

August

2021



# Request for Proposals

To Provide  
Emergency Assistance, Damage  
Remediation, and Debris Removal Services

Deadline: September 10, 2021

Lake Charles Harbor & Terminal District  
Lake Charles, Louisiana

## 1. Introduction

This Request for Proposals (RFP) is issued by the Lake Charles Harbor & Terminal District, also known as the Port of Lake Charles (herein referred to as LCHTD). In preparation for the current hurricane season LCHTD is seeking a contractor to provide assistance and support for emergency assistance, damage remediation, and debris removal if or when a disaster should cause damage to LCHTD property.

The purpose of this Request for Proposal (RFP) is to obtain competitive proposals from qualified contractors who will assist LCHTD in recovery efforts immediately following the storm. This contract shall be utilized when LCHTD resources are not able to provide for the emergency in an immediate manner. The successful contractor shall provide an additional resources, products and services in a declared state of emergency such as hurricanes, tornados, man-made and natural disasters. The types of items/services that may be required are temporary roofing, marine salvage, generators, lighting, toilet facilities, living accommodations, health facilities, etc, as well as on-site response teams to perform a wide range of emergency services.

Following a disaster, LCHTD will declare a state of emergency and authorize a not to exceed limit depending on the size of the disasters. The rates submitted with this RFP and the not to exceed amount will be utilized as part of this contract.

The Contractor shall respond within four (4) hours of receiving assistance notification.

The contractor shall have products and services available within seventy-two (72) hours from the initial assistance notification.

Interested respondents must send an email stating their intent to submit a proposal to [RFP@portlc.com](mailto:RFP@portlc.com) by September 1, 2021. Proposals must be submitted by email as a .pdf document to [RFP@portlc.com](mailto:RFP@portlc.com) by September 10, 2021.

## 2. Overview of Timeline:

- Respondents should send an email to [RFP@portlc.com](mailto:RFP@portlc.com) by September 1, 2021 to show intent to submit a proposal. The response to written inquiries will be sent to all interested parties.
- All inquiries and questions should be submitted by September 8, 2021 by email to [RFP@portlc.com](mailto:RFP@portlc.com).
- Proposals are due to LCHTD no later than 2:00pm on September 10, 2021. Proposals received after that time will not be reviewed.
- Proposals must be submitted by email in .pdf format to [RFP@portlc.com](mailto:RFP@portlc.com).
- LCHTD reserves the right at its sole discretion, to adjust this schedule, as it deems necessary.

## 3. Scope of Services

- Proposer shall have the capacity, ability and experience to respond rapidly with the delivery of the products and/or services required in a declared emergency. Proposer shall provide a past history proving expertise and success in this type of work and provide references of past



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and present customers.

- Proposer shall have the ability to record all transactions in accordance with federal government requirements (i.e. Federal Emergency Management Agency (FEMA), for reimbursement to LCHTD.
- Proposer shall submit satisfactory evidence that it has previous experience and possesses an adequate ability, financial resources, and organization as herein specified to perform the type, magnitude, and quality of work as specified.
- Contractor shall have the ability to procure emergency remediation materials if LCHTD emergency stock is not sufficient. This may include, temporary roof materials such as metal roofing, tarping, or plastic sheeting. LCHTD is exempt from all sales taxes.
- Without limiting any above provision, and for the avoidance of doubt, all work performed under this RFP is limited to Category A and B under FEMA's Public Assistance Program

### 4. Evaluation Criteria:

Selection will be based on overall value, which includes but is not limited to expertise, experience, references, responsiveness, demonstrated understanding of the project, ability to execute the work, as well as price. All submitted proposals are to be limited to a length, including resumes, not to exceed 8 pages.

The following criteria will form the basis for evaluating submitted qualifications:

Number	Criteria	Weight
1.	Qualifications & Experience of the company in relation to the type and magnitude of work required in this RFP <i>Highlight experience with emergency roof and building repair projects. Include Louisiana Contractor License Information.</i>	25
2.	Demonstrate ability to successfully provide emergency services including staff and equipment availability.	20
3.	Nature, quantity, and value of work previously performed for public entities. <i>Identify any work your company or team members have previously done for the Port of Lake Charles or another public entity which involved disaster recovery (last 5years)</i>	20
4.	Location: <i>Physical address where the majority of the design work will be conducted.</i>	10
5.	Pricing: <i>Provide hourly rate schedule for labor that would be utilized post disaster for damage remediation and debris removal. Per diem expenses if required will be at actual costs. Note on rate schedule if per diem is required for any labor.</i>	25

### 5. Submission of RFP:

- All Criteria shall be addressed in the order presented in the Notice. Content shall provide information and respond to the criteria described above.
- SoQ shall be typewritten in a readable digital format such as PDF.
- Maximum of 8 pages will be allowed for the submittal.
- No attachments.



## 6. Terms and Conditions:

- **Liability for Errors and Omissions:** While the LCHTD has employed considerable effort to ensure an accurate representation of information in this RFP, the information is not guaranteed or warranted to be accurate by the LCHTD nor is it necessarily comprehensive or exhaustive. Nothing in this RFP is intended to relieve Consultants from forming their own opinions and conclusions with respect to the matters addressed in this RFP.
- It is the policy of LCHTD to provide equal opportunities without regard to race, color, national origin, sex, age, disabilities, or veteran status in educational programs and activities. This includes, but is not limited to, admissions, educational services, financial aid and employment.
- Respondents, their consultants, sub-contractors, or other parties representing the Respondent for this solicitation may not contact any member of the RFP Selection Panel concerning this project from the date of advertisement until after the date of selection.
- LCHTD reserves the right to reject any and/or all of the proposals in response to this RFP.
- The firm selected will be responsible for assembling the sub contractors necessary to meet the requirements of the RFP. LCHTD reserves the right to review the proposed firm/team and reject any sub contractors identified to be part of the applicant's team due to poor past performance.
- All expenses incurred by your company in preparing your proposal, attending meetings, and all other expenses otherwise associated with this solicitation shall be borne solely by your firm.
- This request for proposals is not an offer to contract. The provisions in this RFP and any purchasing policies or procedures of LCHTD are solely for the fiscal responsibility of LCHTD, and confer no rights, duties or entitlements to any party submitting proposals.
- LCHTD reserves the right to conduct such investigations of and discussions with those who have submitted proposals or other entities as they deem necessary or appropriate to assist in the evaluation of any proposal or to secure maximum clarification and completeness of any proposal.
- The successful proposer shall be required to sign a contract with LCHTD. The contractor shall be an independent contractor of LCHTD.
- All submittals become the property of LCHTD and will not be returned. Proprietary information included in the submittals must be clearly identified and will be protected if possible.
- No Performance Bond is required.
- **Governing Law:** This RFP is governed by, and is to be construed and performed in accordance with, the applicable laws of the State of Louisiana. If a Consultant's Proposal is accepted, the Selected Consultant must agree to submit to the irrevocable exclusive jurisdiction of the Fourteenth Judicial District Court, State of Louisiana.
- **Termination:** Breach of the terms and conditions of the contract shall be just cause for termination without notice and without prejudice to any other rights and remedies available to LCHTD in connection with the breach. LCHTD may cancel any contract without cause upon providing thirty (30) days' written notice to the Selected Consultant.
- Successful Contractor shall submit Insurance Certificate per included insurance requirements, prior to award of contract.

## 7. Questions:

Questions pertaining to this RFP must be directed in electronic format via e-mail to [rfp@portlc.com](mailto:rfp@portlc.com). All questions will be considered. Those that are considered to add clarity to the solicitation will be addressed in writing with the question and answer provided to all Firms.



## Insurance Requirements

The Contractor shall not begin the Services under this agreement until he has obtained all insurance required as set forth in this section. This must be evidenced by the Contractor furnishing the District with an original policy or a certificate of insurance, which shall provide that the original policy shall not be canceled without 30-days prior written notice to the District. The certificate shall reflect for all coverages that the District is an additional named insured on all coverages, unless specifically waived in writing by the District or the District be added as an alternate employer as appropriate to each coverage. A 30-day notice shall be given to the District by the Contractor of any changes contemplated in any of the policies required. All insurance must be from companies acceptable to the District and have a minimum A M Best rating of A VII or greater. A copy of all insurance documentation shall be furnished to the District and the District's engineer. No additional or extra direct payment will be made for providing the required insurance. The cost of insurance shall be totally borne by the Contractor.

The District may waive any of the below set forth insurance coverages after consultation with Contractor in assessing the exact scope of the Services by Contractor and any such waiver shall only be accomplished only by written notice of the District to Contractor.

Evidence of all insurance as required shall be furnished to the address shown in Notice to District for review by the District.

The Contractor shall maintain at all times during the performance of the work under the contract, the following types of insurance with the specified amounts of coverage:

- a. **Worker's Compensation, USL&HW, Alternate Employer and Employer's Liability**  
- The Contractor shall carry workmen's compensation insurance as required by the state workmen's compensation laws as well as additional coverage for anything that falls outside of the workmen's compensation laws. Additionally, Contractor shall furnish Longshoreman Harbor Workers compensation insurance and Alternate Employer insurance, with coverages acceptable to the District. All insurers shall waive the right of subrogation and the certificate and policy must reflect a primary and non-contributory clause in favor of the District. No insurance company shall have the right of recovery against the District or any engineer working on behalf of the District. The policy must include an all-states endorsement as well as satisfy the following requirements.

Coverage A: Workers Compensation Statutory Requirements

Coverage B: Employers Liability

Each Accident	\$2,000,000
Disease - Policy Limit	\$2,000,000
Disease - EA Employee	\$2,000,000

USL&HW and Alternate Employer (acceptable to the District)

The policy shall not be cancelled without a minimum of thirty (30) days' notice to the District. If the insurance is cancelled and another policy is not obtained, the District has the right to obtain a new policy and to charge the Contractor for the cost of this policy. The Contractor shall be responsible for any deductible.

- b. **Automobile Liability** - The protection shall be liability for personal injury, bodily injury and property damage to others or their property cause by the use of all licensed vehicles regardless of ownership. The insurance company shall waive its right of subrogation and the certificate and policy must reflect a primary and non-contributory clause in favor of the District. The insurance company shall have no rights of recovery against the District or the District's engineer. The combined single limit shall be \$5 million.

The Contractor may wish to get an endorsement for his motorized construction equipment, but this endorsement is considered optional.

The policy shall not be cancelled without a minimum of thirty (30) days' notice to the District. The certificate holder shall be the District and the District shall be an additional named insured. The Contractor shall be responsible for any deductible.

- c. **General Liability Insurance Requirements** - The insurance shall be written to cover the Contractor for the following: injury or damage to a person or his property by any act or omission of the Contractor, liability for subcontractors of Contractor for injury or damage to a person or his property; and contractual liability to protect the District and the District's engineer. The Contractor shall also carry Completed Operations Liability Insurance that shall remain effective as per state statute or during the correction period whichever is longer. The insurance company shall waive its right of subrogation. The insurance company shall have no rights of recovery against the Contractor, the District, or the engineer for the District. The certificate and policy must reflect a primary and non-contributory clause in favor of the District.

The insurance coverage shall not exclude coverage for explosion, collapse, or underground damage.

The following limits shall be provided for Contractor's liability, the District's Liability, and the District's Engineer's Liability:

\$15,000,000	General Aggregate
\$5,000,000	Property Damage
\$5,000,000	Bodily Damage
\$5,000,000	Per occurrence

The policy shall not be cancelled without notice to the District and only upon a minimum of thirty (30) days' notice to the District. The certificate holder shall be the District and the District shall be named as an additional insured on the policy.

If the insurance is cancelled and another policy is not obtained, the District has the right to obtain a new policy and to charge the Contractor for the cost of this policy. The Contractor shall be responsible for any deductible.

- d. Maritime Employers Liability Insurance** - The Contractor shall carry \$5 million in coverage as required under the Longshoreman's and Harbor's Compensation Act or the Jones Act for Seaman or both and as directed by the District for all work not covered under the Workmen's Compensation laws. Policy must include officers, crew and employees on owned vessels, non-owned vessels and any vessels operated by the contractor.

The policy shall not be cancelled without notice to the District and only upon a minimum of thirty (30) days' notice to the District. The certificate holder shall be the District and the District shall be an alternate employer or Additional Insured on the certificate and in the policy. If the insurance is cancelled and another policy is not obtained, the District has the right to obtain a new policy and to charge the Contractor for the cost of this policy. The Contractor shall be responsible for the deductible. The insurance company shall waive its right of subrogation and the certificate and policy must reflect a primary and non-contributory clause in favor of the District.

- e. Environmental /Pollution Liability Coverage**- The contractor shall carry \$5 million in environmental/pollution liability coverage (sudden and accidental claims).

The policy shall not be cancelled without notice to the District and only upon a minimum of thirty (30) days' notice to the District. The District shall be an additional named insured. If the insurance is cancelled and another policy is not obtained, the District has the right to obtain a new policy and to charge the Contractor for the cost of this policy. The Contractor shall be responsible for any deductible. The insurance company shall waive its right of subrogation and the certificate and policy must reflect a primary and non-contributory clause in favor of the District.

All losses shall be paid to the District, the Contractor, and the District's engineer as the case may dictate. All claims paid shall include the CONTRACTOR as named insured as trustee for District to receive payment.

## **Additional Requirements**

### **1. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

**(1)** The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

**(2)** The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

**(3)** The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

**(4)** The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.



**(5)** The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

**(6)** The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

**(7)** In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

**(8)** The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency

and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

## 2. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

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

- (1) ***Overtime requirements.*** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) ***Violation; liability for unpaid wages; liquidated damages.*** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 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 **Lake Charles Harbor & Terminal District** 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.

### 3. **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT**

#### 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 and understands and agrees that the **Lake Charles Harbor & Terminal District** 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 **Lake Charles Harbor & Terminal District** and understands and agrees that the **Lake Charles Harbor & Terminal District** 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.

#### **4. DEBARMENT AND SUSPENSION**

##### Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by **Lake Charles Harbor & Terminal District**. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to **Lake Charles Harbor & Terminal District**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transaction.

#### **5. BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION**

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. Please refer to the included form.

#### **6. ACCESS TO RECORDS**

The following access to records requirements apply to this contract:

- (1) The Contractor agrees to provide the **Lake Charles Harbor & Terminal District**, GOHSEP, 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 **Lake Charles Harbor & Terminal District** 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.

## 7. CHANGES

**A. Alterations to the Contract:** The District reserves the right to order such alterations in quantities and plans, within the general scope of the contract, including alterations in grade and alignment, as deemed necessary or desirable in order to complete the work as contemplated. Contract items affected by such alterations shall be performed in accordance with the project specifications and payment will be made at the same unit prices as other parts of the work, except as provided in Subsection "Measurement and Payment".

The District reserves the right to order work not provided for in the contract whenever such work is found essential or desirable to satisfactory completion of the contract within its intended scope. Such work shall be performed in accordance with specifications and as directed. Payment for such work will be made as provided in Subsection "Measurement and Payment".

The District reserves the right to order changes in details, including changes in materials, processes and sequences, whenever such changes are in the best interest of the public or are necessary or desirable to satisfactory completion of the work. Such changes in details shall be performed in accordance with the specifications and as directed, and payment will be made as provided in Subsection "Measurements and Payment". Changes ordered in details, when such changes are allowed or required by the contract, are not alterations to the contract and payment for the affected work will be made at the contract unit prices.

Alterations to the contract as provided for by this Subsection shall not invalidate the contract nor release the surety, and the Contractor agrees to accept the work as altered, as if it had been part of the original contract. The Contractor shall notify the surety of any alterations to the contract.

Alterations of the contract shall not involve work beyond the termini of the proposed work except as necessary to satisfactorily complete the project.

No change order will be assumed to be approved until the signed and approved change order is returned to the originator.

**(a) Differing Site Conditions.**

(1) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract are encountered at the site, the contractor discovering such conditions shall promptly notify the District in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

(2) Upon written notification, the District will investigate the conditions and if he determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The District will notify the contractor of his determination whether or not an adjustment of the contract is warranted.

(3) No contract adjustment, which results in a benefit to the contractor, will be allowed unless the contractor has provided the required written notice.

**(b) Suspensions of Work Ordered by the District.**

(1) If the performance of all or any portion of the work is suspended or delayed by the District/Engineer in writing for an unreasonable period (45 consecutive calendar days) of time (not originally anticipated, customary or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the District in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(2) Upon receipt, the District will evaluate the contractor's request. If the District agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors, and not caused by weather, the District will make an adjustment (excluding profit) and modify the contract in writing accordingly. The District will notify the contractor of his determination whether or not an adjustment of the contract is warranted.

(3) No contract adjustment will be allowed unless the contractor has submitted the

request for adjustment within the time prescribed.

(4) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract.

**(c) Significant Changes in the Character of Work.**

(1) The District reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(2) If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made wither for or against the contractor in such amount as the District may determine to be fair and equitable.

(3) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(4) The term "significant change" shall be constructed to apply only to the following circumstances.

- a. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or;
- b. When a major item of work, as defined elsewhere in the contract, is increased, or decreased, in excess of 25 percent of the contract quantity as awarded. Any adjustment in unit price will be made on only that portion of the major item exceeding the 25 percent increases, or, in the case of a decrease of the item by 25 percent or more the remaining portion will be adjusted.

**(d) Eliminated Items.**

Should any items contained in the contract be found unnecessary for proper completion of the work, the engineer may, upon written order to the contractor, eliminate such items from the contractor. Such action shall not invalidate the contract.

When an item is eliminated, the contractor will be reimbursed for authorized work done toward completion of the item. No allowance, except as provided herein, will be made for any increase expense, loss of expected reimbursement or loss of anticipated profits claimed by the contractor resulting either directly from such elimination or indirectly from unbalanced allocation among the pay items of overhead expense by the contractor and subsequent loss of expected reimbursements therefore or for other reasons.

The change order authorizing reimbursements shall show how the reimbursements were derived. Except when otherwise authorized by the District, such derivation shall show breakdowns of costs as detailed in Subsection 18.B, Headings (a) through (g).

**(e) Extra Work**

When necessary or desirable to complete the project, the District may direct the contractor to perform unforeseen work for which there is no pay item or unit price in the contract. The District will pay for such work in accordance with Subsection 18.B based on an approved change order.

- B. Compensation for Alterations of the Contract:** Payment for work performed in accordance with Subsection 18.A will be made at the unit prices or agreed prices stipulated in the plan change authorizing the work. The District may require the Contractor to do such work on a force account basis, except that compensation for altered quantities shall be in accordance with Subsection 18.C.

When the method of payment for such work is unit prices or agreed prices, the plan change authorizing the work shall show how the unit prices or agreed prices were derived. Except when otherwise authorized by the Engineer, the derivation of costs shall show, as a minimum, breakdowns for labor, bond, insurance and tax, materials, and equipment as detailed below in headings (a) through (g), except that projected costs rather than actual costs will be used. The Contractor's representative and the Engineer shall compare records of the cost of work done as ordered on a force account basis. Such comparison shall be made daily.

When the method of payment for such work is force account, the Contractor will be compensated as follows, which shall be full compensation for the work performed.

- a. Labor:** For labor and working foremen/superintendent in direct charge of operations, the Contractor shall receive the wage rates agreed on in writing before beginning work for each hour that said labor and foreman are engaged in such work and 20 percent will be added.

The Contractor shall receive the actual costs paid to, or in behalf of, workers for subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits when such amounts are required by collective bargaining agreement or other employment contract applicable to the classes of labor employed on the work, but limited to a maximum daily rate for subsistence and travel allowances. This maximum shall be agreed upon prior to the Contractor incurring such charges.

- b. Bond, Insurance and Tax:** For property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions and social security taxes on force account work, the Contractor shall receive the actual cost thereof, to which 6 percent will be added. The Contractor shall furnish satisfactory evidence of the rates paid for such bond, insurance and tax.

- c. Materials:** For materials accepted by the Engineer/Architect and used, the Contractor shall receive the actual cost of such materials delivered to the work including



transportation charges and 15 percent will be added.

**d. Equipment:** For machinery or special equipment the use of which has been authorized, the Contractor shall receive the rental rates agreed on in writing before such work is begun. For equipment rented from independent outside sources, the contractor will reimburse the reasonable actual cost as shown on paid rental invoices. For company owned equipment, the contractor will be reimbursed his internal cost recovery equipment charge rate consistent with his original bid cost estimates. If the contractor chooses to use a rental rate for company owned equipment, adjustments to the allowable type of equipment and hours per day must be made as described in the EDSM. The Department's Engineering Directives and Standards Manual, EDSM III.1.1.27, entitled Equipment Rental Rates, shall be used to establish rental rates. In addition, no 15 percent markup on equipment direct cost for jobsite and home office overhead expenses and profit will be allowed if the contractor chooses to use rental rate guidebook prices instead of his internal cost recovery rates.

**e. Miscellaneous:** No additional allowance will be made for general superintendence or project managers, the use of small tools or other costs for which no specific allowance s herein provided.

**f. Subcontracting:** When the Engineer authorized the work to be performed by an approved Subcontractor, the Contractor will be paid the actual and reasonable cost of such subcontracted work computed as outlined above, plus an additional allowance of 10 percent.

**g. Statements:** No payment will be made for force account work until the Contractor has furnished the Engineer with duplicate itemized statements of the cost of such work detailed as follows:

- 1) Name, classification, date, daily hours, total hours, rate and extension for each laborer and foreman.
- 2) Designations, dates, daily hours, total hours, rental rate and extension for each unit of machinery and equipment.
- 3) Quantities of materials, prices and extensions.
- 4) Transportation of materials.
- 5) Cost of property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions and social security tax.

The contractor's representative and the engineer shall compare records of the cost of work done as ordered on a force account basis. Such comparison shall be made daily. Statements shall be accompanied by invoices for materials used and transportation charges. If materials used on force account work are not purchased for such work, but are taken from the Contractor's stock, in lieu of invoices, the Contractor shall furnish an itemized list of such materials showing that the quantity claimed was actually used, and that the price and transportation costs claimed represent the actual cost to the Contractor. Invoices shall be accompanied by the Contractor's notarized statement that

payment in full has been made for the materials.

- C. Compensation for Altered Quantities:** When contract quantities are altered in accordance with Subsection 18.A, or when final quantities vary for other reason from the quantities in the bid schedule, the Contractor shall accept as payment in full, payment at the contract unit prices for the accepted quantities of work done. No allowance, except as provided hereinafter, will be made for any increased expense, loss of expected reimbursement or loss of anticipated profits claimed by the Contractor resulting either directly from such alterations or indirectly from unbalanced allocation among the contract items of overhead expense of the Contractor and subsequent loss of expected reimbursements therefore or for other cause.

When alterations of quantities are caused by alteration in the plans, and such alterations affect the methods or sequence of construction, an allowance will be made, either for or against the Contractor, in such amount and basis as agreed to in advance of the performance of the work. The plan change authorizing or ordering the work shall show how the allowance was derived. Except when otherwise authorized by the Engineer, such derivation shall show, as a minimum, breakdown of costs as detailed in Subsection 18.B, headings (a) through (g), except that projected costs rather than actual costs will be used.

When alterations in quantities result in an increase or decrease of more than 25 percent in the contract quantity as awarded on any major item of the contract, a supplemental agreement to the contract may be executed between the District and the Contractor at the request of either party, prior to performance of any work in excess of 25 percent of the contract quantity. When the supplemental agreement is executed, the consent of the Contractor's surety shall be obtained and furnished to the Engineer.

A "Major Item" is an item included in the contract as awarded with a total cost equal to or greater than 10 percent of the original total contract amount.

Any adjustment in unit price will be made on only that portion of the major item exceeding 25 percent increase or decrease. Such adjustment will be made based on the actual cost to perform that portion of the work in excess of the 25 percent increase or decrease. The actual costs shall be itemized in accordance with Subsection 18.B, headings (a) through (g), except that projected costs will be used in case of an increase in quantity.

A "Minor Item" is an item included in the contract as awarded with a total cost of less than 10 percent of the original total contract amount. A minor item shall become a major item if it is increased by such an amount that its total cost is equal to or greater than 10 percent of the original total contract amount. If a minor item is increased to the extent that it becomes a major item, only that part of the item that exceeds 12.5 percent of the original total contract amount will be considered on any supplemental agreement. The supplemental agreement shall be executed prior to performance of any work in excess of 12.5 percent of the contract quantity. The requirements of the supplemental agreement

shall be as described above for increases in major items. If a minor item is decreased, no adjustment will be made in the unit price.

## **8. PROCUREMENT OF RECOVERED MATERIALS**

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.

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>.

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

## **9. DHS SEAL, LOGO, AND FLAGS**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

## **10. 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.

## **11. 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.

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

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.

## **13. BREACH OF CONTRACT TERMS**

Any violation or breach of terms of any contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of the contract or such other action that may be necessary to enforce the rights of the parties of the contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

#### **14. TWIC**

Please note that the work is located in a TWIC required area. TWIC is a common identification credential for all personnel requiring unescorted access to secure/restricted areas of Maritime Transportation Security Administration (MTSA) regulated facilities, vessels and all mariners holding Coast Guard-issued credentials. The Transportation Security Administration will issue workers a tamper-resistant "Smart Card" containing the worker's biometric (fingerprint template) to allow for a positive link between the card itself and the individual.

**All persons entering the restricted area of the facility as of APRIL 14, 2009 will be required to present the TWIC card at the security gate.** For more information, visit the TWIC Website at [www.tsa.gov/twic](http://www.tsa.gov/twic) or call 1-866-347-TWIC (8942).