



Federally Required Contract Clauses

Contract Clauses for All Contracts

No Obligation by the Federal Government

The Contractor acknowledges and agrees that, notwithstanding any concurrence by the USDOT in or approval of the solicitation or award of the underlying contract, absent the express written consent by the USDOT, the USDOT is not a party to this contract and shall not be subject to any obligations or liabilities to the Contractor, or any other party pertaining to any matter resulting from this contract. The Contractor will include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FHWA.

False Statements or Claims, Civil and Criminal Fraud

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 *et seq.* and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Subtitle A, Part 31, apply to its actions pertaining to this contract. The Contractor shall certify or affirm the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract of the FHWA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the USDOT reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the USDOT deems appropriate.
2. The Contractor acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the USDOT under a contract connected with a project that is financed in whole or in part with Federal assistance provided by FHWA under 23 U.S.C. Sections 104(f) and 1364 and 49 USC 5303, the USDOT reserves the right to impose the penalties of 18 U.S.C 1001 on the Contractor, to the extent the USDOT deems appropriate.

Civil Rights

The Contractor shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d and 2000e), as well as any applicable titles of the Americans with Disabilities Act). In addition, if the Contractor is providing services or operating programs on behalf of the USDOT or Commission, it shall comply with all applicable provisions of Title II of the American with Disabilities Act.

Administrative Rules

The Contractor shall comply with the administrative rules of the USDOT relative to nondiscrimination in federally assisted programs of the USDOT (49 CFR Subtitle A, Part 21) which are herein incorporated by reference and made part of this contract.

Nondiscrimination

The Contractor shall not discriminate on grounds of race, color, religion, sex, national origin, age, or disability of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Subtitle A, Part 21.5 including employment practices.

Disadvantaged Business Enterprises

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal for DBE participation has not been established for this procurement.
2. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as _____ deems appropriate.

Access to Records

The Contractor agrees to maintain all books, documents, papers and other evidence pertaining to costs incurred in connection with the contract and make such materials available at such Contractor’s office at all reasonable times at no charge during this contract period, and for three (3) years from the date of final payment under this contract, for inspection by the Missouri Highway Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri, and copies shall be furnished, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies. Except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FHWA, or any authorized representatives of the Federal Government and the State of Missouri, have disposed of all such litigation, appeals, claims or exceptions related thereto.

Law of Missouri to Govern

This agreement shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations relating to the performance of the Agreement.

Venue

It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this contract, or regarding its alleged breach, shall be instituted only in the Circuit Court of Greene, Missouri.

Additional Contract Clauses for Contracts \$10,000 +

Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Termination

1. Termination for Convenience (General Provision) - The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.
2. Termination for Default [Breach or Cause] (General Provision) - If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

3. Opportunity to Cure (General Provision) - The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

4. Waiver of Remedies for any Breach - In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.
5. Termination for Convenience (Professional or Service Contracts) - The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Additional Contract Clauses for Contracts \$25,000 +

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded, or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by {_____}. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to {_____}, the USDOT may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, 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 transactions.

Additional Contract Clauses for Contracts \$100,000 +

Clean Air

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC 7401 *et seq.* the Contractor will ensure that its subcontractors will report each violation to the Contractor. The Contractor will, in turn, report each violation as required to assure notification to FHWA and the appropriate United States Environmental Protection Agency (hereinafter, "EPA") Regional Office.

Clean Water

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. Part 1251 *et seq.* The Contractor will require its subcontractors to report each violation to the Contractor and understands and agrees that the Contractor will, in turn, report each violation as required to assure notification to FHWA and the appropriate EPA Regional Office.

Additional Contract Clauses for Contracts \$150,000 +

Sanctions and Penalties for Breach of Contract

1. Disputes – Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this contract while matters in dispute are being resolved.

2. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
3. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.
4. Rights and Remedies - 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. No action or failure to act by the (Recipient), (Architect) or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.