

SUPPLEMENT 2

FEDERAL FUNDING PROVISIONS

The provisions of this **Supplement 2 – Federal Funding Provisions (“Federal Provisions”)** apply to, are incorporated into, and made a part of the agreement or contract (the “**Contract**” for purposes of the Federal Provisions) to which this **Federal Provisions** are attached, or which refers to and incorporates the **Federal Provisions** by hyperlink or other electronic means.

The District has received an award of federal financial assistance (“**Award**”) for all or part of the Contract purchase. Federal law, or the grant or other funding agreement between the District and the federal government, or the agreement between the District and any other non-federal entity that receives federal funding and passes it through to the District, or all, require the Federal Provisions to be included in the Contract.

The party that is entering into the Contract with the District (the “**Contractor**”) SHALL COMPLY with the provisions of law listed below and which are applicable as specified.

1. Transparency Act and Uniform Guidance.

1.1. **Definitions.** The following definitions apply in addition to other definitions appearing in the Federal Provisions and the Contract.

1.1.1. “*Award*” means an award of federal financial assistance, and the Contract setting forth the terms and conditions of that financial assistance, that a non-federal entity receives or administers.

1.1.1.1. Awards may be in the form of:

1.1.1.1.1. Grants;

1.1.1.1.2. Contracts;

1.1.1.1.3. Cooperative Contracts, which do not include cooperative research and development Contracts (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

1.1.1.1.4. Loans;

1.1.1.1.5. Loan Guarantees;

1.1.1.1.6. Subsidies;

1.1.1.1.7. Insurance;

1.1.1.1.8. Food commodities;

1.1.1.1.9. Direct appropriations;

1.1.1.1.10. Assessed and voluntary contributions; and

1.1.1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-federal entities.

1.1.1.1.12. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.

1.1.1.2. Award *does not* include:

1.1.1.2.1. Technical assistance, which provides services in lieu of money;

1.1.1.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;

1.1.1.2.3. Any award classified for security purposes; or

1.1.1.2.4. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

- 1.1.2. “*Data Universal Numbering System (DUNS) Number*” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
- 1.1.3. “*System for Award Management (SAM)*” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.1.4. “*Transparency Act*” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 1.1.5. “*Uniform Guidance*” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

1.2. **Compliance.**

- 1.2.1. Contractor shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, as they may be amended from time to time. Compliance shall include, without limitation, the following:
 - 1.2.1.1. Maintain its information current in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later.
 - 1.2.1.2. Provide its DUNS number and update Contractor’s information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor’s information.
 - 1.2.1.3. Include total compensation in SAM for each of its five most highly compensated executives for the preceding fiscal year if and to the extent requires by the Transparency Act.
 - 1.2.1.4. Comply with reporting requirements imposed on contractors and Award sub recipients, as these terms are defined in the Uniform Guidance and other federal laws.
 - 1.2.1.5. Use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
 - 1.2.1.6. Where required by specific dollar thresholds set forth in the Uniform Guidance, procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501, except electing to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits).

2. **Equal Employment Opportunity** – *Applicable to contracts meeting the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3.* 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." Required by 200 CFR §326, Appendix II to Part 200 (C).

- 3. Davis-Bacon Act** – *When required by federal program legislation, applicable to construction contracts of more than \$2,000.* Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) and as supplemented by Department of Labor regulations (29 CFR Part 5--Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction). In accordance with the law, contractors are required, and must require their subcontractors, to pay wages: (i) at a rate not less than the prevailing wages specified in a wage determination made by the U.S. Secretary of Labor; and (ii) not less than once a week. Solicitations will include a copy of the current prevailing wage determination issued by the Department of Labor. The decision to award a contract or subcontract is conditioned upon the acceptance of the wage determination.
- 4. Copeland “Anti-Kickback” Act** - *When required by federal program legislation, applicable to construction contracts of more than \$2,000.* The Contractor shall comply with (18 U.S.C. 874 and 40 U.S.C. 3145 and the requirements of 29 C.F.R. pt. 3 as may be applicable. Contractors and subcontractors shall 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 they are otherwise entitled. The Contractor and their subcontractor shall insert in any subcontracts the clause above, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor. A breach of this provision may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. §5.12. Required by 200 CFR §326, Appendix II to Part 200 (D).
- 5. Contract Work Hours and Safety Standards Act** (40 U.S.C. 327-333) – *Applicable to contracts in excess of \$100,000 that involve the employment of mechanics or laborers, watchmen and guards. Not applicable to the purchase of supplies and materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.* Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Contractors and their subcontractors shall 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. Additional requirements regarding liquidated damages, withholding of moneys from contract payables of sums for liabilities of unpaid wages and liquidated damages, and the requirement that clauses regarding these requirements be in any contracts with all lower tier subcontracts. 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. Required by 200 CFR §326, Appendix II to Part 200 (E).
- 6. Rights to Inventions Made Under a Contract or Agreement** – *Applicable where the federal award funding the contract meets the definition of “funding agreement” under 37 CFR §401.2(a).* Where the Contractor 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 Contractor and its subcontractors 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. Required by 200 CFR §326, Appendix II to Part 200 (F).

- 7. Clean Air Act** (42 U.S.C. 7401 et seq.) and the **Federal Water Pollution Control Act** (33 U.S.C. 1251 et seq.), as amended. – *Applicable to contracts and subcontracts of more than \$150,000.* Contracts and subcontracts 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 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 8. Debarment and Suspension** (E.O. 12549 and E.O. 12689). – “A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide 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.” 200 CFR §326, Appendix II to Part 200 (H). Contractors with awards that exceed the small purchase threshold must provide the required certification regarding its exclusion status and that of its principal employees. Required by 200 CFR §326, Appendix II to Part 200 (H).
- 9. Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352). *Applicable to contractors who apply or bid for an award of \$100,000 or more.* 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 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 non-federal award.
- 10. Procurement of Recovered Materials and Solid Waste Disposal Act.** *Applicable where the purchase price of an item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.* §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. Required by 200 CFR §326, Appendix II to Part 200 (H).
- 11. Energy Efficiency** – The Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat. 871). The Contractor shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- 12. Access to Records** – *Applies to all negotiated contracts except those for less than the small purchase threshold.* The Contractor shall permit the District, auditors, and the federal government to have access to its records and financial statements as necessary for the District to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

13. Retention of Records – The Contractor shall retain all required records for no less than three years after final payments under the Contract and all subcontracts (if any) are made and all other pending matters are closed. If any audit, litigation, or other action involving the records is started before the end of the three-year period, the Contractor shall retain the records until all issues arising out of the action are resolved or until the end of the three-year period, whichever is later.

14. Conflicts of Interest. The Contractor shall maintain a written code of standards governing the performance of its employees engaged in the award and administration of the Contract. No employee, officer, or agent of the Contractor shall participate in the selection, or in the award or administration of a contract or subcontract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- 14.1. The employee, officer or agent;
- 14.2. Any member of their immediate family;
- 14.3. The employee's partner; or
- 14.4. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The Contractor's, subcontractor's, or sub-grantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from the Contractor, potential contractors, or parties to sub-agreements.

15. Health Insurance Portability & Accountability Act of 1996 (“HIPAA”). – *Applicable to medical information.* Pursuant to federal law and regulations governing the privacy of certain health information, the Contractor, to the extent applicable, shall comply with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d-1320d-8 and its implementing regulations promulgated by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160 and 164 (the “Privacy Rule”) and other applicable laws, as amended.

16. Cost-Reimbursements in Food Contracts. *Applicable to food service cost-reimbursable contracts subject to contracts.* The provisions concerning cost reimbursements set forth in 7 CFR §210.21 (f) are hereby incorporated herein. Required by 7 CFR §210.21.

17. Federal Emergency Management Agency (FEMA) Provisions. If the Contract is funded, wholly or in part, with money from or otherwise governed by or subject to FEMA, the following provisions also apply:

- 17.1. The cost of any change, modification, change order, or constructive change shall be allowable, allocable, within the scope of the Contract, grant funding, or cooperative agreement, and reasonable for the completion of the project scope.
- 17.2. The Contractor shall not use the Department of Homeland Security or FEMA logos, crests, or reproductions of flags or likenesses without specific FEMA pre-approval.
- 17.3. The Contractor acknowledges that FEMA financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures and Directives.
- 17.4. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-federal entity, contractor, or any other person pertaining to any matter resulting from the Contract.
- 17.5. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

18. Compliance with other Federal Laws. The Contractor, while performing under the Contract, shall comply with, and require its Subcontractors to comply with, the following:

- 18.1. **Age Discrimination Act of 1975, as amended 42 U.S.C. 6101, et seq.**
- 18.2. **Age Discrimination in Employment Act of 1967 29 U.S.C., 621-634.**
- 18.3. **Americans with Disabilities Act of 1990 (ADA) 42 U.S.C. 12101, et seq.**
- 18.4. **Equal Pay Act of 1963 29 U.S.C. 206(d).**
- 18.5. **Federal Water Pollution Control Act, as amended 33 U.S.C. 1251, et seq.**

- 18.6. **Immigration Reform and Control Act of 1986 8 U.S.C. 1324b.**
- 18.7. **Section 504 of the Rehabilitation Act of 1973 as amended 29 U.S.C. 794.**
- 18.8. **Title VI of the Civil Rights Act of 1964, as amended 42 U.S.C. 2000d, et seq.**
- 18.9. **Title VII of the Civil Rights Act of 1964 42 U.S.C. 2000e.**
- 18.10. **Title IX of the Education Amendments of 1972 as amended 20 U.S.C. 1681.**
- 18.11. **State Laws Civil Rights Division Section 24-34-301, CRS, et seq.**

19. Confidentiality of Records – The Contractor shall protect the confidentiality of all records and other materials containing personally identifying information that Contractor collects or maintains in accordance with the Contract. Except as provided by law, no information in possession of the contractor about any individual shall be disclosed in a form including identifying information without the prior written consent of the person in interest, a minor’s parent, or guardian. The Contractor shall have written policies governing access to, duplications and dissemination of, all such information.

20. Termination –

- 20.1. Failure to comply with these Federal Provisions is an event of default under the Contract.
- 20.2. The District may terminate the Contract for such causes and reasons and in accordance with the notice and opportunity to cure provisions as are set forth in the Contract. In addition, the District may terminate the Contract at any time, in whole or in part, when it is in the District’s or the federal government’s interest. If this Contract is terminated for any reason, the District shall be liable only for payment under this Contract for services rendered or goods provided before the effective date of termination.

21. Changes. The District may change any of these provisions at any time in the District’s discretion or at the request of an involved federal agency as approved by the Office of Federal Procurement Policy, or as otherwise mandated by federal law.

22. Certification. By signing and performing under the Contract, the Contractor certifies that, to the best of the Contractor’s knowledge and belief, the Contractor, its principals, and its subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency (*see*, System for Award Management (SAM) at <https://www.sam.gov/>).