

# FEDERAL TERMS AND CONDITIONS

## 1. USE OF DEBARRED, SUSPENDED, OR INELIGIBLE CONTRACTORS

1.1 Iowa Economic Development Authority (IEDA) funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any Contractor or sub-recipient during any period of debarment, suspension or placement in ineligibility status under the provisions of 2 CFR Part 200.214 (Government Debarment and Suspension Regulations).

1.2 **ATTACHMENT A is to be completed and submitted with the proposal.**

## 2. ACCESS TO RECORDS

2.1 The Vendor acknowledges that all documents, deliverables, correspondence, and other records are submitted to Des Moines County Emergency Management Agency in connection with this procurement, and any resulting contract may be considered public records subject to disclosure under Iowa Code Chapter 22 unless a lawful exemption applies.

2.2 The Vendor agrees to provide the Des Moines County Emergency Management Agency, IEDA, or any of their authorized representatives access to any records, documents, papers, or other materials related to the contract for the purpose of audit, examination, excerpts, and transcriptions.

2.3 The Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

2.4 The Vendor agrees to retain all records pertinent to this contract for a period of three (3) years after the final payment is made and all pending matters are closed per 2 C.F.R. § 200.334.

2.5 If any litigation, claim, or audit arises before the expiration of the three years, the Vendor agrees to retain the records until all issues are resolved.

2.6 The Vendor agrees to include this clause in all subcontracts financed in whole or in part with funds from this Contract.

## 3. DISPUTES, DEFAULT, AND TERMINATION

Disputes: In the event of a dispute arising under this Contract, the Vendor shall notify the Des Moines County Emergency Management Agency promptly in writing of their contentions and submit the claim. If the dispute arises before performance of the related work, the written notice shall be submitted before commencing such work. In any event, the Vendor shall proceed with such work in compliance with the instructions of the Des Moines County Emergency Management Agency; such compliance shall not be a waiver of the Vendor's rights to make a claim, provided they have notified the Des Moines County Emergency Management Agency in writing as above stipulated.

Default and Remedies: Default shall consist of any failure by the Vendor to perform under this contract or written amendments thereto or any breach of any covenant, agreement, provision, or warranty provided by the Vendor as a part of this contract. Actions which constitute a default include, but are not limited to:

- (1) Failure to submit to the Des Moines County Emergency Management Agency reports which are required pursuant to this contract or the submission of required reports that are incorrect or incomplete.
- (2) Submission of requests for payment or reimbursement of amounts that are incorrect or incomplete.
- (3) The failure of the Vendor to accept any additional conditions which may be provided by law, by executive order, by regulation, or by other policy announced by the Des Moines County Emergency Management Agency, the state, or any federal agency.
- (4) Failure to perform any activity required by this contract.

Default: Upon occurrence of any default, the Des Moines County Emergency Management Agency shall advise the Vendor in writing of the action constituting the default and specify the actions that must be taken to cure the default. The Des Moines County Emergency Management Agency may suspend payment under the contract. If a default is not cured within 30 days from receipt of written notice of such default by the Vendor, Des Moines County Emergency Management Agency may continue the suspension or, by written notice of termination, may terminate the contract.

Notwithstanding the above, the Vendor shall not be relieved of liability to Des Moines County Emergency Management Agency for damage sustained by Des Moines County Emergency Management Agency by virtue of any default or breach of the contract; and Des Moines County Emergency Management Agency may deduct the amount of damages from any outstanding payments to the Vendor or may withhold payments until the exact amount of the damages is determined.

Termination: If federal funding for this project is terminated and no other funding is available for continuation of this project, Des Moines County Emergency Management Agency will not be obligated to continue funding for the services contained in this contract and may terminate the contract.

In the event of termination, all property and finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by or purchased with U.S. Department of Energy (DOE) funds by the Vendor under this contract shall, at the option of Des Moines County Emergency Management Agency, become its property and the Vendor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

#### 4. Termination

##### 4.1 Owner May Terminate for Cause

The occurrence of any one or more of the following events will justify termination for cause:

- (1) Vendor's persistent failure to perform the work in accordance with the contract documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials);
- (2) Vendor's disregard of laws or regulations of any public body having jurisdiction;
- (3) Vendor's disregard of the authority of the owner; or
- (4) Vendor's violation in any substantial way of any provisions of the contract documents.

4.1.1 If one or more of the events identified in this section occur, Owner, after giving Vendor 15 days written notice of its intent to terminate the services of Vendor, may:

- (1) Exclude Vendor from the site, and take possession of the work and of all Vendor's tools, appliances, construction equipment, and machinery at the site, and use the same to the full extent they could be used by Vendor (without liability to Vendor for trespass or conversion),
- (2) Incorporate in the work all materials and equipment stored at the site or for which the Owner has paid the Vendor but which are stored elsewhere, and
- (3) Complete the work as the Owner may deem expedient.

4.1.2 If Owner proceeds as provided in this section, Vendor shall not be entitled to receive any further payment until the work is completed. If the unpaid balance of the contract price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the work, such excess will be paid to Vendor. If such claims, costs, losses, and damages exceed such unpaid balance, Vendor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed as to their reasonableness and, when so approved, incorporated in a Change Order. When exercising any rights or remedies under this section, Owner shall not be required to obtain the lowest price for the work performed.

4.1.3 Vendor will not be terminated if Vendor begins within 15 days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

4.1.4 Where the Vendor has been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Vendor then existing or which may thereafter accrue. Any retention or payment of money due Vendor by Owner will not release Vendor from liability.

#### 4.2 Owner May Terminate for Convenience

4.2.1 Upon 15 days' written notice to Vendor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Vendor shall be paid for (without duplication of any items):

- (1) Completed and acceptable work executed in accordance with the Contract Documents before the effective date of termination, including fair and reasonable sums for overhead and profit on such work;
- (2) Expenses sustained before the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted work, plus fair and reasonable sums for overhead and profit on such expenses;
- (3) All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with sub-contractors, suppliers, and others; and
- (4) Reasonable expenses directly attributable to termination.

4.2.2 Vendor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

### 5. SEVERABILITY

If any provision of this Contract shall be held or made invalid by a court decision, statute, or rule, or shall be otherwise rendered invalid, the remainder of this Contract shall not be affected thereby.

### 6. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that Iowa Economic Development Authority (IEDA) financial assistance will be used to fund all or a portion of the contract. The Vendor will comply with all applicable federal law, regulations, executive orders, IDEA policies, procedures, and directives.

### 7. 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, Vendor, or any other party pertaining to any matter resulting from the contract.

### 8. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Vendor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims

and Statements) applies to the Vendor's actions pertaining to this contract.

**9. PROCUREMENT OF RECOVERED MATERIALS**

9.1 In the performance of this contract, the Vendor shall make maximum use of products acquired competitively within a timeframe providing for compliance with the contract performance; meeting contract performance requirements; or at a reasonable price.

9.2 Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

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

**10. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES**

**10.1 Definitions**

10.1.1 As used in this clause, the terms backhaul; covered foreign country; covered for this section, "covered telecommunications equipment or services" also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

**10.2 Prohibitions**

10.2.1 Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency, on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

10.2.2 Unless an exception in section 10.3 of this clause applies, the Vendor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Department of Energy to:

- (1) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system.
- (2) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system.
- (3) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- (4) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a

substantial or essential component of any system, or as critical technology as part of any system.

### 10.3 Exceptions

10.3.1 This clause does not prohibit vendors from providing:

- (1) A service that connects to the facilities of a third party, such as backhaul, roaming, or interconnection arrangements.
- (2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

10.3.2 By necessary implication and regulation, the prohibitions also do not apply to:

- (1) Covered telecommunications equipment or services that:
  - i. Are not used as a substantial or essential component of any system; and
  - ii. Are not used as critical technology of any system.
- (2) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

### 10.4 Reporting Requirement

10.4.1 In the event the vendor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system during contract performance, or the vendor is notified of such by a subcontractor at any tier or by any other source, the vendor shall report the information in section 10.4.2 of this clause to the recipient or subrecipient, unless procedures for reporting this information are established elsewhere in this contract.

10.4.2 The vendor shall report the following information:

- (1) Within one business day from the date of such identification or notification:
  - i. The contract number
  - ii. The order number(s), if applicable
  - iii. Supplier name
  - iv. Supplier unique entity identifier (if known)
  - v. Supplier Commercial and Government Entity (CAGE) code (if known)
  - vi. Brand
  - vii. Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number).

- viii. Item description
  - ix. Any readily available information about mitigation actions undertaken or recommended
- (2) Within 10 business days of submitting the information in section 10.4.2.1:
- i. Any further available information about mitigation actions undertaken or recommended.
  - ii. A description of the efforts undertaken to prevent use or submission of covered telecommunications equipment or services.
  - iii. A description of any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

10.5 Subcontracts

The vendor shall insert the substance of this clause, including this section (10.5), in all subcontracts and other contractual instruments.

**10.6 ATTACHMENT B is to be completed and submitted with the bid.**

11. CIVIL RIGHTS

The Vendor must comply with the following laws and regulations:

- 11.1 Title VI of the Civil Rights Act of 1964 (P.L. 88-352). States that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance based on race, color, or national origin.
- 11.2 Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended.
- 11.3 Federal Executive Order 11063, as amended by Executive Order 12259, *Equal Opportunity Housing*
- 11.4 Iowa Civil Rights Act of 1965. This Act mirrors the Federal Civil Rights Act.
- 11.5 Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42U.S.C. 5309). Provides that no person shall be excluded from participation in, denied the benefits of, or subjected to discrimination based on race, color, national origin, sex, age, or handicap under any program or activity funded in part or in whole under Title I of the Act.
- 11.6 The Age Discrimination Act of 1975, as amended (42 U.S.C. 1601 et seq.) Provides that no person, based on age, be excluded from participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance.
- 11.7 Section 504 of the Rehabilitation Act of 1973, as amended (P.L. 93-112, 29 U.S.C. 794). Provides that no otherwise qualified individual shall solely by reason of his/her handicap be excluded from participation in, be denied the benefits of, or be discriminated against under any program or activity receiving Federal financial assistance.

- 11.8 Americans with Disabilities Act (P.L. 101-336, 42 U.S.C. 12101-12213)
- 11.9 Provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
- 11.10 Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u). The purpose of section 3 of the Housing and Urban Development Act of 1968 ( 12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.
- 11.11 **ATTACHMENT C is to be completed and submitted with the bid.**

**12. FEDERAL EXECUTIVE ORDERS 11246 AND 11375:**

*Provides that no one be discriminated against in employment.*

"During the performance of this contract, the Vendor agrees as follows:

- 12.1 The Vendor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Vendor 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 Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 12.2 The Vendor will, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 12.3 The Vendor 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 by the agency contracting officer, advising the labor union or workers' representative of the Vendor's commitments under Section 202 of the Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 12.4 The Vendor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 12.5 The Vendor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- 12.6 In the event of the Vendor's non-compliance with the nondiscrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 12.7 The Vendor will include the provisions of Sections 12.1 through 12.7 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 No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Vendor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Vendor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Vendor may request the United States to enter into such litigation to protect the interests of the United States.

**13. AMENDMENT**

- 13.1 No change, modification, or termination of any of the terms, provisions, or conditions of this Contract shall be effective unless made in writing and signed by the parties. Because this procurement is funded in whole or in part through a grant awarded by the Iowa Economic Authority (IEDA), the Vendor acknowledges that any amendment requested is subject to review for compliance with applicable federal and state requirements.
- 13.2 An amendment will be denied if it substantially alters the circumstances under which the Project funding was originally approved or if it conflicts with any applicable federal, state, or local laws, federal regulations, or state rules.

**14. ASSIGNMENT AND DELEGATION**

- 14.1 The Vendor may not assign, transfer, or convey in whole or in part, this Contract without the prior written consent of Des Moines County Emergency Management Agency. For the purposes of this clause, a transfer of a controlling interest in the Vendor shall be considered an assignment. The Vendor may not delegate any of its obligations or duties under this Contract without the prior written consent of Des Moines County Emergency Management Agency. The Vendor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to the Vendor under this Contract.

**15. GOVERNING LAW**

This Contract is governed by the law of the State of Iowa, with venue in the appropriate state and/or federal courts for Des Moines County, Iowa

**ATTACHMENT A**

**Des Moines County Emergency Management Agency  
CERTIFICATION OF BIDDER REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY, AND VOLUNTARY EXCLUSION**

**INSTRUCTIONS**

This certification is required pursuant to 2 CFR Section 200.214. It shall be completed, signed, and submitted as part of the bid.

- (1) By signing and submitting this bid, the prospective lower-tier participant certifies that neither it, its principals, nor its affiliates is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Further, the Participant provides the certification set out below:
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that an erroneous certification was rendered, in addition to other remedies available to the Federal Government, the Department or agency with which this transaction originated may pursue available remedies.
- (3) Further, the Participant shall provide immediate written notice to the person to whom this bid is submitted if at any time the Participant learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) By submitting this bid, it is agreed that should the proposed covered transaction be entered into, the Participant will not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the agency with which this transaction originated.
- (5) It is further agreed that by submitting this bid, the Participant will include this Certification, without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.

Vendor Name and Title	Signature	Date
Address	City	State      Zip

**NON-CERTIFICATION:** As the prospective lower-tier participant, I am unable to certify to statements in this Certification.

Vendor Name and Title	Signature	Date
Address	City	State      Zip

**This form must be submitted with the Bid Form**

**ATTACHMENT B**

**Des Moines County Emergency Management Agency  
Vendor Certification:  
Prohibition on Certain Telecommunications  
and Video Surveillance Equipment or Services**

**TO BE COMPLETED BY VENDOR**

**In accordance with the prohibitions previously listed, the offeror hereby represents that:**

1. It will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract, or other contractual instrument resulting from this solicitation.
  
2. It does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services.

**Signed by:**

\_\_\_\_\_

**Printed Name**

\_\_\_\_\_

**Date**

\_\_\_\_\_

**Signature**

\_\_\_\_\_

**Position or Title with Company**

\_\_\_\_\_

**Name of Company**

**This form must be submitted with the Bid Form**

# ATTACHMENT C

## Des Moines County Emergency Management Agency CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY

### Instructions

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any vendor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause, and if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven (7) calendar days after bid opening. No contract shall be awarded unless such a report is submitted.

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COMPANY'S NAME

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PROJECT NAME & NUMBER

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Name and Address of Vendor (include zip code)

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1. Vendor has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.  
Yes \_\_\_\_\_ No \_\_\_\_\_
2. Compliance reports were required to be filed in connection with such contract or subcontract.  
Yes \_\_\_\_\_ No \_\_\_\_\_
3. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?  
Yes \_\_\_\_\_ No \_\_\_\_\_
4. Vendor has filed all compliance reports due under applicable instructions, including Monthly Employment Utilization Report (257).  
Yes \_\_\_\_\_ No \_\_\_\_\_

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Name and Title of Signer (please type)

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Signature

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Date

**This form must be submitted with the Bid Form**