIENT must also maintain appropriate insurances to cover property, this includes equipment purchased under this Agreement. Should SUB-RECIPIENT procure additional insurance against liability for injury to persons or property, it should have MDEQ named as additional insureds on all such policies for any work performed by SUB-RECIPIENT pursuant to this Agreement and provide MDEQ with appropriate Certificates of Insurance and endorsements reflecting such additions within thirty (30) days after this Agreement is fully-executed.

Notwithstanding this Section, the Sub-recipient and its Contracted Parties agree to and shall maintain insurance that is required by applicable state, federal, and local laws and regulations.

24. ENTIRE AGREEMENT

This Agreement, including all attachments, represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This Agreement may be altered, amended, or modified only by a written document executed by MDEQ and the SUB-RECIPIENT. SUB-RECIPIENT acknowledges that it has thoroughly read this Agreement and all its attachments and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein.

25. AMENDMENTS OR MODIFICATION

This Agreement may only be amended, modified, or supplemented by written agreement signed by the Parties hereto.

26. ORAL STATEMENTS

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. All modifications to the Agreement must be made in writing by the MDEQ and agreed to by SUB-RECIPIENT.

27. OWNERSHIP OF DOCUMENTS AND WORK PAPERS

MDEQ shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Project which is the subject of this Agreement, except for SUB-RECIPIENT's internal administrative and quality assurance files and internal project correspondence. SUB-RECIPIENT shall deliver such documents and work papers to MDEQ. The foregoing notwithstanding, SUB-RECIPIENT shall be entitled to retain a set of such work papers for its files.

28. RECORD RETENTION AND ACCESS TO RECORDS

Provided SUB-RECIPIENT is given reasonable advance written notice and such inspection is made during normal business hours of SUB-RECIPIENT, RESTORE Council, the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of SUB-RECIPIENT's books, documents, papers, and other records which are maintained or produced as a result of the Project for the purpose of making audits, investigations, examinations, excerpts, transcriptions, and copies of such documents. This right also includes timely and reasonable access to the SUB-RECIPIENT's personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by SUB-RECIPIENT for a minimum of three (3) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

SUB-RECIPIENT is not required to retain the above-mentioned records for the ten-year period prescribed in this Section and the "Right to Audit" provision only if all of the following conditions are satisfied:

A. SUB-RECIPIENT has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the three (3) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;

B. no audit, litigation or other action arising out of or related in any way to this Project is commenced before SUB-RECIPIENT provides the records and corresponding certification to MDEQ, in which case, SUB-RECIPIENT shall retain the records until all issues arising out of the action are finally resolved; and

C. SUB-RECIPIENT provides MDEQ a minimum of thirty (30) days' written notice before providing the above-mentioned records and corresponding certification.

29. RIGHT TO AUDIT

SUB-RECIPIENT shall maintain such financial records and other records as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. SUB-RECIPIENT shall retain these records for a period of ten years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten-year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General and RESTORE Council.

30. RIGHT TO INSPECT WORK; ACCESS

RESTORE Council, the Government Accountability Office, MDEQ and their representatives, invitees, and consultants shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all Work hereunder. Notwithstanding any review or inspection by RESTORE Council, the Government Accountability Office, MDEQ and their representatives, invitees, and consultants, SUB-RECIPIENT shall not be relieved of its responsibility for performance of the Work or the submission of reports as expressly set forth in this Agreement solely by virtue of such inspection or review of the Work. SUB-RECIPIENT shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to SUB-RECIPIENT's performance of the Work.

31. SEVERABILITY

If any part of this Agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the Parties shall amend the Agreement as necessary to reflect the original intent of the Parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

32. THIRD PARTY ACTION NOTIFICATION

SUB-RECIPIENT shall give the MDEQ prompt notice in writing of any action or suit filed, and prompt notice of any claim made against SUB-RECIPIENT by any entity that may result in litigation related in any way to this Agreement.

33. UNSATISFACTORY WORK

If at any time during the Period of Performance, the service performed or work done by SUB-RECIPIENT is determined by MDEQ to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, MDEQ shall notify SUB-RECIPIENT. If SUB-RECIPIENT agrees with MDEQ's determination, it shall immediately correct such deficient service or work. If SUB-RECIPIENT disagrees with MDEQ's determination, it shall be given an opportunity to respond to show that the service or work is not deficient or that it does not threaten the health, safety, or welfare of the citizens and/or employees of the State of Mississippi in accordance with the Dispute Resolution Clause of this Agreement. If MDEQ still considers that the threatening condition exists, MDEQ shall have the right to correct the service or work, and the Maximum Amount of this Agreement may be reduced accordingly.

34. WAIVER

No delay or omission by either Party to this Agreement in exercising any right, power, or remedy hereunder or otherwise afforded by Agreement, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either Party to this Agreement shall be valid unless set forth in writing by the Party making said waiver. No waiver of or modification to any term or condition of this Agreement will void, waive, or change any other term or condition. No waiver by one Party to this Agreement of a default by the other Party will imply, be construed as or require waiver of future or other defaults.

35. COMPLIANCE WITH MISS. CODE ANN. § 31-5-37

If applicable, SUB-RECIPIENT shall ensure that Contracted Parties and bidders solicited for contract awards pursuant to this Agreement comply with the requirements of Miss. Code. Ann. § 31-5-37. SUB-RECIPIENT shall require all bidders for any contract of Five Thousand Dollars ($5,000.00) or more procured or to be procured with funds received pursuant to this Agreement to submit a certification with their bid that said bidder will comply with the provisions of Miss. Code. Ann. § 31-5-37. In addition, within seven (7) days of any such contract award procured or to be procured with funds received pursuant to this Agreement, SUB-RECIPIENT shall require the Contracted Party to submit to both SUB-RECIPIENT and the Mississippi Department of Employment Security ("MDES") an employment plan which conforms to the requirements contained in Miss. Code. Ann. § 31-5-37(2).

From the date written notice of any such contract award is received and until ten (10) business days after the receipt of the employment plan by MDES, the Contracted Party and any subcontractors shall not hire any personnel to fill vacant positions for the project except residents of the State of Mississippi who are to be verified by MDES and/or those qualified individuals who are submitted by MDES. However, the Contracting Party or contractor is authorized to employ Mississippi residents to begin work immediately if such persons are verified by MDES after employment by the Contracting Party or contractor. SUB-RECIPIENT shall vacate the contract award in the event the Contracting Party fails to comply with the provisions of Miss. Code Ann. § 31-5-37.

36. CONFLICT OF INTEREST

The SUB-RECIPIENT shall immediately notify MDEQ in writing of any potential conflict of interest resulting from the representation of or service to other clients or otherwise affecting this Agreement in any way. If any such conflict occurs before it is discovered, the SUB-RECIPIENT shall notify MDEQ of such conflict within five (5) working days of such discovery. If such conflict cannot be resolved to MDEQ's satisfaction, MDEQ reserves the right to terminate this Agreement per the "Termination for Convenience" clause.

37. SUCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and permitted assigns.

38. NO THIRD-PARTY BENEFICIARIES

This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

39. EVALUATION

SUB-RECIPIENT agrees to cooperate with MDEQ by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and this Agreement for a period of ten (10) years after the date on which the Final Reports are provided.

40. VENUE

Venue for the resolution of any dispute, according to Disputes Clause of this Agreement, and any subsequent litigation shall be in Jackson, Hinds County, Mississippi.

41. HEADINGS

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Attachment I

RESTORE COUNCIL

FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

RESTORE COUNCIL
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS

Gulf Coast Ecosystem Restoration Council
August 2015

RESTORE COUNCIL
FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

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THESE RESTORE COUNCIL FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS (ST&Cs) ARE INCORPORATED INTO AND MADE A PART OF THE GRANT AWARD TO WHICH THEY ARE ATTACHED.

A. STATUTORY AND NATIONAL POLICY REQUIREMENTS

The non-Federal entity[1] (also referred to as "recipient" or "grantee") and any subrecipients must, in addition to the assurances made as part of the application, comply and require each of its contractors and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (EOs), Office of Management and Budget (OMB) circulars, terms and conditions, and approved applications. This document provides the Gulf Coast Ecosystem Restoration Council ("Council") standard terms and conditions (ST&Cs) for all Council awards. 2 CFR § 5900.101 provides the Council's adoption of 2 CFR Part 200, giving regulatory effect to the OMB guidance.

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: public laws, regulations, applicable notices published in the *Federal Register*, EOs, OMB circulars, the Council ST&Cs, and special award conditions. Special award conditions may amend or take precedence over the ST&Cs if and when so provided by the ST&Cs.

Certain of the ST&Cs contain, by reference or substance, a summary of the pertinent statutes or regulations published in the *Federal Register* or Code of Federal Regulations (C.F.R.), EOs, OMB circulars, or the assurances (Forms SF-424B and SF-424D). No such provision will be construed so as to be in derogation of, or an amendment to, any such statute, regulation, EO, OMB circular, or assurance.

B. PROGRAMMATIC REQUIREMENTS

The recipient must use funds only for the purposes identified in the grant award agreement in accordance with the requirements in 31 C.F.R. § 34.803(d). All activities under the award must meet the eligibility requirements of the Gulf RESTORE Program as defined in 31 C.F.R. §§ 34.201, 34.202 or 34.203, according to component.

[1] The OMB *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* located at 2 C.F.R. part 200 uses the term "non-Federal entity" to generally refer to an entity that carries out a Federal award as a recipient or subrecipient. Because certain of the provisions of these ST&Cs apply to recipients rather than subrecipients, or vice versa, for clarity, these ST&Cs use the terms "non-Federal entity", "recipient", and "subrecipient." In addition, the OMB Uniform Guidance uses the term "pass-through entity" to refer to a non-Federal entity that makes a subaward.
"Non-Federal entity" is defined at 2 C.F.R. § 200.69 as "a State, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient."
"Recipient" is defined at 2 C.F.R. § 200.86 as "a non-Federal entity 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."
"Subrecipient" is defined at 2 C.F.R. § 200.93 as "a non-Federal entity 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. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency."
"Pass-through entity" is defined as 2 C.F.R. § 200.74 as "a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program."

.01 Performance (Technical) Reports

a. Non-Federal entities must use OMB-approved governmentwide standard information collections when providing financial and performance information and, as appropriate and in accordance with such information collections, are required to relate financial data to the performance accomplishments of the Federal award. When applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The Non-Federal entity's performance will be measured in a way that will help the Council and other non-Federal entities to improve program outcomes, share lessons learned and spread the adoption of promising practices. Recipients will be provided with clear performance goals, indicators and milestones as described in 2 C.F.R. § 200.210 "Information contained in a Federal award."

b. Recipients must submit performance (technical) reports, which may be Form SF-PPR "Performance Progress Report" or any successor form, or another format as required by the Council, to the Council-designated grants officer (Grants Officer). Performance reports should be submitted electronically, unless the recipient makes an arrangement with the Grants Officer for submission in hard copy (no more than one original and two copies) in accordance with the award conditions.

c. Performance Reports must be submitted with the same frequency as the Federal Financial Report (Form SF-425), unless otherwise authorized by the Grants Officer. If events occur between scheduled performance reporting dates that have significant impact upon the activity, project or program, the recipient must notify the Grants Officer as soon as possible.

d. Performance (technical) reports shall contain brief information as prescribed in the *Uniform Administrative Requirements, Cost Principals and Audit Requirements for Federal Awards* (2 C.F.R. part 200, specifically 2 C.F.R. § 200.328) incorporated into the award, unless otherwise specified in the award provisions. Specifically, in the "performance narrative" (item 10 on the SF-PPR), the recipient must provide the following information.

1. Activities and Accomplishments:

   i. Summarize activities undertaken during the reporting period;
   ii. Summarize any key accomplishments, including milestones and metrics completed for the period;
   iii. List any contracts awarded during the reporting period, along with the name of the contractor and its principal, the DUNS number of the contractor, the value of the contract, the date of award, a brief description of the services to be provided, and whether or not local preference was used in the selection of the contractor; and
   iv. If the recipient is authorized to make subawards, list any subawards executed during the reporting period, along with the name of the entity and its principal, the DUNS number of the entity, the value of the agreement, the date of award, and a brief description of the scope of work.

2. Adaptive Management:

   i. Indicate if any operational, legal, regulatory, budgetary, and/or ecological risks, and/or any public controversies, have materialized; if so, indicate what mitigation strategies have been undertaken to attenuate these risks or controversies; and
   ii. Summarize any challenges that have impeded the recipient's ability to accomplish the approved scope of work on schedule and on budget.

3. Findings/Events: Summarize any significant findings or events, if applicable.

4. Dissemination Activities: Describe any activities to disseminate or publicize results of the activity, project, or program, if applicable.

5. Monitoring:

   i. Describe all efforts taken to monitor contractor and/or subrecipient performance, to include site visits, during the reporting period. For subawards, indicate whether the subrecipient submitted an audit to the recipient, and if so, whether the recipient issued a management decision on any findings; and
   ii. Describe any other activities or relevant information not already provided.

6. Planned Activities: Summarize the activities planned for the next reporting period.

7. Attachments: List and attach any deliverables completed during the performance period or other materials to be submitted with the report.

.02 Reporting on Real Property

In accordance with 2 C.F.R. § 200.329, the Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. If the attached Federal interest is for a period of 15 years or longer, the Council or pass-through entity may, at its option, require the non-Federal entity to report at various multi-year frequencies as specified in the terms of the award (e.g., every two years or every three years, not to exceed a five-year reporting period; or the Council or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

.03 Unsatisfactory Performance

Failure to perform the work in accordance with the terms of the award and maintain at least a satisfactory performance as determined by the Council may result in designation of the non-Federal entity as high risk and the assignment of special award conditions or other further action as provided in Section B.06, "Non-Compliance with Award Provisions" below.

.04 Programmatic Changes

The non-Federal entity shall report programmatic changes to the Grants Officer in accordance with 2 C.F.R. § 200.308, and shall request prior approvals in accordance with 2 C.F.R. § 200.407.

.05 Other Federal Awards with Similar Programmatic Activities

The non-Federal entity shall immediately provide written notification to the Grants Officer in the event that, subsequent to receipt of the Council award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the Council award. The Council will not pay for any costs that are funded by other sources.

.06 Non-Compliance with Award Provisions

Failure to comply with any or all of the provisions of the award may have a negative impact on future funding by the Council and may be considered grounds for any or all of the following actions: withholding of payments pending correction of the deficiency by the non-Federal entity and/or more severe enforcement action by the Council or pass-through entity in accordance with 2 C.F.R. § 200.338; disallowance of (that is, denial of both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance; suspension or termination of all or any portion of the award; initiation of suspension or debarment proceedings as authorized under 2 C.F.R. part 180 and any Council regulations and policies promulgated pursuant to its authority (or in the case of a pass-through entity, recommendation that such a proceeding be initiated by the Council); withholding of further awards for the project or program; or enforcement of other remedies that may be legally available. *See also* 2 C.F.R. §§ 200.339 through 200.342.

.07 Prohibition against Assignment by the Non-Federal Entity

The non-Federal entity shall not transfer, pledge, hypothecate, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, including without limitation any bank, trust company or other financing or financial institution, without the express written approval of the Grants Officer.

.08 Disclaimer Provisions

a. The United States expressly disclaims any and all responsibility or liability to the non-Federal entity or third persons for any actions of the non-Federal entity or third persons resulting in death, bodily injury, personal or property damage, or any other damage, loss or liability in connection with or resulting in any way from the performance of this award or any subaward or subcontract under this award.

b. Acceptance of this award by the non-Federal entity does not in any way establish or constitute an agency relationship between the United States and the non-Federal entity.

C. FINANCIAL REQUIREMENTS

.01 Financial Reports

a. In accordance with 2 C.F.R. § 200.327, the recipient shall submit a "Federal Financial Report" (Form SF-425 or any successor form, or another format as required by the Council) on a semi-annual basis. Semi-annual reporting periods will be specified in the grant award for either the periods ending March 31 and September 30, or any portion thereof, or June 30 and December 31, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period. A final Form SF-425 shall be submitted within 90 days after the expiration of the project period.

b. The report should be submitted to the Grants Officer electronically, unless the recipient makes an arrangement with the Grants Officer for submission in hard copy (no more than one original and two copies), in accordance with the award conditions.

c. The recipient must report to the Council at the conclusion of the grant period, or other period specified by the Council, on the use of funds pursuant to the award in accordance with the requirements in 31 C.F.R. § 34.803(e).

d. The recipient must forecast cash requirements/draws semi-annually, for the periods October 1 to March 31 and April 1 to September 30, throughout the life of the grant. Forecasted cash requirements must be updated with the submission of each "Federal Financial Report."

.02 Financial Management

a. In accordance with 2 C.F.R. § 200.302(a), each State, including a state's administrative agents and the Gulf Consortium of Florida counties, must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and other non-Federal entities' financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions – including preparation of accurate, current and complete SF-425, Performance (Technical) Report, reporting on subawards, and any additional reports required by any additional award conditions. The financial management system also must be sufficient to trace funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations – including without limitation the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act), Council and Treasury RESTORE Act regulations – and the terms and conditions of the Federal award. *See also* 2 C.F.R. § 200.450 "Lobbying."

b. The financial management system of each non-Federal entity must provide all information required by 2 C.F.R. § 200.302(b) and maintain detailed records sufficient to account for the receipt, obligation and expenditure of grant funds in accordance with the requirements in 31 C.F.R. § 34.803(b). *See also* 2 C.F.R. §§ 200.333 "Retention requirements for records"; 200.334 "Requests for transfer of records"; 200.335 "Methods for collection, transmission and storage of information"; 200.336 "Access to records"; and 200.337 "Restrictions on public access to records." Specifically, the financial management system must provide for:

    1. Identification and tracking of all Council awards received and expended by the Catalog of Federal Domestic Assistance (CFDA) title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any;

    2. Records that adequately identify the source and application of all funds for Federally-funded activities, including information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest, and are supported by source documentation; and

    3. Effective control over, and accountability for, all Federal funds, and all property and assets acquired with Federal funds. The recipient must adequately safeguard all assets and ensure that they are used solely for authorized purposes.

c. The recipient must establish written procedures to implement the requirements set forth in Subsection, C.03 "Award Payments," below, as well as written procedures to determine the allowability of costs in accordance with 2 C.F.R. Part 200, subpart E "Cost Principles," and the terms and conditions of this award.

.03 Award Payments

a. The reimbursement method of payment will be used under this award, unless otherwise specified in a special award condition. The Grants Officer will determine the appropriate method of payment. Payments are made through electronic funds transfers directly to the non-Federal entity's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 *et. seq.*) and the Cash Management Improvement Act (31 U.S.C. § 6501 *et. seq.*).

   1. Consistent with 2 C.F.R. § 200.305(a), for States, payments are governed by the Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 C.F.R. Part 205 "Rules and Procedures for Efficient Federal-State Funds Transfers" and Treasury Financial Manual Volume I, 4A-2000 "Overall Disbursing Rules for All Federal Agencies."

   2. Consistent with 2 C.F.R. § 200.305(b), for non-Federal entities other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.

b. The Council Award Number must be included on all payment-related correspondence, information, and forms.

c. Unless otherwise provided for in the award terms, payments under this award will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP)[2] system. Under the ASAP system, payments will be made through preauthorized electronic funds transfers in accordance with the requirements of the Debt Collection Improvement Act of 1996. Awards paid under the ASAP system will contain a special award condition, clause or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system. Recipients enrolled in the ASAP system are not required to submit a "Request for Advance or Reimbursement" (Form SF-270 or successor form), in order to receive payments relating to their award. Pre-approval prior to requesting payments may be required for recipients that are determined by the Council to be in a high risk category or noncompliant (*see* 2 C.F.R. § 200.205 "Federal awarding agency review of risk posed by applicants," and *see* section M "Remedies for Noncompliance" below).

   1. In order to receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which enables them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts.

   2. The following information will be required to make withdrawals under ASAP: (i) ASAP account number, i.e., the Federal award number found on the cover sheet of the award; (ii) Agency Location Code (ALC); and (iii) Region Code.

d. When expressly allowed through a special award condition, advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs, but in no event shall advances exceed the amount of cash required for a 30-day period. Funds advanced but not disbursed in a timely manner and any accrued interest thereon must be promptly returned to the Council. The Grants Officer may periodically request documentation from the non-Federal entity verifying that the elapsed time between the transfer of funds and disbursement has been minimized. If a non-Federal entity demonstrates an unwillingness or inability to establish procedures that will minimize time elapsing

[2] Department of Treasury's Automated Standard Application for Payment (ASAP) system - https://www.fiscal.treasury.gov/fsservices/gov/pmt/asap/asap_home.htm, verified on 8/18/2015.

between transfer of funds and disbursement or if the non-Federal entity otherwise fails to continue to qualify for the advance payment method, the Grants Officer may change the method of payment to reimbursement only.

e. Where the use of an alternative system other than ASAP is provided for in the award terms, requests for payment will be submitted to the Grants Officer.

    1. Form SF-3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed before the first award payment can be made via the "Request for Advance or Reimbursement" (Form SF-270) request.

    2. When advance payment is expressly allowed for by special award condition, the non-Federal entity must submit the request no more frequently than monthly, and advances will be approved for periods to cover only expenses anticipated over the following 30 days. The non-Federal entity must complete the "ACH Vendor Miscellaneous Payment Enrollment Form" (Form SF-3881 or successor form), and Form SF-270, and submit those forms to the Grants Officer.

.04 Federal and Non-Federal Sharing

a. Awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved budget, the Federal share shall not exceed the total Federal dollar amount authorized by the award.

b. The non-Federal share, whether in cash or in-kind, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case the non-Federal entity must meet its cost share commitment over the life of the award. The non-Federal entity must create and maintain sufficient records sufficient to justify all non-Federal sharing requirements and to facilitate questions and audits. *See* Section I "Audits" below for audit requirements, and *see* 2 C.F.R. § 200.306 for additional requirements regarding cost sharing.

.05 Program Income

a. Non-Federal entities are encouraged to earn income to defray program costs where appropriate. Any program income shall be earned and applied consistent with the requirements of 2 C.F.R. § 200.307.

b. The recipient must maintain detailed records sufficient to account for the receipt, obligation, and expenditure of grant funds including the tracking of program income. Program income must be included in the non-Federal entity's approved budget and tracked in accordance with the requirements in 31 C.F.R. § 34.803(b).

c. All program income must be documented in the Federal financial report submitted to the Council for the period in which the income was earned.

.06 Budget Changes and Transfer of Funds among Categories

a. Requests for changes to the approved budget must be made in accordance with 2 C.F.R. § 200.308 "Revision of budget and program plans" and submitted in writing to the Grants Officer who will make the final determination on such requests and notify the non-Federal entity in writing thereof.

1. Construction Awards. For construction Federal awards, the non-Federal entity must request prior written approval promptly from the Grants Officer for budget revisions whenever one or more of the following applies:

   i. The revision results from changes in the scope or the objective of the project or program;
   ii. The need arises for additional Federal funds to complete the project; or
   iii. A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in 2 C.F.R. part 200, Subpart E—"Cost Principles."

2. Non-Construction Awards. For non-construction Federal awards, recipients must request prior written approval promptly from the Grants Officer for budget revisions whenever one or more of the following applies:

   i. Change in the scope or the objective of the project or program;
   ii. Change in a key person specified in the application or the Federal award;
   iii. The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator;
   iv. The inclusion, unless waived by the Council, of costs that require prior approval in accordance with 2 C.F.R. part 200 Subpart E—"Cost Principles" or 45 C.F.R. Part 75 Appendix IX "Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals," or 48 C.F.R. Part 31 "Contract Cost Principles and Procedures," as applicable;
   v. The transfer of funds budgeted for participant support costs as defined in 2 C.F.R. § 200.75 "Participant support costs to other categories of expense";
   vi. The subawarding, transferring or contracting out of any work under a Federal award unless (a) described in the application and funded in the approved Federal award, or (b)applicable to the acquisition of supplies, material, equipment or general support services only; or
   vii. Changes in the amount of approved cost-sharing or matching provided by the non-Federal entity. No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB. *See also* 2 C.F.R. §§ 200.102 "Exceptions" and 200.407 "Prior written approval."

3. Both Construction and Non-Construction Activities in Award. If a single award provides support for construction and non-construction work, the recipient must request prior written approval from the Grants Officer before making any fund or budget transfers between the two types of work supported.

b. In accordance with 2 C.F.R. § 200.308(e), transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is the Simplified Acquisition Threshold ($150,000 as of 12/26/2013) or less. For awards in which the Federal share of the project exceeds the Simplified Acquisition Threshold, the recipient must request prior written approval from the Grants Officer for transfers of funds among direct cost categories when the

cumulative amount of such direct cost transfers exceeds ten percent of the total budget[3] as last approved by the Grants Officer. The 10% threshold applies to the total Federal funds authorized by the Grants Officer at the time of the transfer request. The same requirements apply to the cumulative amount of transfer of funds among programs, functions, and activities. This transfer authority does not authorize the recipient to create new budget categories within an approved budget without the prior written approval of the Grants Officer. No transfer that enables any Federal appropriation, or part thereof, to be used for an unauthorized purpose will be permitted. The foregoing provision does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. *See* 2 C.F.R. § 200.308 (as applicable) for specific requirements concerning budget revisions and transfer of funds between budget categories.

c. The recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa without the prior written approval of the Grants Officer.

.07 Indirect (Facilities and Administrative [F&A]) Costs

a. Indirect (facilities and administrative [F&A]) costs will not be allowable charges against an award unless permitted under the award, specifically included as a line item in the award's approved budget and consistent with 2 C.F.R. §§ 200.414 "Indirect (F&A) costs" and Subpart E "Cost Principles."

b. Indirect costs of recipients are subject to the three percent (3%) cap on administrative expenses stated in 33 U.S.C. § 1321(t)(1)(B)(iii) and 31 C.F.R. § 34.204. The three percent cap on administrative expenses applies only to recipients and does not flow down to subrecipients.

c. Excess indirect costs may not be used to offset unallowable direct costs.

d. Indirect costs charged must be consistent with the indirect cost rate agreement negotiated between the non-Federal entity and its cognizant agency (defined as the Federal agency that is responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, *see* 2 C.F.R. § 200.19) and must be included in the recipient's budget. The Council will accept approved indirect cost rates unless otherwise authorized by a Federal statute or regulation, or requirements at 2 C.F.R. § 200.414(c) are met.

    1. If indirect costs are permitted and the non-Federal entity wishes to include indirect costs in its budget, but the non-Federal entity has not previously established an indirect cost rate with a Federal agency, the requirements for determining the relevant cognizant agency and developing and submitting indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III – VII to 2 C.F.R. Part 200 as follows:

        - Appendix III to 2 C.F.R. Part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);
        - Appendix IV to 2 C.F.R. Part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;
        - Appendix V to 2 C.F.R. Part 200 – State/Local Governmentwide Central Service Cost Allocation Plans;

[3] The cumulative amount of direct cost transfers is calculated by summing the negative variances between the approved and proposed budgets. Variance is calculated by subtracting the proposed budget amount for each cost category from the approved budget amount for the category. Only variances less than zero are totaled. The cumulative negative variance is then divided by the total grant award budget to determine the percentage transferred, i.e., cumulative % of transfer(s) = {[Σ (negative variances)] / total award budget} x 100.

- Appendix VI to 2 C.F.R. Part 200 – Public Assistance Cost Allocation Plans; and
- Appendix VII to 2 C.F.R. Part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals.

The cognizant agency for governmental units or agencies not specifically identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. *See* 2 C.F.R. §200.416 "Cost allocation plans and indirect cost proposals." When the Council is not the oversight or cognizant Federal agency, the non-Federal entity shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.

2. For those organizations for which the Council is cognizant or has oversight, the Council or its designee will either negotiate a fixed rate with carry-forward provisions for the non-Federal entity or, in some instances, will limit its review to evaluating the procedures described in the non-Federal entity's cost allocation plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.

3. Within 90 days after the award start date, the non-Federal entity shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The non-Federal entity shall provide the Grants Officer with a copy of the transmittal letter.

   Gulf Coast Ecosystem Restoration Council Office
   Attn: Senior Grants Management Officer
   500 Poydras Street, Suite 1117
   New Orleans, LA 70130

   If the non-Federal entity fails to submit the required documentation to the Council within 90 days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the Council, oversight or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the non-Federal entity's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

4. The non-Federal entity may use the fixed rate proposed in the indirect cost plan until such time as the Council provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carry-forward provision used in calculating the following year's rate. This calculation of actual indirect costs and the carry-forward provision is subject to audit. Indirect cost rate proposals must be submitted annually. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each of the recipients' fiscal years.

e. The maximum dollar amount of allocable indirect costs for which the Council will reimburse the non-Federal entity shall be the lesser of:

   1. The line item amount for the Federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Officer; or

   2. The Federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by a cognizant or oversight Federal Agency for indirect costs and applicable to the period in which the cost was incurred, provided that the rate is approved in writing on or before

the award end date, subject to the three percent (3%) cap on administrative expenses provided in 33 U.S.C. § 1321(t)(1)(B)(iii) and 31 C.F.R. § 34.204.

f. In addition, a non-Federal entity that is a State, local government, Indian tribe, institution of higher education, or nonprofit organization and has never received a negotiated indirect cost rate may elect to charge a *de minimis* rate of 10% of modified total direct costs. *See also* 2 C.F.R. § 200.414(f).

.08 Incurring Costs or Obligating Federal Funds Outside of the Period of Performance

a. The non-Federal entity shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the period of performance, i.e., the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award. *See* 2 C.F.R. §§ 200.77 and 200.309.

1. The Council or pass-through entity must include start and end dates of the period of performance in the Federal award.

2. All activities supported through an award must occur and be completed during the approved period of performance, whether funded directly or through a subaward or subcontract, and all obligated costs must be liquidated within 90 days following the end date of the period of performance.

3. The only costs which may be authorized for a period of not to exceed 90 days following the end of the project period are those solely associated with close-out activities. Close-out activities are limited to the preparation of final progress, financial, and required project audit reports unless otherwise approved in writing by the Grants Officer. The Grants Officer may approve extensions of the 90-day closeout period upon a request by the non-Federal entity as provided in 2 C.F.R. § 200.343.

b. Unless otherwise authorized in 2 C.F.R. § 200.343 or a special award condition, any extension of the project period can only be authorized by the Grants Officer in writing. Verbal or written assurances of funding from anyone other than the Grants Officer shall not constitute authority to obligate funds for programmatic activities beyond the end of the project period.

c. Pre-Award Costs. Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Grants Officer. The recipient must use funds obligated and disbursed under the award only during the period of performance specified in the award document. *See* 2 C.F.R. § 200.458.

d. The Council has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the project period is at the sole discretion of the Council.

.09 Tax Refunds

Refunds of Federal Insurance Contributions Act (FICA) (26 U.S.C. §§ 3101-3128) or Federal Unemployment Tax Act (FUTA) (26 U.S.C. §§ 3301-3311) taxes received by the non-Federal entity

during or after the period of performance must be refunded or credited to the Council whenever the benefits were financed with Federal funds under the award. The non-Federal entity shall contact the Grants Officer immediately upon receipt of these refunds. The non-Federal entity shall in addition refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the period of performance ends.

D. INTERNAL CONTROLS

Consistent with 2 C.F.R. § 200.303, each non-Federal entity:

a. Must establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls must be in compliance with guidance in "Standards for Internal Control in the Federal Government"[4] issued by the Comptroller General of the United States or the "Internal Control Integrated Framework,"[5] issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

b. Must comply with Federal statutes, regulations, and the terms and conditions of the Federal award.

c. Must evaluate and monitor the non-Federal entity's compliance with statute, regulations and the terms and conditions of Federal award.

d. Must take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

e. Must take reasonable measures to safeguard protected personally identifiable information and other information the Council or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

E. PROPERTY STANDARDS

.01 Standards

The non-Federal entity must comply with the property standards as stipulated in 2 C.F.R. §§ 200.310 to 200.316.

.02 Insurance coverage

Recipients must provide insurance coverage for real property and equipment acquired or improved with Federal funds equivalent to that provided for property owned by the non-Federal entity. Federally-owned

[4] "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States - http://www.gao.gov/assets/80/76455.pdf, verified on 8/18/2015.
[5] "Internal Control Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), Executive Summary - http://www.coso.org/documents/Internal%20Control-Integrated%20Framework.pdf, verified on 8/18/2015.

property need not be insured unless required by the terms and conditions of the Federal award. *See* 2 C.F.R. § 200.310.

.03 Real Property

a. Real property or an interest in real property may not be acquired under an award without prior written approval of the Grants Officer.

b. Title of real property. Subject to the obligations and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

c. Use. Except as otherwise provided by Federal statutes or by the Council, real property must be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or any other interest therein.

d. Willing Sellers. Land or interest in land may only be acquired by purchase, exchange or donation from a willing seller in accordance with the requirements in 31 C.F.R. § 34.803(f).

e. Federal Acquisitions. Funds may not be used to acquire land in fee title by the Federal Government unless the exceptions in 31 C.F.R. § 34.803(g) are met.

f. Disposition. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Council or pass-through entity. The instructions will provide that the non-Federal entity do one of the following:

    1. Retain title after compensating the Council. The amount paid to Council will be computed by applying the Council's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, if the non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

    2. Sell the property and compensate the Council. The amount due to the Council will be calculated by applying the Council's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, it must utilize sales procedures that provide for competition to the extent practicable and result in the highest possible return.

    3. Transfer title to the Council or to a third party designated or approved by the Council. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

g. The Grants Officer may require the non-Federal entity to submit the Tangible Personal Property Report (Form SF-428 or successor form), and/or Real Property Status Report (Form SF-429 or successor form), including applicable attachments to each form, in connection with the reporting of tangible personal property or of real property acquired or improved, in whole or in part, under a Council financial assistance award. The Grants Officer may also require the non-Federal entity to

submit Form SF-428 and/or Form SF-429, or successor forms, in connection with a non-Federal entity's request to acquire, encumber, dispose of, or take any other action pertaining to tangible personal property or to real property acquired or improved, in whole or in part, under a Council financial assistance award.

.04 Federally-owned and Exempt Federally-owned Property

a. Title to Federally-owned property[6] remains vested in the Federal government. The non-Federal entity must submit annually an inventory listing of Federally-owned property in its custody to the Grants Officer. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the Grants Officer for further Council utilization. If the Council has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the Council has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. § 3710 (i)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12999, "Educational Technology: Ensuring Opportunity for All Children in the Next Century."). The Council will issue appropriate instructions to the non-Federal entity. The Council may exercise this option when statutory authority exists.

b. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt Federally-owned property acquired under the Federal award remains with the Federal government.

c. The Grants Officer may require the non-Federal entity to submit the Tangible Personal Property Report (Form SF-428 or successor form), and/or Real Property Status Report (Form SF-429 or successor form), including applicable attachments to each form, in connection with the reporting of Federally-owned property that is in the non-Federal entity's custody pursuant to a Council financial assistance award or with a non-Federal entity's request to acquire, encumber, dispose of, or take any other action pertaining to Federally-owned property.

.05 Equipment

a. Recipients must comply with the equipment standards provided in 2 C.F.R. §§ 200.313 "Equipment" and 200.439 "Equipment and other capital expenditures."

b. American-Made Equipment and Products. Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this award.

c. Use, management, and disposition of equipment acquired.

   1. For recipients that are States: The recipient must use, manage and dispose of equipment acquired under this award in accordance with state laws and procedures.

   2. For recipients that are not States: Equipment must be used by the recipient in the program or project for which it was acquired as long as needed, whether or not the project or program

[6] Federally-owned property as defined in 2 C.F.R. § 200.312 means property acquired under a Federal award where the title vests with the Federal government. Exempt Federally-owned property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further obligation to the Federal Government, based upon the explicit terms and conditions of the Federal award.

continues to be supported by the Federal award. Before disposing of equipment during the period of performance, the recipient must seek disposition instructions from the Grants Officer for equipment acquired under this award if the current fair market value of the equipment is greater than $5,000 per unit. Disposition instructions must be requested by submitting a completed "Tangible Personal Property Report" (SF-428 or any successor form) and the "Disposition Request/Report" (SF-428-C or any successor form). In addition, not later than 60 days after the end of the period of performance, the recipient must submit to the Grants Officer a completed SF-428 and "Final Report Form" (SF-428-B or any successor form) if the recipient retains any equipment with a current fair market value greater than $5,000 per unit.

.06 Supplies

a. Title to supplies vests in the non-Federal entity upon acquisition. If residual inventory of unused supplies exceeds $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, then the non-Federal entity may retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal government for its share. The amount of compensation must be computed in the same manner as for equipment as prescribed in 2 C.F.R. § 200.313 "Equipment"; *see* 200.313(e)(2) for the calculation methodology. *See also* 2 C.F.R. § 200.453 "Materials and supplies costs, including costs of computing devices." The recipient must report the value and the retention or sale of such supplies by submitting to the Grants Officer a completed "Tangible Personal Property Report" (SF-428 or any successor form) and "Final Report Form" (SF-428-B or any successor form) no later than 60 days after the end of the period of performance.

b. As long as the Federal government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

.07 Intangible Property

a. Title to intangible[7] property acquired under a Federal award vests upon acquisition in the non-Federal entity.

b. The non-Federal entity must use intangible property for the originally-authorized purpose, and must not encumber the property without the prior written approval of the Council. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 2 C.F.R. § 200.313(e).

c. The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Council reserves a royalty-free, perpetual, nonexclusive and irrevocable license to reproduce, publish, distribute, exhibit, and/or otherwise use and exploit the work throughout the world in all media now known or hereafter devised, and to authorize others to do so for Federal purposes.

[7] Intangible property as defined by 2 C.F.R. § 200.59 means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

d. The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements."

e. The Federal government has the right, perpetually throughout the world in all media now known or hereafter devised, to:

    1. Obtain, reproduce, publish, distribute, exhibit, and/or otherwise use and exploit the data produced under a Federal award; and

    2. Authorize others to do so for Federal purposes.

f. Freedom of Information Act (FOIA). Pursuant to 2 C.F.R. § 200.315(e), in response to a FOIA request for research data relating to published research findings[8] produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, the Council will request, and the non-Federal entity must provide, within a reasonable time, the research data[9] so that such data can be made available to the public through the procedures established under the FOIA. If the Council obtains the research data solely in response to a FOIA request, the Council may charge the requester a reasonable fee equal to the full incremental cost of obtaining the research data that reflects the costs incurred by the Council and the non-Federal entity. Pursuant to 5 U.S.C. § 552(a)(4)(A), this fee is in addition to any fees the Council may assess under the FOIA.

.08 Property Trust Relationship

Real property, equipment and intangible property acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Council may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

F. PROCUREMENT STANDARDS

Pursuant to 2 C.F.R. § 200.317, when procuring property and services under this Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The

[8] Published research findings (as defined by 2 C.F.R. § 200.315(e)(2)) means findings are published in a peer-reviewed scientific or technical journal; or a Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. Used by the Federal government in developing an "agency action that has the force and effect of law" is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

[9] As defined by 2 C.F.R. § 200.315(e)(3), research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include: trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

State will comply with 2 C.F.R. § 200.322 "Procurement of recovered materials," and the State must ensure that every purchase order or other contract includes any clauses required by section 2 C.F.R. § 200.326 "Contract provisions." All other non-Federal entities, including subrecipients of a State, will follow the requirements of 2 C.F.R. §§ 200.318 "General procurement standards" through 200.326 "Contract provisions."

a. For recipients that are States: When executing procurement actions under the award, the recipient must follow the same policies and procedures it uses for procurements from its non-Federal funds. The recipient must ensure that every purchase order or other contract contains any clauses required by federal statutes and EOs and their implementing regulations, including all of the provisions listed in Appendix II to 2 C.F.R. Part 200 "Contract Provisions for Non-Federal Entity Contracts under Federal Awards," as well as any other provisions required by law or regulations.

b. For recipients that are not States: The recipient must follow all procurement requirements set forth in 2 C.F.R. §§ 200.318, 200.319, 200.320, 200.321, 200.323, 200.324, and 200.325. In addition, all contracts executed by the recipient to accomplish the approved scope of work must contain any clauses required by federal statutes and EOs and their implementing regulations, including all of the provisions listed in Appendix II to 2 C.F.R. Part 200 "Contract Provisions for Non-Federal Entity Contracts under Federal Awards."

G. NON-DISCRIMINATION REQUIREMENTS

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The non-Federal entity shall comply with the non-discrimination requirements below:

.01 Statutory Provisions

a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and any Council regulations and policies promulgated pursuant to its authority prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;

b. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibits discrimination on the basis of sex under Federally assisted education programs or activities;

c. The Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12101 *et seq.*) prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;

d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and any Council regulations and policies promulgated pursuant to its authority prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.

e. Revised ADA Standards for Accessible Design for Construction Awards revised regulations implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286) which adopted new enforceable accessibility standards called the "2010 ADA

Standards for Accessible Design" (2010 Standards). All new construction and alteration projects shall comply with the 2010 Standards.

f. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and any Council regulations and policies promulgated pursuant to its authority prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance;

g. Any other applicable non-discrimination law(s).

.02 Other Provisions

a. Parts II and III of EO 11246, "Equal Employment Opportunity," (30 FR 12319, 1965), as amended by EO 11375 (32 FR 14303, 1967) and EO 12086 (43 FR 46501, 1978), requiring Federally-assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that EO and Department of Labor regulations implementing EO 11246 (41 C.F.R. § 60-1.4(b), 1991).

b. EO 13166 (August 11, 2000), "Improving Access to Services for Persons With Limited English Proficiency," requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them.

c. Pilot Program for Enhancement of Employee Whistleblower Protections. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. No. 112-239, enacted January 2, 2013 and codified at 41 U.S.C. § 4712) includes a pilot program of whistleblower protection. It applies to all Council awards, subawards, or contracts under awards issued beginning July 1, 2013 through January 1, 2017. The following provision implements that law:

In accordance with 41 U.S.C. § 4712, an employee of a non-Federal entity or contractor under a Federal award or subaward may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward. These persons or bodies include:

1. A Member of Congress or a representative of a committee of Congress.
2. An Inspector General.
3. The Government Accountability Office.
4. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
5. An authorized official of the Department of Justice or other law enforcement agency.
6. A court or grand jury.
7. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Non-Federal entities shall inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

.03 Title VII Exemption for Religious Organizations

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq*., provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

H. RECORDS RETENTION

a. The recipient must retain all records pertinent to this award for a period of no less than three years, beginning on a date as described in 2 C.F.R. § 200.333. While electronic storage of records (backed up as appropriate) is preferable, the recipient has the option to store records in hardcopy (paper) format. For the purposes of this section, the term "records" includes but is not limited to:

    1. Copies of all contracts and all documents related to a contract, including the Request for Proposal (RFP), all proposals/bids received, all meeting minutes or other documentation of the evaluation and selection of contractors, any disclosed conflicts of interest regarding a contract, all signed conflict of interest forms (if applicable), all conflict of interest and other procurement rules governing a particular contract, and any bid protests;

    2. Copies of all subawards, including the funding opportunity announcement or equivalent, all applications received, all meeting minutes or other documentation of the evaluation and selection of subrecipients, any disclosed conflicts of interest regarding a subaward, and all signed conflict of interest forms (if applicable);

    3. All documentation of site visits, reports, audits, and other monitoring of contractors (vendors) and subrecipients (if applicable);

    4. All financial and accounting records, including records of disbursements to contractors (vendors) and subrecipients, and documentation of the allowability of Administrative Costs charged to this award;

    5. All supporting documentation for the performance outcome and other information reported on the recipient's Financial Reports and Performance (Technical) Reports; and

    6. Any reports, publications, and data sets from any research conducted under this award.

b. If any litigation, claim, investigation, or audit relating to this award or an activity funded with award funds is started before the expiration of the three year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

I. AUDITS

a. Under the Government Accounting Office's authorities (5 U.S.C. § 701 et seq.) and the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, § 1 *et seq.,* an audit of the award may be conducted at any time. The Treasury Office of Inspector General (OIG), Government Accounting Office (GAO) and the Council are authorized to audit Council awards. *See* Section 1608 of the RESTORE Act; and *see* 31 C.F.R. §§ 34.205, 34.406, 34.508 and 34.805.

b. The Treasury OIG (as specified in the RESTORE Act), or any of his or her duly authorized representatives, the GAO and the Council shall have timely and unrestricted access to any pertinent books, documents, papers, and records of the non-Federal entity, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law.

c. If the Treasury OIG requires a program audit on a Council award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with the Council, or any other Federal, state, or local audit entity.

d. The Treasury OIG, the GAO, and the Council shall have the right during normal business hours to conduct announced and unannounced onsite and offsite physical visits of recipients and their subrecipients and contractors corresponding to the duration of their records retention obligation for this award.

.01 Organization-Wide, Program-Specific, and Project Audits

a. Organization-wide or program-specific audits must be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by 2 C.F.R. part 200, Subpart F, "Audit Requirements." Recipients that are subject to the provisions of 2 C.F.R. part 200, Subpart F and that expend $750,000 or more in a year in Federal awards must have an audit conducted for that year in accordance with the requirements contained in 2 C.F.R. part 200, Subpart F. A copy of the audit shall be submitted to the Bureau of the Census, which has been designated by OMB as a central clearinghouse, by electronic submission to the Federal Audit Clearinghouse website.[10] If it is necessary to submit by paper, the address for submission is:

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, IN 47132

b. Except for the provisions for biennial audits provided in paragraphs (1) and (2) of this section, audits required must be performed annually. Any biennial audit must cover both years within the biennial period.

1. A State, local government, or Indian tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period.

[10] Federal Audit Clearinghouse website - http://harvester.census.gov/sac/, verified on 6/5/2015.

2. Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

c. Council programs may have specific audit guidelines that will be incorporated into the award. When the Council does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in 2 C.F.R. § 200.507. The non-Federal entity may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer and to the OIG at OIGCounsel@oig.treas.gov or if e-mail is unavailable, submission to the OIG can be made at the following address:

Treasury Office of Inspector General
1500 Pennsylvania Ave. NW
Washington, DC 20220

.02 Audit Resolution Process

a. An audit of the award may result in the disallowance of costs incurred by the non-Federal entity and the establishment of a debt (account receivable) due the Council. For this reason, the non-Federal entity should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.

b. A non-Federal entity whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. Unless the Inspector General determines otherwise, the non-Federal entity has 30 days after the date of the transmittal of the draft audit report to submit written comments and documentary evidence.

2. The non-Federal entity has 30 days after the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.

3. The Council will review the documentary evidence submitted by the non-Federal entity and notify the non-Federal entity of the results in an *Audit Resolution Determination Letter*. The non-Federal entity has 30 days after the date of receipt of the *Audit Resolution Determination Letter* to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the non-Federal entity to submit written comments and documentary evidence that dispute the validity of the audit resolution determination.

4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.

5. The Council will review the non-Federal entity's appeal and notify the non-Federal entity of the results in an *Appeal Determination Letter*. After the opportunity to appeal has expired or after the appeal determination has been rendered, the Council will not accept any further documentary evidence from the non-Federal entity. No other administrative appeals to the Council are available.

J. DEBTS

.01 Payment of Debts Owed the Federal Government

a. The non-Federal entity must promptly pay any debts determined to be owed the Federal Government. Council debt collection procedures are set out in 2 C.F.R. part 200, Subpart D. In accordance with 2 C.F.R. § 200.345, delinquent debt includes any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award, constituting a debt to the Federal government (this includes a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. In accordance with 2 C.F.R. § 200.345, failure to pay a debt by the due date, or if there is no due date, within 90 calendar days after demand, shall result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. parts 900 through 999. The Council will transfer any debt that is more than 180 days delinquent to the Bureau of the Fiscal Service for debt collection services, a process known as "cross-servicing," pursuant to 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12 and any Council regulations and policies promulgated pursuant to its authority, and may result in the Council taking further action as specified in Section B.06 "Non-Compliance With Award Provisions" Above. Funds for payment of a debt shall not come from other Federally-sponsored programs. Verification that other Federal funds have not been used will be made (e.g., during on-site visits and audits).

b. If a non-Federal entity fails to repay a debt within 90 calendar days after the demand, the Council may reduce the debt by: (1) Making an administrative offset against other requests for reimbursements; (2) Withholding advance payments otherwise due to the non-Federal entity; or (3) Other action permitted by Federal statute. *See* 2 C.F.R. § 200.345(a).

.02 Late Payment Charges

a. Interest shall be assessed on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act of 1982, as amended (31 U.S.C. § 3701 *et seq.)*. The minimum annual interest rate to be assessed is the Department of the Treasury's Current Value of Funds Rate (CVFR).[11] The CVFR is published by the Department of the Treasury in the *Federal Register*[12] and in the *Treasury Financial Manual Bulletin*.[13] The assessed rate shall remain fixed for the duration of the indebtedness.

b. Penalties shall accrue at a rate of not more than six percent (6%) per year or such higher rate as authorized by law.

c. Administrative charges, that is, the costs of processing and handling a delinquent debt, are determined by the Council.

[11] Department of the Treasury's Current Value of Funds Rate (CVFR) webpage - https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm, verified 8/18/2015.
[12] Federal Register website - http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR and http://www.federalregister.gov/, verified 8/18/2015.
[13] Treasury Financial Manual Bulletin website - http://tfm.fiscal.treasury.gov/v1/bull.html, verified 8/18/2015.

.03 Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs

Pursuant to 28 U.S.C. § 3201(e), unless waived by the Council a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

K. GOVERNMENTWIDE DEBARMENT AND SUSPENSION

The non-Federal entity shall comply with the provisions of 2 C.F.R. Part 180, "OMB Guidelines To Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," which generally prohibit entities, and their principals, that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions, and which sets forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

L. LOBBYING RESTRICTIONS

.01 Statutory Provisions

The non-Federal entity shall comply with 2 C.F.R. § 200.450 ("Lobbying"), which incorporates the provisions of 31 U.S.C. § 1352, the "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), and OMB guidance and notices on lobbying restrictions. In addition, non-Federal entities must comply with any Council regulations and policies promulgated pursuant to its authority. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal Government in connection with the award, and require the disclosure of the use of non-Federal funds for lobbying. Executive lobbying costs, i.e., costs incurred in attempting to improperly influence[14] either directly or indirectly an employee or officer of the executive branch of the Federal government to give consideration or to act regarding a Federal award or a regulatory matter, are unallowable costs. *See* 2 C.F.R. § 200.450(b) and (c).

.02 Disclosure of Lobbying Activities

The non-Federal entity receiving in excess of $100,000 in Federal funding shall submit a completed Form SF-LLL or any successor form, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The non-Federal entity must submit any required Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer. *See* 31 U.S.C. § 1352.

[14] To improperly influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.

M. REMEDIES FOR NONCOMPLIANCE

a. If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Council or pass-through entity may impose additional conditions, as described in 2 C.F.R. § 200.207 "Specific conditions" (e.g., requiring additional reporting or more frequent submission of the Financial or Performance (Technical) Reports; requiring additional activity, project, or program monitoring; requiring the recipient or one or more of its subrecipients to obtain technical or management assistance; or establishing additional actions that require prior approval). If the Council or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, pursuant to 2 C.F.R. § 200.338, the Council or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Council or pass-through entity.

2. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

3. Wholly or partly suspend or terminate the Federal award.

4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. part 180 and Council regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by the Council).

5. Withhold further Federal awards for the project or program.

6. Take other remedies that may be legally available.

The Council will notify the recipient in writing of the Council's proposed determination that an instance of non-compliance has occurred, provide details regarding the instance of noncompliance, and indicate the remedy that the Council proposes to pursue. The recipient will then have 30 calendar days to respond and provide information and documentation contesting the Council's proposed determination or suggesting an alternative remedy. The Council will consider information provided by the recipient and issue a final determination in writing, which will state the Council's final findings regarding noncompliance and the remedy to be imposed.

b. RESTORE Act-Specific Remedy for Non-compliance

1. If the Council determines that the recipient has expended funds to cover the cost of any ineligible activities, in addition to the remedies available in this section, the Council, in coordination with the U.S. Department of Treasury ("Treasury"), will make no additional payments to the recipient from the RESTORE Trust Fund, including no payments from the RESTORE Trust Fund for activities, projects, or programs under any other RESTORE Act Component until the recipient has either (a) deposited an amount equal to the amount expended for the ineligible activities in the RESTORE Trust Fund, or (b) the Council, in coordination with Treasury, has authorized the recipient to expend an equal amount from the recipient's own funds for an activity that meets the requirements of the RESTORE Act. *See* 33 U.S.C. § 1321(t)(1)(G) and (H), and *see* 31 C.F.R. § 34.804 "Noncompliance."

2. If the Council determines that the recipient has materially violated the terms of the award, the Council, in coordination with Treasury, will make no additional funds available to the recipient from any part of the RESTORE Trust Fund until the recipient corrects the violation.

c. In extraordinary circumstances, the Council may require that any of the remedies above take effect immediately upon notice in writing to the recipient. In such cases, the recipient may contest the Council's determination or suggest an alternative remedy in writing to the Council, and the Council will issue a final determination.

d. Instead of, or in addition to, the remedies listed above, the Council may refer the noncompliance to the Treasury OIG for investigation or audit, pursuant to 31 C.F.R. § 34.805 "Treasury Inspector General." The Council will refer all allegations of fraud, waste, or abuse to the Treasury OIG.

e. Termination. In accordance with 2 C.F.R. § 200.339, when a Federal award is terminated or partially terminated, both the Council or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in 2 C.F.R. §§ 200.343 "Closeout" and 200.344 "Post-closeout adjustments and continuing responsibilities."

1. The Federal award may be terminated in whole or in part as follows:

   i. By the Council or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
   ii. By the Council or pass-through entity for cause;
   iii. By the Council or pass-through entity with the consent of the non-Federal entity, in which case the two parties will agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
   iv. By the non-Federal entity upon sending to the Council or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Council or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Council or pass-through entity may terminate the Federal award in its entirety.

2. The Council or pass-through entity is required to provide a notice of termination to the non-federal entity, pursuant to 2 C.F.R. § 200.340:

   i. If the Federal award is terminated for the non-Federal entity's failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that the termination decision may be considered in evaluating future applications received from the non-Federal entity.
   ii. Upon termination of a Federal award, the Council will provide the information required under FFATA to the Federal Web site established to fulfill the requirements of FFATA, and update or notify any other relevant governmentwide systems or entities of any indications of poor performance as required by 41 U.S.C. § 417b and 31 U.S.C. § 3321 and implementing guidance at 2 C.F.R. part 77. See also 2 C.F.R. part 180 for the requirements for Suspension and Debarment.

N. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS

.01 Code of Conduct for Recipients

a. The non-Federal entity must immediately report any indication of fraud, waste, abuse or potential criminal activity pertaining to grant funds to the Council, Treasury and the Treasury Inspector General in accordance with the requirements in 31 C.F.R. § 34.803(a).

b. Pursuant to the certification in Form SF-424B, paragraph 3, or equivalent, the non-Federal entity must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of this award.

c. Non-Federal entities must comply with the requirements of 2 C.F.R. § 200.318 "General procurement standards," including maintaining written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer or agent shall participate in the selection, award or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to or planning to employ any of the foregoing parties, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees and agents of the non-Federal entity must neither solicit nor accept any gratuities, favors or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set written standards of conduct for circumstances in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. Such standards must provide for disciplinary actions to be taken for violations of the standards of conduct by officers, employees or agents of the non-Federal entity.

.02 Applicability of Award Provisions to Subrecipients

a. The non-Federal entity shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of the award, including applicable cost principles, administrative provisions, audit requirements, and all associated terms and conditions. *See* 2 C.F.R. part 200, Subpart D, "Subrecipient Monitoring and Management" *and see* 2 C.F.R. § 200.101(b)(1). Additionally, the non-Federal entity must perform all responsibilities required of a pass-through entity, as specified in 2 C.F.R. Part 200, including evaluating and documenting a subrecipient's risk of noncompliance; providing training and technical assistance necessary to complete the subaward activities; monitoring the performance of the subrecipient; and taking any necessary enforcement actions against a noncompliant subrecipient. *See* 2 C.F.R. § 200.331 "Requirements for pass through entities."

b. Prior to dispersing funds to a subrecipient, the recipient must execute a legally-binding written agreement with the entity receiving the subaward in accordance with the requirements in 31 C.F.R. § 34.803(c). The written agreement shall extend all applicable program requirements to the subrecipient. The written agreement must include a requirement that the contractor or subrecipient retain all records in compliance with 2 C.F.R. § 200.333.

c. A non-Federal entity is responsible for subrecipient monitoring, including the following:

1. Federal Award Identification. The non-Federal entity must ensure that each subaward includes the following information and applicable compliance requirements at the time of the subaward. If any of these data elements change, the pass through entity must include the changes in a subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward.

    i. Subrecipient name (which must match the registered name in DUNS);
    ii. Subrecipient's DUNS number (*see* 2 C.F.R. § 200.32 "Data Universal Numbering System (DUNS) number");
    iii. Federal Award Identification Number (FAIN);
    iv. Federal Award Date (*see* 2 C.F.R. § 200.39 "Federal award date");
    v. Subaward Period of Performance Start and End Date;
    vi. Amount of Federal Funds Obligated by this action;
    vii. Total Amount of Federal Funds Obligated to the subrecipient;
    viii. Total Amount of the Federal Award;
    ix. Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
    x. Name of Federal awarding agency, pass-through entity and contact information for awarding official;
    xi. CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;
    xii. Identification of whether the award is for research and development (R&D); and
    xiii. Indirect cost rate for the Federal award (including whether the *de minimis* rate is charged per 2 C.F.R. § 200.414 "Indirect (F&A) costs").

2. Award Monitoring. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure that compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. *See* 2 C.F.R. §§ 200.328 "Monitoring and reporting program performance," and 200.331 "Requirements for pass-through entities." The non-Federal entity shall monitor activities of the subrecipient through reporting, site visits, regular contact, or other means, as necessary to ensure that the subaward is used solely for authorized purposes, in compliance with Federal statutes, regulations and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

    i. Reviewing financial and programmatic reports required by the pass-through entity.
    ii. Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
    iii. Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by 2 C.F.R. § 200.521 "Management decision."

3. Subrecipient Audits. The non-Federal entity is responsible for ensuring that subrecipients expending $750,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of 2 C.F.R. part 200, Subpart F, "Audit Requirements," and that the required audits are completed within nine (9) months after the end of the subrecipient's audit period. In addition, the non-Federal entity is required to issue a management decision on audit findings within six (6) months after receipt of the subrecipient's audit report, and to ensure that the

subrecipient takes timely and appropriate corrective action on all audit findings. Pursuant to 2 C.F.R. § 200.505, in cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities must take appropriate action as provided in 2 C.F.R. § 200.338 "Remedies for noncompliance."

.03 Competition and Codes of Conduct for Subawards

a. Unless otherwise approved in writing in advance by the Grants Officer, all subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition in accordance with the requirements of 2 C.F.R. §§ 200.317 through 200.326 "Procurement Standards." The non-Federal entity must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such subawards.

b. The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to or planning to employ any of the foregoing parties, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards of conduct for circumstances in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. Such standards must provide for disciplinary actions to be taken for violations of the standards of conduct by officers, employees or agents of the non-Federal entity.

c. If the non-Federal entity has a parent, affiliate or subsidiary organization that is not a State, local government or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest, wherein relationships with a parent company, affiliate or subsidiary organization cause the non-Federal entity to be or appear to be unable to be impartial in conducting a procurement action involving such related organization.

d. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It may also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

.04 Applicability of Provisions to Subawards, Contracts, and Subcontracts

a. The non-Federal entity shall include the following notice in each request for applications or bids for a subaward, contract, or subcontract, as applicable:

Applicants or bidders for a lower tier covered transaction (except procurement contracts for goods and services under $25,000 not requiring the consent of a Council official) are subject to 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)." In addition, applicants or bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than $100,000 of Federal funds at any tier are subject to relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, "New Restrictions on Lobbying," published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Governmentwide Guidance for New Restrictions on Lobbying," and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).

When the recipient makes a subaward to a subrecipient that is authorized to enter into contracts for the purpose of completing the subaward scope of work, the recipient must require the subrecipient to comply with the requirements contained in this section.

b. Pursuant to 2 C.F.R. Appendix II to part 200, "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards," and in addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable:

    1. Contracts for more than the Simplified Acquisition Threshold ($150,000 as of 12-26-2013), which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, must address administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

    2. All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

    3. Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. part 60, all contracts that meet the definition of "Federally assisted construction contract" in 41 C.F.R. part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. 60-1.4(b), in accordance with EO 11246, "Equal Employment Opportunity" (30 F.R. 12319, 12935, 3 C.F.R. part, 1964-1965 Comp., p. 339), as amended by EO 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

    4. Davis-Bacon Act. When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Council. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of

Labor regulations (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"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Council.

5. Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702 of the Act, 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. 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.

6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the non-Federal entity or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the non-Federal entity or subrecipient must comply with the requirements of 37 C.F.R. 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.

7. 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 (42 U.S.C. § 6201).

8. Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (*see* 2 C.F.R. § 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM[15] contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

9. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Contractors that apply or bid for an award of $100,000 or more must file the required certification, a "Disclosure of Lobbying Activities" (Form SF-LLL or successor form). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal

[15] System for Award Management (SAM) website - https://www.sam.gov, verified 8/18/2015.

contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must 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 Federal award recipient. The Form SF-LLL must be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The non-Federal entity must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

10. Procurement of recovered materials (section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act). A state agency or agency of a political subdivision of a State and its contractors must comply with requirements of Section 6002 including procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

11. Pilot Program for Enhancement of Employee Whistleblower Protections. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. No. 112-239, enacted January 2, 2013 and codified at 41 U.S.C. § 4712) includes a pilot program of whistleblower protection. It applies to all Council awards, subawards, or contracts under awards issued beginning July 1, 2013 through January 1, 2017. Non-Federal entities and contractors under Federal awards and subawards shall inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce. *See* section G.02 (c) of this document.

c. The recipient must include in its legal agreement or contract with the subrecipient a requirement that the subrecipient make available to the Council, the Treasury OIG, and the GAO any documents, papers or other records, including electronic records, of the subrecipient, that are pertinent to this award, in order to make audits, investigations, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to the subrecipient's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as records are required to be retained.

d. The recipient and any subrecipients, contractors, or subcontractors must comply with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328), as applicable, which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

e. When contracting, the non-Federal entity must take all necessary affirmative steps, as prescribed in 2 C.F.R. § 200.321(b), to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

.05 Subaward and/or Contract to a Federal Agency

a. The non-Federal entity, subrecipient, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of the Council and/or other

Federal department, agency, or instrumentality without the prior written approval of the Grants Officer.

b. Requests for approval of such action must be submitted in writing to the Grants Officer. The Grants Officer will notify the non-Federal entity in writing of the final determination.

O. AMENDMENTS AND CLOSEOUT

a. Amendments to an award must be requested in writing and require the written approval of the Grants Officer. The recipient must provide an explanation for the reason an amendment is requested. The Council reserves the right to amend the terms of the award when required by law or regulation.

b. The non-Federal entity must comply with the closeout requirements as stipulated in 2 C.F.R. § 200.343. Closeout of the award does not affect any of the post-closeout adjustments and continuing responsibilities under 2 C.F.R. § 200.344.

P. ENVIRONMENTAL COMPLIANCE

Environmental impacts must be considered by Federal decision-makers in deciding whether or not to approve: (1) a proposal for Federal assistance; (2) such proposal with mitigation; or (3) a different proposal having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Non-Federal entities must comply with all applicable environmental laws, regulations and policies. Additionally, recipients may be required to assist the Council in complying with laws, regulations and policies applicable to Council actions. Laws, regulations, and policies potentially applicable to Council actions and/or recipients may include but are not limited to the statutes and EOs listed below. The Council does not make independent determinations of compliance with laws such as the Clean Water Act. Rather, the Council may require a recipient to provide information to the Council to demonstrate that the recipient has complied with or will comply with all such requirements. In some cases, if additional information is required after an application is selected, funds may be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional information sufficient to enable the Council to make an assessment regarding compliance with applicable environmental laws, regulations and policies.

If a recipient is permitted to make any subawards, the recipient must include all of the environmental statutes, regulations and EOs listed below in any agreement or contract with a subrecipient, and require the subrecipient to comply with all of these and to notify the recipient if the subrecipient becomes aware of any impact on the environment that was not noted in the recipient's approved application package.

.01 The National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*)

Council approval of financial assistance awards may be subject to the environmental review requirements of the National Environmental Policy Act (NEPA). In such cases, recipients of financial assistance awards may be required to assist the Council in complying with NEPA. For example, applicants may be required to assist the Council by providing information on a proposal's potential environmental impacts, or drafting or supplementing an environmental assessment or environmental impact statement if the Council determines such documentation is required. Independent of the Council's responsibility to comply with

NEPA, where appropriate, projects or programs funded by the Council may trigger Federal agency NEPA compliance duties involving a separate Federal action, such as the issuance of a Federal permit.

.02 The Endangered Species Act (16 U.S.C. § 1531 *et seq.*)

Council approval of financial assistance for project implementation is subject to compliance with section 7 of the Endangered Species Act (ESA). Recipients must identify any impact or activities that may involve a Federally-listed threatened or endangered species, or their designated critical habitat. Section 7 of the ESA requires every Federal agency to ensure that any action it authorizes, funds or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat. Federal agencies have the responsibility for ensuring that a protected species or habitat does not incur adverse effects from actions taken under Federal assistance awards, and for conducting the required consultations with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service under the Endangered Species Act, as applicable.

.03 Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*)

Recipients of financial assistance awards must identify to the Council any effects the award may have on essential fish habitat (EFH). Federal agencies which fund, permit, or carry out activities that may adversely impact EFH are required to consult with NMFS regarding the potential effects of their actions, and respond in writing to NMFS recommendations. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. In addition, NMFS is required to comment on any state agency activities that would impact EFH. Provided the specifications outlined in the regulations are met, EFH consultations will be incorporated into interagency procedures previously established under NEPA, the Endangered Species Act, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes.

.04 Clean Water Act Section 404 (33 U.S.C. § 1344 *et seq.*)

Clean Water Act (CWA) Section 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as levees and some coastal restoration activities), and infrastructure development (such as highways and airports). CWA Section 404 requires a permit from the U.S. Army Corps of Engineers before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities).

.05 The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*), and Executive Order No. 13186, Responsibilities of Federal Agencies to Protect Migratory Birds

A number of prohibitions and limitations apply to projects that adversely impact migratory birds and bald and golden eagles. Executive Order 13186 directs Federal agencies to enter a Memorandum of Understanding with the U.S. Fish and Wildlife Service to promote conservation of migratory bird populations when a Federal action will have a measurable negative impact on migratory birds.

.06 National Historic Preservation Act (16 U.S.C. § 470 *et seq.*)

Council approval of financial assistance awards may be subject to Section 106 of the National Historic Preservation Act (NHPA). In such cases, recipients of financial assistance awards may be requested to assist the Council in identifying any adverse effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Pursuant to 36 C.F.R. § 800.2(c)(4), applicants and recipients may also be requested to assist the Council in initiating consultation with State or Tribal Historic Preservation Officers, Indian tribes, Native Hawaiian Organizations or other applicable interested parties as necessary to the Council's responsibilities to identify historic properties, assess adverse effects to them, and determine ways to avoid, minimize or mitigate adverse effects on historic properties.

Pursuant to guidelines issued by the National Park Service under the Abandoned Shipwreck Act (43 U.S.C. §§ 2101-2106), state and Federal agencies whose activities may disturb, alter, damage, or destroy State-owned shipwrecks must take into account the effect of the proposed activity on any state-owned shipwreck and afford the state agencies assigned management responsibility for state-owned shipwrecks a reasonable opportunity to comment on the proposed activity.

.07 Clean Air Act (42 U.S.C. § 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) (Clean Water Act), and Executive Order 11738 ("Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans")

Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 *et seq*.), Clean Water Act (33 U.S.C. §§ 1251 *et seq*.), and Executive Order 11738. Recipients shall not use a facility that the Environmental Protection Agency (EPA) has placed on EPA's List of Violating Facilities (this list is incorporated into the Excluded Parties List System which is part of SAM) in performing any award that is nonexempt under subpart J of 2 C.F.R. part 1532.

.08 The Flood Disaster Protection Act (42 U.S.C. § 4002 *et seq.*)

Flood insurance, when available, is required for Federally-assisted construction or acquisition in areas having special flood hazards and flood-prone areas. When required, recipients will ensure that flood insurance is secured for their project(s).

.09 Executive Order 11988 ("Floodplain Management"), Executive Order 13690 ("Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input"), and Executive Order 11990 ("Protection of Wetlands")

Recipients must identify proposed actions located in a floodplain and/or wetlands to enable the Council to determine whether there is an alternative to minimize any potential harm. Floodplains are identified through a climate-informed science approach, adding 2-3 feet of elevation to the 100-year floodplain, or using the 500-year floodplain.

.10 Executive Order 13112 ("Invasive Species")

Federal agencies must identify actions that may affect the status of invasive species and use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them. In addition, an agency may not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.

.11 The Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.*)

Federally funded projects must be consistent with a coastal state's approved management program for the coastal zone.

.12 The Coastal Barriers Resources Act (16 U.S.C. § 3501 *et seq.*)

Only in certain circumstances may Federal funding be provided for actions within a Coastal Barrier System. The Coastal Barriers Resources Act generally prohibits new Federal expenditures, including Federal grants, within specific units of the Coastal Barrier Resources System (CBRS). Although the Act restricts Federal expenditures for coastal barrier development, Section 6(a)(6)(A) contains an exemption for projects relating to the study, management, protection, or enhancement of fish and wildlife resources and habitats, including recreational projects. Section 6(a)(6)(G) also exempts nonstructural projects for shoreline stabilization that are designed to mimic, enhance or restore natural stabilization systems. However, care must be taken when interpreting any exemptions described, as they are limited to projects that are consistent with the purpose of this Act as interpreted by the lead agency, Department of Interior. Applicants should work with the U.S. Fish and Wildlife Service, which reviews proposals to determine whether a project falls within a protected unit and if so, whether an exception applies. Maps of the CBRS are available through the interactive U.S. Fish and Wildlife Service Coastal Barrier Resources System Mapper.[16]

.13 The Wild and Scenic Rivers Act (16 U.S.C. § 1271 *et seq.*)

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system. Funded projects in the National Wild and Scenic Rivers system must be consistent with Wild and Scenic Rivers Act requirements.

.14 The Safe Drinking Water Act (42 U.S.C. § 300 *et seq.*)

The Sole Source Aquifer program under this statute precludes Federal financial assistance for any project that the EPA determines may contaminate a designated sole source aquifer through a recharge zone so as to create a significant hazard to public health.

[16] U.S. Fish and Wildlife Service Interactive Coastal Barrier Resources System Mapper - http://www.fws.gov/cbra/Maps/Mapper.html, verified 8/18/2015.

.15 The Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*)

This act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that recipients of Federal funds that are state agencies or political subdivisions of states give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

.16 The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 *et seq.*)

The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 et seq.), as amended by the Community Environmental Response Facilitation Act, provides the President with broad, discretionary response authorities to address actual and threatened releases of hazardous substances, as well as pollutants and contaminants where there is an imminent and substantial danger to public health and the environment. Section 103 of this Act contains specific reporting requirements and responsibilities and section 117 of the Act contains specific provisions designed to ensure meaningful public participation in the response process.

.17 Executive Order 12898 ("Environmental Justice in Minority Populations and Low Income Populations")

This Order identifies and addresses adverse human health or environmental effects of programs, policies and activities on low income and minority populations. Consistent with EO 12898, recipients may be requested to help identify and address, as appropriate, disproportionate impacts to low income and minority populations which could result from their project.

.18 Rivers and Harbors Act (33 U.S.C. 407)

A permit may be required from the U.S. Army Corps of Engineers if the proposed activity involves any work in, over or under navigable waters of the United States. Recipients must identify any work (including structures) that will occur in, over or under navigable waters of the United States and obtain the appropriate permit, if applicable.

.19 Marine Protection, Research and Sanctuaries Act (Pub. L. 92-532, as amended), National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.), and Executive Order 13089 ("Coral Reef Protection")

The Marine Protection, Research and Sanctuaries Act prohibits dumping of material into ocean waters beyond the territorial limit without a permit. Recipients must identify any potential ocean dumping of materials, obtain the appropriate permit, if applicable, and notify the Council. Under the National Marine Sanctuaries Act, Federal agencies are required to protect National Marine Sanctuary resources. Recipients must identify actions that are in or may affect a National Marine Sanctuary and notify the Council. EO 13089 requires that any actions authorized or funded by Federal agencies not degrade the condition of coral reef ecosystems. Recipients must identify any action that might affect a coral reef ecosystem and notify the Council.

.20 Executive Order 13653 ("Preparing the United States for the Impacts of Climate Change")

This EO requires Federal agencies to identify and support smarter, more climate-resilient investments by States, local communities and tribes, including by providing incentives through agency guidance and grants. Recipients must identify and describe any project elements that promote climate resilience.

.21 Farmland Protection Policy Act (7 U.S.C. 4201 et seq.)

This act requires agency programs, to the extent possible, be compatible with state, local and private programs and policies to protect farmland from irreversible conversion to nonagricultural uses. Recipients must identity any irreversible conversion of farmland to nonagricultural uses as a result of their project.

.22 Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.)

During the planning of water resource development projects, agencies are required to give fish and wildlife resources equal consideration with other values. Additionally, the Fish and Wildlife Service and fish and wildlife agencies of States must be consulted whenever waters of any stream or other body of water are "proposed or authorized, permitted or licensed to be impounded, diverted… or otherwise controlled or modified" by any agency under a Federal permit or license.

Q. MISCELLANEOUS REQUIREMENTS

.01 Criminal and Prohibited Activities

a. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), provides for the imposition of civil penalties against persons who make false, fictitious or fraudulent claims to the Federal Government for money (including money representing grants, loans or other benefits).

b. The False Claims Amendments Act and the False Statements Act (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious or fraudulent statement, representation or claim against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.

c. The Civil False Claims Act (31 U.S.C. § 3729 *et seq*.), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.

d. The Copeland "Anti-Kickback" Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally-supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland "Anti-Kickback" Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

.02 Political Activities

The non-Federal entity must comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

.03 Drug-Free Workplace

The non-Federal entity shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Pub. L. No. 100-690, Title V, Sec. 5153, as amended by Pub. L. No. 105-85, Div. A, Title VIII, Sec. 809, as codified at 41 U.S.C. § 8102) and any Council regulations and policies promulgated pursuant to its authority, which require that the non-Federal entity take steps to provide a drug-free workplace.

.04 Foreign Travel

a. The non-Federal entity may not use funds from this award for travel outside of the United States unless the Grants Officer provides prior written approval. The non-Federal entity shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 through 301-10.143.

b. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.

c. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow Federally-funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA website.[17] Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State's website.[18]

d. If a foreign air carrier is anticipated to be used for any portion of travel under a Council financial assistance award the non-Federal entity must obtain prior written approval from the Grants Officer. When requesting such approval, the non-Federal entity must provide a justification in accordance with guidance provided by 41 C.F.R. § 301-10.142, which requires the non-Federal entity to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the non-Federal entity meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the non-Federal entity must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer shall make the final determination and notify the non-Federal entity in writing. Failure to adhere to the provisions of the Fly America Act will result in the non-Federal entity not being reimbursed for any transportation costs for which the non-Federal entity improperly used a foreign air carrier.

[17] GSA Fly America Act website - http://www.gsa.gov/portal/content/103191, verified 8/18/2015.
[18] Department of State Open Skies Agreements website - http://www.state.gov/e/eb/tra/ata/index.htm, verified 8/18/2015.

.05 Increasing Seat Belt Use in the United States

Pursuant to EO 13043, recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented or personally owned vehicles.

.06 Research Involving Human Subjects

a. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. part 27 "Protection of Human Subjects." No research involving human subjects is permitted under this award unless expressly authorized by special award condition, or otherwise in writing by the Grants Officer.

b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

c. Department of Commerce regulations at 15 C.F.R. part 27, applying to all Federal departments and agencies, require that recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the non-Federal entity shall submit appropriate documentation to the Federal Program Officer for approval by the appropriate Council officials. This documentation may include:

    1. Documentation establishing approval of the project by an institutional review board (IRB) approved for Federal-wide use under Department of Health and Human Services guidelines (*see also* 15 C.F.R. § 27.103);

    2. Documentation to support an exemption for the project under 15 C.F.R. § 27.101(b);

    3. Documentation to support deferral for an exemption or IRB review under 15 C.F.R. § 27.118;

    4. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.

d. No work involving human subjects may be undertaken or conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

.07 Federal Employee Expenses

Federal agencies are generally barred from accepting funds from a non-Federal entity to pay transportation, travel or other expenses for any Federal employee. Use of award funds (Federal or non-Federal) or the non-Federal entity's provision of in-kind goods or services, for the purposes of transportation, travel or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, Council policy prohibits the acceptance of gifts, including travel payments for Federal employees, from recipients or applicants, regardless of the source.

.08 Minority Serving Institutions Initiative

Pursuant to EOs 13555 ("White House Initiative on Educational Excellence for Hispanics"), 13270 ("Tribal Colleges and Universities"), and 13532 ("Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities"), the Council is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance programs. The Council's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. The Council encourages all recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

.09 Research Misconduct

The Council adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification or plagiarism in proposing, performing or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Non-Federal entities that conduct extramural research funded by the Council must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Non-Federal entities also have the primary responsibility to prevent, detect and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Federal award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and/or suspension or debarment. The Council requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the Treasury OIG of such allegation. Once the non-Federal entity has investigated the allegation, it shall submit its findings to the Grants Officer. The Council may accept the non-Federal entity's findings or proceed with its own investigation. The Grants Officer will inform the non-Federal entity of the Council's final determination.

.10 Publications, Videos, Signage and Acknowledgment of Sponsorship

a. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to Federally-funded projects (*e.g.*, scientific research).

b. Recipients are required to submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to the Council.

c. When releasing information related to a funded project, recipients must include a statement that the project or effort undertaken was or is sponsored by the Council.

d. Any signage produced with funds from the award or informing the public about the activities funded in whole or in part by the award, must first be approved in writing by the Grants Officer.

e. Recipients are responsible for assuring that every publication of material based on, developed under, or otherwise produced under a Council financial assistance award, except scientific articles or papers

appearing in scientific, technical or professional journals, contains the following disclaimer or other disclaimer approved in writing by the Grants Officer:

This [report/video/etc.] was prepared by [non-Federal entity name] using Federal funds under award [number] from the RESTORE Council. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the RESTORE Council.

.11 Care and Use of Live Vertebrate Animals

Recipients must comply with the Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89-544, 7 U.S.C. § 2131 *et seq*.) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations, 9 C.F.R. Parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. § 1531 *et seq*.); Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq*.) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. § 4701 *et seq*.) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling and treatment of warm-blooded animals held for research, teaching or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any Council financial assistance award without the prior written approval of the Grants Officer.

.12 Homeland Security Presidential Directive 12

If the performance of a grant award requires non-Federal entity personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term "routine access" is defined as more than 180 days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the Council will conduct a check with U.S. Citizenship and Immigration Services' (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure that the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award shall comply with the Council personal identity verification procedures that implement Homeland Security Presidential Directive 12, "Policy for a Common Identification Standard for Federal Employees and Contractors," FIPS PUB 201, and OMB Memorandum M-05-24. The non-Federal entity shall ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements provided below. The non-Federal entity shall insert the following term in all subawards and contracts when the subaward non-Federal entity or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

a. *The subrecipient or contractor shall comply with the Council personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.*

b. *The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Council: (1) When*

no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee's employment; or (3) Upon subaward or contract completion or termination.

.13 Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations

a. This clause applies to the extent that this financial assistance award involves access to export-controlled items.

b. In performing this financial assistance award, the non-Federal entity may gain access to items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The non-Federal entity is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and reexports provisions. The non-Federal entity shall establish and maintain effective export compliance procedures at Council and non-Council facilities throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled items, including by foreign nationals.

c. Definitions

1. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the Department of Commerce's Bureau of Industry and Security. These are generally known as "dual-use" items, items with both a military and commercial application.

2. Deemed Export/Reexport. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is "deemed" to be an export to the home country of the foreign national. 15 C.F.R. § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national's home country. Licenses may be required for deemed exports or reexports.

d. The non-Federal entity shall control access to all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable Federal laws, EOs, and/or regulations, including the EAR.

e. As applicable, non-Federal entity personnel and associates at Council sites shall be informed of any procedures to identify and protect export-controlled items.

f. To the extent the non-Federal entity wishes to provide foreign nationals with access to export-controlled items, the non-Federal entity shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed reexports.

g. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, EOs or regulations.

h. Compliance with the foregoing will not satisfy any legal obligations the non-Federal entity may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports of munitions items subject to the

International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including releases of such items to foreign nationals.

i. The non-Federal entity shall include this Subsection .13, including this Subparagraph i, in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled items.

.14 The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, and the implementing regulations at 2 C.F.R. part 175

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the non-Federal entity engages in certain activities related to trafficking in persons. The Council incorporates the following award term required by 2 C.F.R. § 175.15(b).[19]

Award Term from 2 C.F.R. § 175.15(b):

I. Trafficking in persons.
- a. Provisions applicable to a non-Federal entity that is a private entity.
  1. You as the non-Federal entity, your employees, subrecipients under this award, and subrecipients' employees may not—
     i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
     ii. Procure a commercial sex act during the period of time that the award is in effect; or
     iii. Use forced labor in the performance of the award or subawards under the award.
  2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
     i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
     ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either— (A) Associated with performance under this award; or (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 C.F.R. Part 1326, "Nonprocurement Debarment and Suspension."
- b. Provision applicable to a non-Federal entity other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
  1. Is determined to have violated an applicable prohibition in paragraph a.1 of this awardterm; or
  2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
     i. Associated with performance under this award; or

[19] *See* 2 C.F.R. § 175.15(b) - http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf, verified 8/18/2015.

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 C.F.R. Part 1326, "Nonprocurement Debarment and Suspension."

c. Provisions applicable to any non-Federal entity.
   1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
   2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
      i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
      ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
   3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:
   1. Employee means either:
      i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
      ii. ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
   2. Forced labor means: labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
   3. Private entity:
      i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. 175.25;
      ii. Includes: (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. 175.25(b); and (B) A for-profit organization.
   4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

.15 The Federal Funding Accountability and Transparency Act of 2006 ("Transparency Act" or FFATA)—Public Law 109-282, as amended by section 6202(a) of Public Law 110-252 (31 U.S.C. 6101)

a. Searchable Website Requirements. The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at the USA Spending website.[20] Recipients and subrecipients must include the following required data elements in their application:

[20] USASpending.gov website - www.USASpending.gov, verified 8/18/2015.

- Name of entity receiving award;
- Award amount;
- Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;
- Location of entity, primary location of performance (City/State/Congressional District/Country); and
- Unique identifier of entity.

b. Reporting Subawards and Executive Compensation. Prime grant recipients awarded a new Federal grant greater than or equal to $25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The prime non-Federal entity is required to file a FFATA subaward report by the end of the month following the month in which the prime non-Federal entity awards any sub-grant greater than or equal to $25,000. *See* Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (*see* 31 U.S.C. 6101 note). The reporting requirements are located in Appendix A of 2 C.F.R. Part 170.[21]

Award Term from Appendix A of 2 C.F.R. Part 170:

I. Reporting Subawards and Executive Compensation.
   a. Reporting of first-tier subawards.
      1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5) for a subaward to an entity (*see* definitions in paragraph e. of this award term).
      2. Where and when to report.
         i. You must report each obligating action described in paragraph a.1 of this award term to the FFATA Subaward Reporting System (FSRS).[22]
         ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
      3. What to report. You must report the information about each obligating action that the submission instructions posted at the FSRS website specify.
   b. Reporting Total Compensation of Non-Federal Entity Executives.
      1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
         i. the total Federal funding authorized to date under this award is $25,000 or more;
         ii. in the preceding fiscal year, you received—
            (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and
            (B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

[21] 2 C.F.R. § 170.320 on GPO website - http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1/pdf/CFR-2011-title2-vol1-part170-appA.pdf, verified 8/18/2015.
[22] Federal Funding Accountability and Transparency Act Subaward Reporting System - http://www.fsrs.gov, verified 8/18/2015.

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, *see* the U.S. Security and Exchange Commission total compensation filings.[23])

2. Where and when to report. You must report executive total compensation described in paragraph b.1 of this award term:
   i. As part of your registration profile in the System for Award Management (SAM),[24] and
   ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.
1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
   i. In the subrecipient's preceding fiscal year, the subrecipient received—
      (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and
      (B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
   ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, *see* the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)
2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
   i. To the non-Federal entity.
   ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions. If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report: i. Subawards, and ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:
1. Entity means all of the following, as defined in 2 C.F.R. part 25:
   i. A Governmental organization, which is a State, local government, or Indian tribe;
   ii. A foreign public entity;
   iii. A domestic or foreign nonprofit organization;
   iv. A domestic or foreign for-profit organization;

[23] U.S. Security and Exchange Commission Executive Compensation "Fast Facts" - http://www.sec.gov/answers/execomp.htm, verified on 8/18/2015.
[24] System for Award Management (SAM) - https://www.sam.gov, verified on 8/18/2015.

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
   i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the non-Federal entity award to an eligible subrecipient.
   ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, *see* 2 C.F.R. § 200.330).
   iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. Subrecipient means an entity that:
   i. Receives a subaward from you (the non-Federal entity) under this award; and
   ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. Total compensation means the cash and noncash dollar value earned by the executive during the non-Federal entity's or subrecipient's preceding fiscal year and includes the following (for more information *see* 17 C.F.R. 229.402(c)(2)):
   i. Salary and bonus.
   ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
   iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
   iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
   v. Above-market earnings on deferred compensation which is not tax-qualified.
   vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

c. System for Award Management (SAM) and Universal Identifier requirements.

1. Requirement for SAM. Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

2. Requirement for unique entity identifier. If you are authorized to make subawards under this award, you:

   i. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
   ii. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

3. Definitions for purposes of this award term:

   i. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management Internet site.[25]
   ii. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
   iii. Entity, as it is used in this award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:
      (A) A Governmental organization, which is a State, local government, or Indian Tribe;
      (B) A foreign public entity;
      (C) A domestic or foreign nonprofit organization;
      (D) A domestic or foreign for-profit organization; and
      (E) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
   iv. Subaward:
      (A) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the non-Federal entity award to an eligible subrecipient.
      (B) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, *see* 2 C.F.R. § 200.330).
      (C) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
   v. Subrecipient means an entity that:
      (A) Receives a subaward from you under this award; and
      (B) Is accountable to you for the use of the Federal funds provided by the subaward.

.16 Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown

This term sets forth initial guidance that will be implemented for Federal assistance awards in the event of a lapse in appropriations, or a government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

a. Unless there is an actual rescission of funds for specific grant obligations, recipients of Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Recipients are advised that ongoing activities by Federal employees involved in grant administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.

b. All award actions will be delayed during a government shutdown; if it appears that a non-Federal entity's performance under a grant or cooperative agreement will require agency involvement, direction or clearance during the period of a possible government shutdown, the Program Officer or

[25] System for Award Management (SAM) - https://www.sam.gov, verified on 8/18/2015.

Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise recipients that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, recipients whose ability to withdraw funds is subject to prior agency approval, which in general are recipients that have been designated high risk, recipients of construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Recipients should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Recipients whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

c. The ASAP system may remain operational during a government shutdown. As applicable, recipients that do not require Council approval to draw down advance funds from their ASAP accounts may be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will apply notwithstanding a government shutdown and advanced funds held for more than 30 days shall be returned with interest.

R. CERTIFICATIONS

At a minimum, the non-Federal entity must comply with the certifications and requirements in 31 C.F.R. § 34.802, assurances (Forms SF-424B and SF-424D, or equivalent, as applicable), and any required Council-specific certifications. Other certifications may be required by 2 C.F.R. part 200. Certifications must be signed by an authorized senior official of the entity receiving grant funds who can legally bind the organization or entity, and who has oversight for the administration and use of the funds in question.

APPENDIX II TO 2 CFR PART 200: CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 USC 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 USC. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 USC. 3145), as supplemented by Department of Labor regulations (29 CFR 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"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 USC 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 USC 3702 and 3704,

as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 USC 3702 of the Act, 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. The requirements of 40 USC 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.

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

(G) Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 USC 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Each tier must 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 non-Federal award.

(J) See §200.323.

(K) See §200.216.

(L) See §200.322.

PROCUREMENT OF RECOVERED MATERIALS

The prime contractor must comply with federal regulations regarding procurement of recovered materials found at 2 CFR §200.323.

2 CFR §200.323 requires the Project Owner and its contractors to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OF EQUIPMENT

The prime contractor must comply with federal regulations regarding prohibition on certain telecommunications and video surveillance services or equipment found at 2 CFR §200.216, which states:

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

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

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

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

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

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

(b) 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.

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

(d) See also §200.471.

DOMESTIC PREFERENCES FOR PROCUREMENTS

The prime contractor must comply with federal regulations regarding domestic preferences for procurements found at 2 CFR §200.322, which states:

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

(b) For purposes of this section:

> (1) ‘‘Produced in the United States’’ means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
>
> (2) ‘‘Manufactured products’’ means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

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

Documentation of compliance with the following requirements is a matter of <u>contractor responsibility</u>. When subcontracting, the contractor must submit documentation of good faith efforts to meet the project's MBE/WBE requirements before contracted work can commence. (MBE/WBE requirements are outlined below and can be found at 2. C. F. R. §200.321.) Failure on the part of the contractor to submit proper documentation may cause the Owner not to execute or to terminate the contract.

(a) The prime contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,

(5) 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.

The prime contractor should note that this requirement mandates two responsibilities. Separate solicitations must be made of minority **<u>and</u>** women's business enterprises.

SUBMITTAL OF MINORITY BUSINESS ENTERPRISE AND WOMEN'S BUSINESS ENTERPRISE (MBE/WBE) DOCUMENTATION

Prior to contract execution, the prime contractor must submit:

- A written certification that no subcontracts will be issued.

  - OR -

- The Subcontractor Listing Form detailing all subcontractors that will perform work on the project, including name, contact person, address, phone, and status (MBE, WBE or Non).

If subcontractors will be utilized, the prime contractor must submit the following for subcontracts proposed to be awarded to MBE/WBE enterprises:

- A certification from each MBE and/or WBE firm declaring its status as a MBE or WBE firm. This can be an MDOT, SBA or MDA certification. A self-certification is acceptable, if the certification specifies the basis for MBE/WBE designation (e.g., the business is 51% owned and daily operation is controlled by one or more women or minority owners).

If subcontractors will be utilized, the prime contractor must submit the following for subcontracts proposed to be awarded to Non-MBE/WBE:

- For all subcontracts for which there are capable certified MBE/WBE firms existing to potentially perform the work, letters transmitted to MBE and WBE firms requesting quotes or proposals for specific subcontracting opportunities and encouraging inquiries for further details. Solicitations should have been sent in a timely manner, including allowed response time. (See "Sample Letter from Contractor to MBE/WBE Firms" below.)

- A listing of certified MBE and WBE firms from whom quotes or proposals were received, if any, who were not awarded subcontracts.

- Evidence that each Non-MBE/WBE subcontractor selected for the scope of work, was lower in price than each MBE/WBE proposal (or that there is some other acceptable reason to select the Non-MBE/WBE) and that the scope of work was the same for both the MBE/WBE and Non-MBE/WBE.

The contractor may utilize the following resources to assist in MBE/WBE affirmative outreach:

- MDOT Disadvantaged Business Entity (DBE) Website:

  http://sp.mdot.ms.gov/Civil%20Rights/Pages/DBE.aspx

- MDA Minority Business Enterprise/Women Business Enterprise (MBE/WBE) Directory:

  https://minority.mississippi.org/MinorityBusinessDirectory.aspx

Should the Prime Contractor intend to later issue a subcontract, the above affirmative steps must be followed and documentation of such submitted to the Owner for review as described under this section.

SAMPLE LETTER FROM CONTRACTOR TO MBE/WBE FIRMS

(CONTRACTOR'S LETTERHEAD)

[DATE]

[MBE/WBE COMPANY NAME]
[ADDRESS]
[CITY, STATE ZIP]

RE: [NAME OF PROJECT]

Dear [MBE/WBE FIRM]:

Our company has been engaged to support the above referenced project. We are soliciting a proposal from you for the services described below:

[DESCRIBE SCOPE OF WORK FOR SERVICES BEING SOLICITED FROM MBE/WBE FIRM]

Proposals must be submitted by [SUBMITTAL DEADLINE] to be considered.

For further details, you are encouraged to contact [NAME OF OWNER REPRESENTATIVE] by email at [EMAIL ADDRESS] or by telephone at [TELEPHONE NUMBER] during normal business hours.

Sincerely,

[NAME OF REPRESENTATIVE]
[NAME OF COMPANY]

Enclosure: [SCOPE OF WORK]

MISSISSIPPI EMPLOYMENT PROTECTION ACT OF 2008

TITLE 71. LABOR AND INDUSTRY
CHAPTER 11. EMPLOYMENT PROTECTION ACT

Miss. Code Ann. § 71-11-1

§ 71-11-1. Legislative findings

The Legislature finds that when illegal immigrants have been sheltered and harbored in this state and encouraged to reside in this state through the benefit of work without verifying immigration status, these practices impede and obstruct the enforcement of federal immigration law, undermine the security of our borders, and impermissibly restrict the privileges and immunities of the citizens of Mississippi. The Legislature further finds that illegal immigration is encouraged when public agencies within this state provide public benefits without verifying immigration status. The Legislature further finds that the Tenth Amendment to the United States Constitution reserves to the states those powers not delegated to the United States by the Constitution. Therefore, the Legislature declares that it is a compelling public interest of this state to discourage illegal immigration by requiring all agencies within this state to fully cooperate with federal immigration authorities in the enforcement of federal immigration laws. The Legislature also finds that other measures are necessary to ensure the integrity of various governmental programs and services.

TITLE 71. LABOR AND INDUSTRY
CHAPTER 11. EMPLOYMENT PROTECTION ACT

Miss. Code Ann. § 71-11-3

§ 71-11-3. Definitions; verification of work eligibility status of new hires; employer liability; exemptions; penalties for violation.

(1) This chapter shall be known as the "Mississippi Employment Protection Act."

(2) The provisions of this section shall be enforced without regard to race, gender, religion, ethnicity or national origin.

(3) For the purpose of this section only, the following words shall have the meanings ascribed herein unless the content clearly states otherwise:

(a) "Employer" is any person or business that is required by federal or state law to issue a United States Internal Revenue Service Form W-2 or Form 1099 to report income paid to employed or contracted personnel in Mississippi.

(b) "Employee" is any person or entity that is hired to perform work within the State of Mississippi and to whom a United States Internal Revenue Service Form W-2 or Form 1099 must be issued.

(c) "Third-party employer" is any person or company that provides workers for another person or company. This includes, but is not limited to, leasing companies and contract employers.

(d) "Status verification system" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996,

Public Law 104-208, Division C, Section 403(a); 8 USC, Section 1324a, and operated by the United States Department of Homeland Security, known as the E-Verify Program.

(e) "Unauthorized alien" means an alien as defined in Section 1324a(h)(3) of Title 8 of the United States Code.

(f) "Public employer" means every department, agency or instrumentality of the state or a political subdivision of the state.

(g) "Subcontractor" means a subcontractor, contract employee, staffing agency or any contractor regardless of its tier.

(4) (a) Employers in the State of Mississippi shall only hire employees who are legal citizens of the United States of America or are legal aliens. For purposes of this section, a legal alien is an individual who was lawfully present in the United States at the time of employment and for the duration of employment, or was permanently residing in the United States under color of law at the time of employment and for the duration of employment.

(b) (i) Every employer shall register with and utilize the status verification system to verify the federal employment authorization status of all newly hired employees.

(ii) No contractor or subcontractor shall hire any employee unless the contractor or subcontractor registers and participates in the status verification system to verify the work eligibility status of all newly hired employees.

(iii) No contractor or subcontractor who enters into a contract with a public employer shall enter into such a contract or subcontract unless the contractor or subcontractor registers and participates in the status verification system to verify information of all newly hired employees.

(c) The provision of this section shall not apply to any contracts entered into on or before July 1, 2008.

(d) It shall be a discriminatory practice for an employer to discharge an employee working in Mississippi who is a United States citizen or permanent resident alien while retaining an employee who the employing entity knows, or reasonably should have known, is an unauthorized alien hired after July 1, 2008, and who is working in Mississippi in a job category that requires equal skill, effort and responsibility, and which is performed under similar working conditions, as defined by 29 USC, Section 206(d) (1), as the job category held by the discharged employee.

(e) An employing entity which, on the date of the discharge in question, was enrolled in and used the status verification system to verify the employment eligibility of its employees in Mississippi hired after July 1, 2008, shall be exempt from liability, investigation or suit arising from any action under this section.

(f) No cause of action for a violation of this section shall lie under any other Mississippi law but shall arise solely from the provisions of this section.

(5) Any employer that complies with the requirements of this section shall be held harmless by the Mississippi Department of Employment Security, provided the employer is not directly involved in the creation of any false documents, and provided that the employer did

not knowingly and willfully accept false documents from the employee.

(6) (a) All third-party employers that conduct business in Mississippi shall register to do business in Mississippi with the Mississippi Department of Employment Security before placing employees into the workforce in Mississippi.

(b) Third-party employers shall provide proof of registration and any participation in the status verification system to any Mississippi employer with whom they do business.

(7) (a) State of Mississippi agencies and political subdivisions, public contractors and public subcontractors and private employers with two hundred fifty (250) or more employees shall meet verification requirements not later than July 1, 2008.

(b) Employers with at least one hundred (100) but less than two hundred fifty (250) employees shall meet verification requirements not later than July 1, 2009.

(c) Employers with at least thirty (30) but less than one hundred (100) employees shall meet verification requirements not later than July 1, 2010.

(d) All employers shall meet verification requirements not later than July 1, 2011.

(e) (i) Any employer violating the provisions of this section shall be subject to the cancellation of any state or public contract, resulting in ineligibility for any state or public contract for up to three (3) years, the loss of any license, permit, certificate or other document granted to the employer by any agency, department or government entity in the State of Mississippi for the right to do business in Mississippi for up to one (1) year, or both.

(ii) The contractor or employer shall be liable for any additional costs incurred by the agencies and institutions of the State of Mississippi, or any of its political subdivisions, because of the cancellation of the contract or the loss of any license or permit to do business in the state.

(iii) Any person or entity penalized under this section shall have the right to appeal to the appropriate entity bringing charges or to the circuit court of competent jurisdiction.

(f) The Department of Employment Security, State Tax Commission, Secretary of State, Department of Human Services and the Attorney General shall have the authority to seek penalties under this section and to bring charges for noncompliance against any employer or employee.

(8) (a) There shall be no liability under this section in the following circumstances:

(i) An employer who hires an employee through a state or federal work program that requires verification of the employee's social security number and provides for verification of the employee's lawful presence in the United States in an employment-authorized immigration status;

(ii) Any candidate for employment referred by the Mississippi Department of Employment Security, if the Mississippi Department of Employment Security has verified the social security number and provides for verification of the candidate's lawful presence in the United States in an employment-authorized immigration status; or

(iii) Individual homeowners who hire workers on their private property for noncommercial purposes, unless required by federal law to do so.

(b) (i) Compliance with the sections of this statute shall not exempt the employer from regulations and requirements related to any federal laws or procedures related to employers.

(ii) This section shall not be construed as an attempt to preempt federal law.

(c) (i) It shall be a felony for any person to accept or perform employment for compensation knowing or in reckless disregard that the person is an unauthorized alien with respect to employment during the period in which the unauthorized employment occurred. Upon conviction, a violator shall be subject to imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, a fine of not less than One Thousand Dollars ($ 1,000.00) nor more than Ten Thousand Dollars ($ 10,000.00), or both.

(ii) For purposes of determining bail for persons who are charged under this section, it shall be a rebuttable presumption that a defendant who has entered and remains in the United States unlawfully is deemed at risk of flight for purposes of bail determination.

EXAMPLE OF E-VERIFY CERTIFICATION LETTER

Date

TO: Project Owner
P. O. Box 12345
Anytown, MS 12345

RE: Compliance with Mississippi Employment Protection Act of 2008 and the United States Illegal Immigration Reform and Immigration Responsibility Act of 1996 (E-Verify)

Project Name _____
Project Number _____

The purpose of this letter is to inform you that_____(Contractor and/or Subcontractor's Company Name_____is in compliance with the Mississippi Employment Protection Act of 2008 as described in Senate Bill 2988 of the 2008 Regular Session of the Mississippi Legislature and the United States Illegal Immigration Reform and Immigration Responsibility Act of 1996. Our E-verify registration number is_____.

Attached, for your review, is a copy of the documentation showing our company's participation in the E-Verify program and upon request, copies of employee's certifications will be provided as they are kept in the employee's personnel file.

Our company understands if compliance with the above-mentioned Act is not followed consequences may occur as contemplated in that Act.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

President of Company

If you are not already enrolled you may enroll by going to the E-Verify Web site at www.uscis.gov/e-verify follow the directions and tutorial.

SUBCONTRACTOR LISTING FORM *(v.10.22.2020)*

The prime contractor must submit this form to the Owner prior to contract execution and must update it for each subcontractor performing any work resulting from this contract. If additional lines are needed, this form may be duplicated.

Subcontractor Name and Contact Person	Subcontractor Address and Phone Number	Subcontractor DUNS	MBE (Y/N)	WBE (Y/N)	On Site during this period (Y/N)

COMPLETED BY:_____ **DATE:** _____

ATTACHMENT J
MDEQ SUB-AWARD TERM AND CONDITIONS FOR CONTRACTED PARTIES

1. AUTHORITY TO PARTICIPATE IN THIS AGREEMENT

The Contracted Party certifies that (a) it is either a 1) state agency, 2) a validly organized business that is authorized to do business in the state of Mississippi, 3) a nongovernmental organization, or 4) political subdivision of the state of Mississippi with valid authority to enter into this agreement and; (b) entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (c) notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

2. DEBARMENT AND SUSPENSION

Contractor/Contracted Parties certifies to the best of its knowledge and belief, that it:

A. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;

B. has not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;

C. has not, within a three-year period preceding this agreement, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

D. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,

E. has not, within a three-year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

This agreement is subject to 31 C.F.R. Part 19.

3. INDEMNIFICATION

To the extent allowed by state law, Contracted Party agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and the Department's contractors from and against any and all claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of any Contracted Party, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.

4. RELATIONSHIP STATUS

The Contracted Party acknowledges and agrees that MDEQ is not a party, in any manner whatsoever, to any contract between the SUB-RECIPIENT and the construction contractor(s), engineer(s), attorney(s), equipment supplier(s), contractor(s), or between any other parties of any kind whatsoever (hereinafter collectively referred to as "vendor"). The SUB-RECIPIENT and Contracted Party also acknowledge and agree that any benefit to vendors contracting with the SUB-RECIPIENT or Contracted Parties arising from, or associated with this Agreement is strictly incidental and all such vendors are not, and are not intended to be considered as third party beneficiaries under any agreement between MDEQ and the SUB-RECIPIENT.

Upon execution of any contract between the SUB-RECIPIENT and any other party in regard to the project, MDEQ does not assume any authorities, duties, responsibilities, or liabilities under such contract. The SUB-RECIPIENT and Contracted Party shall not have any authority to bind or otherwise obligate MDEQ, directly or indirectly, under any contract or agreement between the SUB-RECIPIENT and any other party. The SUB-RECIPIENT, Contracted Party and its vendors acknowledge and agree that any action taken by MDEQ in its role of grantor, or in its separate and distinct role as regulator shall not in any way change or alter its position as that of grantor.

MDEQ does not have any authority, duty, responsibility, or liability in contract claims or dispute identification, negotiation, resolution, or any other actions regarding contract claims under the contract(s) between the SUB-RECIPIENT and any other party. The SUB-RECIPIENT and the Contracted Party acknowledge and agree that MDEQ is not obligated to review, comment on, approve, or discuss the merits of any contract claims presented by or to any party. Any MDEQ reviews, approvals, observations, presence at meetings, written communications, verbal communications or other actions are not to be interpreted as addressing the merits of any claims, nor are they to be construed as interpreting the contract between the SUB-RECIPIENT and the Contracted Party or any other parties.

5. ACCESS TO RECORDS

Treasury, the Treasury Office of Inspector General, the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have the right of timely and unrestricted access to any of Contracted Party's books, documents, papers, and other records, including electronic records, which are maintained or produced as a result of the agreement

and Project for the purpose of making audits, investigations, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to the SUB-RECIPIENT's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as records are required to be retained.

6. RECORD RETENTION AND RIGHT TO AUDIT

The Contracted Party shall maintain and retain books, documents, papers, financial records, and other records, including electronic records, which are maintained or produced as a result of the agreement and the Project. These records must be retained for a minimum of three years after final payment under the agreement is made. These records shall be made available during the term of the agreement and the subsequent three-year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General and Treasury. If any litigation, claim, investigation, or audit relating to Federal Award No. RDCGR470031-01-00 ("Award") or an activity funded under the Award is started before the expiration of the three year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

7. RIGHT TO INSPECT WORK; SITE ACCESS

Treasury, the Treasury Office of Inspector General, the Government Accountability Office, MDEQ and their representatives, invitees, and consultants, and Departments and Agencies of the State of Mississippi, and any of their duly authorized representatives', shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all work hereunder.

8. CONFLICT OF INTEREST

The Contracted Party covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described Project or any parcels therein, where applicable, or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contracted Party further covenants that, in the performance of this agreement, no person having any such interest shall be employed.

The Contracted Party agrees to establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have a family, business, or other tie.

9. COOPERATION & EVALUATION

Both parties agree to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project or projects to which the agreement relates, and to provide in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

Further, both parties agree to cooperate with MDEQ or its duly designated representatives by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and the agreement for a period of ten (10) years after the date on which the Final Reports are provided.