

## INVITATION TO BID

- Issue Date:** February 14, 2025
- Project:** Lurich Baseball Field Fence Replacement
- Issuing Organization:** Town of Narrows, Virginia (the "Town" or "Owner")
- Contract Period:** March 1, 2025 through April 30, 2025
- Scope of Work:** The Town of Narrows is seeking sealed bids from responsive and responsible contractors to replace its Lurich Baseball Field fence that was recently damaged during Hurricane Helene. The work shall include the removal and disposal of damaged fencing and other materials, and the installation of approximately 1,125 linear feet of new chain-link fencing at the Lurich Baseball Field in the Town of Narrows (the "Work"). Additional information regarding specific project deliverables and terms of the Work is outlined in the full version of the Invitation to Bid.
- This project is federally-assisted. The successful Bidder must comply with all necessary and applicable federal, state, and local laws and regulations and funding requirements. Bids will be accepted via hard copy at the Town Office, or via electronic means through the Commonwealth's eVA system or by email to the Town Manager at [tnicholson@townofnarrows.org](mailto:tnicholson@townofnarrows.org).
- Bid Recipient:** Terry Nicholson  
Office of the Town Manager  
P.O. Box 440  
Narrows, VA 24124  
Email: [tnicholson@townofnarrows.org](mailto:tnicholson@townofnarrows.org)  
Phone: (540) 726-2423
- Due Date for Bids:** February 28, 2025 by 3:00 PM local time. Bids shall be publicly opened and read aloud at that time. Emailed bids are acceptable.
- Notice to Bidders:** Should the apparent low bid exceed available funds, the Owner reserves the right to negotiate with the apparent low bidder to obtain a contract price within available funds. Bidders shall

comply with Virginia Code Section 54.1-1112 regarding information required with the bid. Envelopes or electronic submissions containing bids shall be clearly marked with the Bidder's Class A Contractor License number. Questions regarding this Invitation to Bid shall be directed to Terry Nicholson, Town Manager, at 540-726-2423. Bidders may arrange a visit to the site to evaluate project requirements and the scope of the Work. It is anticipated that only one payment application will be necessary. Should more than one payment application be necessary the Town may elect to withhold 5% retainage until completion. The Town of Narrows reserves the right to accept or reject any or all Bids received as a result of this request; to waive any informalities; and to negotiate with any qualified contractor or to modify or cancel in part or in its entirety the bid, in accordance with applicable law, if it is in the best interest of the Town to do so. Bids must be submitted to the Town in accordance with the Invitation to Bid on the included Bid Form.

Bids may only be withdrawn for error as permitted under Virginia Code § 2.2-4330. Any bidder intending to withdraw their bid for error as permitted under § 2.2-4330 must give notice in writing of their claim of right to withdraw their bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

**Evaluation of Bids:**

Contract shall be awarded to the lowest responsive and responsible Bidder, as provided by the Virginia Public Procurement Act. Bids shall be evaluated based on the following criteria:

- a) Price;
- b) Whether the bid as submitted conforms in all material respects to the Invitation to Bid;
- c) Bidder's capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance;
- d) Bidder's prior experience with similar projects, including federally-assisted contracts.
- e) Bidder's ability to mobilize and complete the Work in a timely manner.

**Insurance for Project:** During the performance of the Work, the contractor shall be required to indemnify, defend, and hold harmless the Town of Narrows and its agents, officers, and employees from any and all claims for money or other relief, arising out of any and all occurrences resulting in bodily injury or property damage that may happen to occur in connection with and during the performance of the Work, resulting from acts or omissions of the Contractor. The Contractor will maintain the following minimum insurance requirements:

- a) Worker's Compensation – Statutory requirements and benefits, but in no event less than- \$100,000/\$500,000/\$100,000 Employers Liability: accident, disease, policy limit;
- b) General Liability - \$1,000,000 per occurrence, \$2,000,000 aggregate applies per project. The Town of Narrows shall be named as additional insured with respect to goods and services being procured. This coverage is to include Premises/Operations liability, Products and Completed Operations Coverage, Independent Contractor's Liability and Personal Injury Liability.
- c) Automobile Liability - \$1,000,000 CSL Bodily injury and Property Damage.
- d) Premises/Operations, Independent Contractors, Products, Completed Operations, Contractual Liability, Personal Injury Liability - \$1,000,000 occurrence, \$2,000,000 aggregate.
- e) Under all insurance policies, the Town of Narrows shall be named an additional insured and provided with a Certificate of Insurance before commencement of the Work.

**Contract Documents:** Upon award, the Town desires to enter into a Purchase Order Agreement (the "Agreement" or "Contract") with the Contractor for the Work described. The "Attachment A-General Terms and Conditions" and "Attachment B-Supplemental Terms and Conditions" attached hereto are incorporated herein and made a part of this Invitation to Bid.

For purposes of the Work for the Project, the following shall constitute the Contract Documents:

- a) This "Invitation to Bid," including its Attachment A and Attachment B;
- b) The Purchase Order Agreement; and
- c) The Contractor's Bid.

**Lurich Baseball Field Fence Replacement  
Bid Form**

The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the Town of Narrows, Virginia. The Bidder accepts all of the terms and conditions defined in this Invitation to Bid and the Bid will remain subject to acceptance for 90 days after Bid opening, or for such longer period of time that the Bidder may agree to in writing.

- 1) *Bidder's Representations in submitting this Bid.* The Bidder acknowledges that the Bid and all prices in the Bid are premised upon performing and furnishing the Work required; furthermore, the Bidder is familiar with and satisfied itself of the following conditions that may affect costs, progress and performance of the Work (initial):

\_\_\_\_\_ general site conditions;

\_\_\_\_\_ all applicable laws and regulations;

\_\_\_\_\_ the means, methods, techniques, sequences, and procedures to complete the proposed Work; and

\_\_\_\_\_ provided in writing to the Town, a notice of all potential conflicts, errors, ambiguities, or discrepancies that the Bidder has discovered in the Request for Proposals.

- 2) *Bidder's Certification:* The Bidder certifies that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity; furthermore, the Bidder certifies that has not (initial):

\_\_\_\_\_ directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid or engaged in any collusion with other bidders;

\_\_\_\_\_ solicited or induced any individual or entity to refrain from Bidding; and

\_\_\_\_\_ engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the contract.

- 3) *Basis of Bid and Primary Construction Contract.* The Bidder will complete Work for the following prices (attach additional pages, as necessary):

<i>Item</i>	<i>Description</i>	<i>Est. Quantity</i>	<i>Units</i>	<i>Bid Unit Price</i>	<i>Bid Price</i>
1	Chain-link fence, 9 gauge galvanized wire, mesh size 50 mm, 6' height	1,125	LF		
2	Gates, mesh size 50 mm, 6' height	4	EA		
3	Fence fittings: posts, rails, top cap and braces	1	LS		
5	Hardware	1	LS		

6	Labor	1	LS		
7	Disposal of old fencing and materials				

**TOTAL BID:**                    \$ \_\_\_\_\_

Bidder/Co.: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Contractor VA License No.: \_\_\_\_\_

Authorized Signature : \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT A-GENERAL TERMS AND CONDITIONS

The following General Terms and Conditions shall be included in any agreement for the Work between the Town and the successful bidder:

### 1. REMEDIES

Contracts for more than the simplified acquisition threshold, currently set at \$250,000, 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. See 2 C.F.R. Part 200, Appendix II(A).

### 2. TERMINATION FOR CAUSE AND CONVENIENCE

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. See 2 C.F.R. Part 200, Appendix II(B).

#### i. Time for Completion and Liquidated Damages

- a. The date of beginning and the time for completion of the WORK are essential conditions and the WORK embraced shall be commenced on the date specified in the NOTICE TO PROCEED.
- b. The CONTRACTOR will proceed with the WORK at such rate of PROGRESS to insure full completion within the CONTRACT TIME. It is expressly understood and agreed by and between the CONTRACTOR and the TOWN OF NARROWS that the CONTRACT TIME for the completion of the WORK described in the Agreement is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

#### ii. Suspension of Work, Termination And Delay

- a. The TOWN OF NARROWS may suspend the WORK or any portion thereof for a period of not more than ninety (90) days or such further time as agreed upon by the CONTRACTOR by WRITTEN NOTICE to the CONTRACTOR which shall fix the date on which the WORK shall be resumed. The CONTRACTOR will resume that WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.
- b. If the CONTRACTOR is adjudged bankrupt or insolvent, or otherwise violates any provision of the CONTRACT DOCUMENTS, then the TOWN OF NARROWS may, without prejudice to any other right or remedy and after giving the CONTRACTOR and its surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate services of the CONTRACTOR and take possession of the PROJECT and all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR and finish the WORK by whatever method the TOWN OF NARROWS may deem expedient. In such case, the CONTRACTOR shall not be

entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess shall be paid to the CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the TOWN OF NARROWS. Such costs incurred by the TOWN OF NARROWS will be incorporated into the Agreement by a CHANGE ORDER.

- c. After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR, the TOWN OF NARROWS may, without cause or prejudice to any other right or remedy, elect to abandon the PROJECT and to terminate the CONTRACT. In such case the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.
- d. If through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the TOWN OF NARROWS or under an order of court or other public authority, or the ENGINEER, if any, fails to act on any request for payment within thirty (30) days after it is submitted, or the TOWN OF NARROWS fails to pay the CONTRACTOR substantially the sum approved by the ENGINEER or awarded through the legally recognized disputed claim procedure within thirty (30) days of its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to the TOWN OF NARROWS terminate the CONTRACT and recover from the TOWN OF NARROWS payment for all WORK executed and expenses sustained. In addition and in lieu of terminating the CONTRACT, if the ENGINEER, if any, has failed to act on a request for payment or if the TOWN OF NARROWS has failed to make any payment as foresaid, the CONTRACTOR may upon ten (10) days WRITTEN NOTICE to the TOWN OF NARROWS and ENGINEER stop the WORK until all amounts then due are paid, in which event and upon resumption of the WORK CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME, or both, to compensate for the costs and delays attributable to the stoppage of the WORK.
- e. If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of the TOWN OF NARROWS or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the Costs and delays necessarily caused by the failure of the TOWN OF NARROWS or ENGINEER.

iii. Correction of Work

- a. The CONTRACTOR shall promptly remove from the premises all WORK rejected by the TOWN OF NARROWS for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and re-execute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the TOWN OF NARROWS and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.
- b. All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the TOWN OF NARROWS may remove such WORK and store the



materials at the expense of the CONTRACTOR.

- c. If the TOWN OF NARROWS deems it not expedient to require the CONTRACTOR to correct WORK not done in accordance with the CONTRACT DOCUMENTS, an agreement may be made between the TOWN OF NARROWS and the CONTRACTOR for a change in CONTRACT PRICE with an equitable deduction in lieu of replacement and removal.

iv. Notices

- a. All NOTICES, demands, requests, instructions, approvals, proposals, and claims must be made in writing and as provided in the Agreement.
- b. Any NOTICE to or demand upon the CONTRACTOR shall be sufficiently given if delivered at the office of the CONTRACTOR stated on the signature page of the CONTRACT DOCUMENTS (or at such other office as he may from time to time designate in writing to the TOWN OF NARROWS, or deposited in the United States Mail in a sealed, postage paid envelope, or if delivered with charges prepaid to any telegraph company for transmission in each case addressed to such office).
- c. All NOTICES required to be delivered to the TOWN OF NARROWS shall, unless otherwise specified in writing to the CONTRACTOR, be delivered to the designated representative and any NOTICE to or demand upon the TOWN OF NARROWS shall be sufficiently given if so delivered in writing, or deposited in the United States Mail in a sealed, postage paid envelope, or delivered with charges prepaid to any telegraph company for transmission to said designated representative at such address, or to such other address as the TOWN OF NARROWS may subsequently specify in writing to the CONTRACTOR for such purposes.
- d. Any such WRITTEN NOTICE shall be deemed to have been given as of the time of actual delivery, or in the case of mailing, when the same should have been received in due course of post, or in the case of telegrams at the time of actual receipt, as the case may be.

v. Cleanup Requirements

- a. The construction premises, job sites and any property leased for storage of equipment or materials shall be maintained by the CONTRACTOR in reasonably neat and orderly condition, free from accumulation of waste material and rubbish during the entire construction period. All crates, cartons and other flammable and trash shall be removed from work areas at the end of each working day. Trash burning on the site shall be prohibited unless done in accordance with local ordinance and with the consent of the TOWN OF NARROWS.
- b. The CONTRACTOR shall remove all rubbish and debris from WORK with reasonable promptness. Rubbish and debris shall not be permitted to accumulate in excessive amounts that will become hazardous underfoot and to vehicular traffic.
- c. Upon completion of the WORK, the CONTRACTOR shall remove all temporary construction facilities, including buildings, fences, scaffolding, unused materials; and rubbish of any kind. Buildings, job site and adjacent property shall be left in a neat and clean condition acceptable to the TOWN OF NARROWS.

vi. Final Completion Inspection and Closeout

- a. When the WORK as described in the CONTRACT DOCUMENTS is substantially completed, the CONTRACTOR shall notify the ENGINEER, if any, and TOWN OF NARROWS by WRITTEN NOTICE that the WORK will be ready for final inspection on a definite date specified in such NOTICE. The WRITTEN NOTICE shall be given at least ten (10) days prior to the date stated for final inspection. If the TOWN OF NARROWS determines that the status of the WORK is as represented, it will make arrangements necessary to conduct final inspection on the date stated in the NOTICE, or as soon thereafter as is practicable. The inspection party will include the ENGINEER, if any, and such representatives of the TOWN OF NARROWS as deemed appropriate.
- b. After the TOWN OF NARROWS is satisfied that the CONTRACTOR has performed satisfactorily in accordance with the CONTRACT DOCUMENTS, the CONTRACTOR is eligible for final payment by the TOWN OF NARROWS.
- c. The TOWN OF NARROWS' attorney will review the CONTRACTOR'S close out documents prior to acceptance by the TOWN OF NARROWS. If the TOWN OF NARROWS and its attorney are satisfied that the TOWN OF NARROWS is released from all liens, claims or other charges connected with the WORK, the TOWN OF NARROWS will make payment to the CONTRACTOR.

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. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p.339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II(C).

Key Definitions.

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

The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause: During the performance of this contract, the contractor agrees as follows:

- i. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- ii. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- iii. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- iv. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- vi. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- vii. In the event of the contractor's noncompliance with the nondiscrimination clauses of this

contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following

actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### 4. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 29 C.F.R. Part 200, Appendix II(E). Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

This requirement applies to all FEMA contracts awarded by the non-federal entity in excess of \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

The regulation at 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including the following contract clause:

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

- (1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such

individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

- (3) *Withholding for unpaid wages and liquidated damages.* The Town of Narrows shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

#### 5. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

If applicable, contracts must contain a provision that requires the contractor 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 FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II(G). This requirement applies to contracts awarded by a non-federal entity of amounts in excess of \$150,000 under a federal grant:

##### Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the awarded contractor and understands and agrees that the awarded contractor will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

##### Federal Water Pollution Control Act

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

2. The contractor agrees to report each violation to the Town of Narrows and understands and agrees that the Town of Narrows will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

## 6. DEBARMENT AND SUSPENSION

Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).

- i. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II(H); and 2 C.F.R. § 200.213. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that 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. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530.
- ii. In general, an "excluded" party cannot receive a Federal grant award or a contract within the meaning of a "covered transaction," to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a "covered transaction," which is any non-procurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although "covered transactions" do not include contracts awarded by the Federal Government for purposes of the non-procurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipients.
- iii. Specifically, a covered transaction includes the following contracts for goods or services:
  - The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
  - The contract requires the approval of FEMA, regardless of amount.
  - The contract is for federally-required audit services.
  - A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

## 7. BYRD ANTI-LOBBYING AMENDMENT

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. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. 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 awarding agency.

This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of \$100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.

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

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

If applicable, contractors must sign and submit to the non-federal entity the following certification:

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

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit



Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

\_\_\_\_\_

Signature of Contractor's Authorized Official

\_\_\_\_\_

Name and Title of Contractor's Authorized Official

\_\_\_\_\_

Date

## 8. PROCUREMENT OF RECOVERED MATERIALS

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II(J); and 2 C.F.R. § 200.322. This requirement applies to all contracts awarded by a non-federal entity under FEMA grant and cooperative agreement programs.

The requirements of Section 6002 include procuring only items designated in guidelines of the 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.

- i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
  - Competitively within a timeframe providing for compliance with the contract performance schedule;
  - Meeting contract performance requirements; or
  - At a reasonable price.
- ii. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

## 9. ACCESS TO RECORDS

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS/FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, Section 1225 of the Disaster Recovery Reform Act of 2018 prohibits FEMA from providing reimbursement to any state, local, tribal, or territorial government, or private non-profit for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.

The following access to records requirements apply to this contract:

- (1) The Contractor agrees to provide the Town of Narrows, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the Town of Narrows and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

#### 10. CHANGES & CORRECTIONS

To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

- i. The TOWN OF NARROWS may make changes in the WORK required to be performed by the CONTRACTOR under the CONTRACT DOCUMENTS without releasing the CONTRACTOR from any of his obligations under the CONTRACT DOCUMENTS or any guarantee given by him pursuant to the CONTRACT provisions, and without affecting the validity of the guaranty BONDS, and without relieving or releasing the surety or sureties of said BONDS. All WORK shall be executed under the terms of the original CONTRACT DOCUMENTS unless it is expressly provided otherwise. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER. All change Orders must be approved by the Virginia Department of Housing and Community Development (DHCD) and may not alter the scope of the project. DHCD must receive justification for Change Orders from the grantee.
- ii. Except for the purpose of affording protection against any emergency endangering health, life, limb or property as specified in Section 14, the CONTRACTOR shall make no change in the WORK as specified in the CONTRACT DOCUMENTS unless in pursuance of a written approved CHANGE ORDER from the TOWN OF NARROWS authorizing the CONTRACTOR to proceed with the change. No claim for an adjustment of the CONTRACT PRICE or time will be valid unless so ordered.
- iii. The TOWN OF NARROWS shall, before ordering the CONTRACTOR to proceed with the desired changes, request from him an itemized proposal covering the WORK involved in

the change after which the procedure shall be as follows:

- a. If the proposal is acceptable the TOWN OF NARROWS will prepare the CHANGE ORDER in accordance therewith for acceptance by the CONTRACTOR.
- iv. Each CHANGE ORDER shall include in its final form:
  - a. A detailed description of the change in the WORK
  - b. The CONTRACTOR'S proposal (if any) or a confirmed copy thereof
  - c. A definite statement as to the resulting change in the CONTRACT PRICE or TIME
  - d. The statement that all WORK involved in the change shall be performed in accordance with the CONTRACT DOCUMENTS except as modified by the CHANGE ORDER.

#### **11. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

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

- i. **Subpart E: Opportunities For Minority And Female-Owned Businesses.** The work covered by this CONTRACT is subject to the provisions of OMB Part 85, Attachment 0 which requires that minority and female-owned businesses be solicited whenever they are sources of supplies, equipment, construction and services on federally funded projects.
  - A. In procuring supplies, equipment, construction and services, the CONTRACTOR and all SUBCONTRACTORS will contact those appropriate minority and female-owned firms provided by the PUBLIC BODY on its solicitation list and provide such firms reasonable opportunities to compete for procurement contracts.
  - B. The CONTRACTOR shall keep a complete and accurate record of all procurement of greater than ten thousand dollars (\$10,000) made in the execution of the PROJECT. Such record shall be on a form provided by the PUBLIC BODY and shall be submitted to the PUBLIC BODY no less than every thirty (30) days.

#### **12. NO OBLIGATION BY FEDERAL GOVERNMENT**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

#### **13. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor

acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

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.

## ATTACHMENT B-SUPPLEMENTAL TERMS AND CONDITIONS

This Supplemental Terms and Conditions is incorporated into and made a part of the Invitation to Bid for the Lurich Baseball Field Fence Replacement Project. Any agreement resulting from the Invitation to Bid shall include the following terms and conditions. References to "Contractor" in this Supplemental Terms and Conditions shall be deemed to apply to any bidder to the Invitation to Bid and the successful bidder under any agreement resulting therefrom. References to "Owner" shall mean the Town of Narrows, Virginia.

1. Non-Discrimination: During the performance of the agreement, Contractor agrees as follows:

A. Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of these provisions.

D. Contractor shall include the foregoing provisions concerning non-discrimination in every subcontract or purchase order of over ten thousand dollars (\$10,000.00) so that the provisions will be binding upon each subcontractor or vendor.

2. Drug-Free Workplace: During the performance of the agreement:

A. Contractor agrees to (i) provide a drug-free workplace for employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that shall be taken against employees for violations of this prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that it maintains a drug-free workplace, and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

B. For the purposes of the above, "drug-free workplace" means a site for the performance of work done in connection with the agreement, or a subcontract or purchase order awarded to a subcontractor or vendor in accordance with the Virginia

Public Procurement Act, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance under the subcontract or the agreement.

3. Faith-Based Organizations: Pursuant to Virginia Code § 2.2-4343.1, in all invitations to bid, requests for proposals, contracts, and purchase orders, the Owner does not discriminate against faith-based organizations.

"Faith-based Organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

If Contractor is a faith-based organization, then Contractor shall give to each individual who applies for or receives goods, services, or disbursements provided pursuant to this Agreement the following notice:

**NOTICE**

Pursuant to § 2.2-4343.1 of the Code of Virginia of 1950, as an applicant for or recipient of goods, services, or disbursements provided pursuant to a contract between the Owner and a faith-based organization, you are hereby notified as follows:

**Neither the Owner's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the Owner.**

4. Insurance Coverages: Contractor shall provide insurance as set out in the Invitation to Bid.

5. Claims Procedure: Notwithstanding any other provision contained in this Agreement, contractual claims or disputes by Contractor, whether for money or other relief, as a condition precedent to pursuing any other legal remedy, shall be subject to the following procedure:

All such claims shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that Contractor shall give the Owner written notice of its intention to file a claim or dispute within fifteen (15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of Contractor's intention to file such a claim or dispute need not detail the amount of the claim but shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. Whether or not Contractor files such written notice, Contractor shall proceed with the work as directed. If Contractor fails to make its claim or dispute or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.

The Owner, upon receipt of a detailed claim, may at any time render its decision and shall render such decision within sixty (60) days of the claim. Each such decision rendered shall be forwarded to the Contractor by written notice.

If the Contractor disagrees with the decision of the Owner concerning any pending claim, the Contractor shall promptly notify the Owner by written notice that the Contractor is proceeding with the work under protest. Any claim that is not resolved, whether by failure of the Contractor to accept the decision of the Owner or under a written notice of Contractor's intention to file a claim or a detailed claim not acted upon by the governing body of the Owner, shall be specifically exempt by the Contractor from any future payment request, whether progress or final. Pendency of claims shall not delay payment of amounts agreed due in subsequent payments.

The decision on contractual claims by the governing body of the Owner shall be final and conclusive unless the Contractor appeals within six months of the date of the final decision on the claim by instituting legal action in the appropriate circuit court.

6. Payment Provisions: Pursuant to Virginia Code § 2.2-4354, the Contractor covenants and agrees to:

- A. Within seven (7) days after receipt of any amounts paid to Contractor under the contract with Owner, (i) pay any subcontractor for its proportionate share of the total payment received from the Owner attributable to the work under the contract performed by such subcontractor, or (ii) notify the Owner and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason therefor;
- B. Provide its federal employer identification number or social security number, as applicable, before any payment is made to Contractor under the contract; and,
- C. Pay interest to the subcontractor on all amounts owed by Contractor that remain unpaid after seven (7) days following receipt by Contractor of payment from the Owner for work performed by the subcontractor under the contract, except for amounts withheld as described above. Unless otherwise



provided under the terms of the contract, interest shall accrue at the rate of one percent per month.

- D. Subject to the provisions of **Virginia Code § 2.2-4354(1)**, in the event that the Contractor has not received payment from the Owner for work performed by a subcontractor under the contract, the Contractor shall pay subcontractor within sixty (60) days of the receipt of an invoice following satisfactory completion of the work for which the subcontractor has invoiced.

Contractor shall include in its contracts with any and all subcontractors the requirements stated above.

7. Immigration Laws: Pursuant to Virginia Code § 2.2-4311.1, during the performance of the agreement, the Contractor shall not knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

8. Authority to Transact Business: Pursuant to Virginia Code § 2.2-4311.2, if Contractor is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, Contractor must be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity as required by Virginia Code Title 13.1 or Title 50 or as otherwise required by law.

9. Certifications. Contractor certifies and agrees to the following:

A. The bid or offer (1) has been made without prior participation, understanding, agreement, or connection with any corporation, firm or person submitting a bid/offer for the same materials, supplies, equipment, or services with respect to the allocation of the business afforded by or resulting from the acceptance of the bid or proposal, (2) is in all respects fair and without collusion or fraud, and (3) is or is intended to be competitive and free from any collusion with any person, firm or corporation;

B. Contractor has not offered or received any kickback from any other bidder or contractor, supplier, manufacturer, or subcontractor in connection with the bid/offer on this solicitation. A kickback is defined as an inducement for the award of a contract, subcontracts or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, Contractor has not received or provided to another person any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract;

C. Contractor is not a party to nor has it participated in nor is obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning bids, prices, terms or conditions upon which the contract resulting from the acceptance of his bid proposal is to be performed;

D. Contractor has not and will not confer on any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged;

E. Contractor understands that collusive bidding is a violation of the Virginia Governmental Frauds Act, the Virginia Public Procurement Act, and federal law, and can result in fines, prison sentences, and civil damage awards and agrees to abide by all conditions of this proposal.

10. Collusion: Contractor shall comply, as applicable, with the requirements of Virginia Code Section 2.2-4374 of the Virginia Public Procurement Act. Furthermore, Contractor understands that collusive bidding is a violation of the Virginia Governmental Frauds Act, the Virginia Public Procurement Act, and federal law and can result in fines, prison sentences, and civil damage awards.

11. Project Funding; Notice: Owner and Contractor acknowledge that the project and work described in the Invitation to Bid is a federally-assisted project and funded, in whole or in part, by FEMA funds. Owner and Contractor agree to comply with all federal, state, and local rules, laws, and regulations relating to the use of federal funding for the projects and services. Furthermore, the Owner and Contractor agree to comply with the provisions of the federal inserts and notices attached hereto as Subparts A-H.

## **Subpart A: Equal Employment Opportunity**

1. Executive Order 11246, as amended (Contracts/subcontracts above \$10,000)
    - a. During the performance of this contract, the contractor agrees as follows:
      - (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
      - (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
      - (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
      - (4) The contractor will comply with all provisions of Executive Order 11246, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
      - (5) The contractor will furnish all information and reports required by Executive Order 11246, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency
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and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

b. Subcontracts

Each prime contractor or subcontractor shall include the equal opportunity clause in each of its subcontracts.

### **Subpart B: Title VI of the Civil Rights Act of 1964, as Amended**

All parties to this contract hereby agree to comply with the provisions of Title VI of the *Civil Rights Act of 1964* (Public Law 88-352) which provides: that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance of any dollar amount – no minimum threshold.

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## **Subpart C: Section 109 of the Housing and Community Development Act of 1974, as Amended**

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in section 504 of the *Rehabilitation Act of 1973* shall also apply to any such program or activity of any dollar amount – no minimum threshold.

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## **Subpart D: Records Retention**

The CONTRACTOR shall maintain financial records, supporting documents, statistical records, and all other records pertinent to this contract during the period of this contract and for five (5) years from the date of final payment; except, if any litigation, claim or audit is started before the expiration of the 5-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

## **Subpart E: Provisions Required by Law Deemed Inserted**

The provisions of Article 4 (Ethics in Public Contracting), Chapter 7 of Title 11 of the Code of Virginia, as amended, is hereby incorporated by reference and each and every other provision of law and clause required by law to be inserted herein shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein.

## **Subpart F: Immigration Reform and Control Act of 1986**

The Contractor agrees by signing this contract that he/she does not and will not during the performance of this contract violate the provisions of the *Federal Immigration Reform and Control Act of 1986*, which prohibits employment of illegal aliens.

## **Subpart G: Access to Records**

The Public Body, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcriptions.

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## **Subpart H: Drug-Free Workplace Act Assurances**

The Contractor agrees by signing this contract that he/she will provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - (b) Establishing a drug-free awareness program to inform employees about -
    - i. The dangers of drug abuse in the workplace;
    - ii. The grantee's policy of maintaining a drug-free workplace;
    - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
    - iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
  - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will -
    - i. Abide by the terms of the statement; and
    - ii. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
  - (e) Notifying the Town within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such condition;
  - (f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted -
    - i. Taking appropriate personnel action against such an employee, up to and including termination; or
-

- ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).
-