

**DNR PUBLIC IMPROVEMENT \$25,000 OR LESS
GENERAL CONDITIONS**

ARTICLE 1 - DEPARTMENT REPRESENTATIVE

All communications from the Contractor should occur with the DNR Representative as designated on the Department Purchase Order (PO).

ARTICLE 2 - DEFINITIONS

This Contract includes the following definitions:

“Department” shall mean the Iowa Department of Natural Resources (DNR).

“Contract” shall mean the Department Purchase Order (PO), the Contractor Quotation (Quote), and the “DNR Public Improvement \$25,000 or Less General Conditions”.

ARTICLE 3- SCOPE OF WORK

The Contractor shall furnish, at its own proper cost and expense, all materials, equipment, labor, insurance, and other accessories and services necessary to complete, in a workmanlike manner, ready for continuous operation, the project as identified in the Department Purchase Order (PO). The work shall be performed in accordance with the requirements and provisions of the following document, which is by this reference a part of this Contract:

- Department Purchase Order (PO)

It is intended that the specifications as noted in the Department Purchase Order (PO), may be supplemented as necessary by the Department, to provide for the completion of the work specified.

The omission of specific reference to any minor items of material or work reasonably necessary to provide a complete project, will not release the Contractor from the responsibility of furnishing or doing the items omitted.

The Contractor shall leave the site free and clean of all construction equipment, materials, and rubbish. The Contractor shall replace any defective material or workmanship in the construction at no cost to the Department, and shall guarantee the construction for a period of one year from the date of the Department’s final acceptance.

ARTICLE 4 - TIME OF COMMENCEMENT AND COMPLETION

The time of commencement of work under this Contract shall be completed by the date agreed to by both the Department and the Contractor.

ARTICLE 5 - COMPENSATION

The Department shall make payment within 30 days of receipt of a payment request/invoice which is approved as payable by the Department.

Invoices shall be emailed to the DNR Representative, as designated on the DNR Purchase Order (PO) within 30 days of work completion and/or acceptance. Invoices shall be itemized, including a breakdown of labor and material costs, and shall include the completion date of work performed. Invoices for work performed/tasks completed shall be separated by state fiscal year. No invoice shall request payment for work occurring in more than one state fiscal year.

No advance payments will be made to the Contractor.

ARTICLE 6 - PERMITS

In addition to other permits that may be required for the Contractor to conduct its business in the state of Iowa, the Contractor shall apply for, pay for and obtain prior to commencing work under this Contract a NPDES Stormwater Discharge Permit (DNR’s General Permit No. 2) for Construction Operation, as required by EPA regulations, for any land-disturbing activity which will disturb an area of one or more acres. The permits shall be readily available for inspection at all times. Permits are available from the DNR Storm Water Coordinator, 6200 Park Ave Ste 200, Des Moines IA, 50321. (Tel. (515) 217-0875)

The Contractor shall be required to apply for, pay for and obtain all permits required by law prior to commencing work under this Contract.

ARTICLE 7 - CONTRACTOR'S INSURANCE

The Contractor's current Certificate of Liability and Property Damage Insurance shall be filed with the Department prior to the commencement of work and shall be maintained at such amounts throughout progression of work until final acceptance. The minimum coverage by such insurance shall be as follows:

Public Liability Insurance
Per Person \$250,000.
Each Occurrence \$500,000.

Property Damage Insurance
Each Occurrence \$250,000.

ARTICLE 8 - TERMINATION

8.1 Termination Due to Lack of Funds or Change in Law. **Notwithstanding anything in this Contract, to the contrary,** the Department shall have the right to terminate this Contract without penalty by giving thirty (30) days written notice to the Contractor if, in the Department's sole discretion, adequate funds are not appropriated or granted to allow the Department to operate as required and to fulfill its obligations under this Contract or funds are de-appropriated; if funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by Department to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Department in its sole discretion; if the Department's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; if the Department's duties, programs or responsibilities are modified or materially altered; or if there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Department's ability to fulfill any of its obligations under this Contract.

8.2 The Department shall have the right to cancel any or all items from the Contract and may terminate this Contract immediately for any of the following reasons effective immediately without advance notice:

- A) In the event the Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
- B) The Department determines that the actions, or failure to act, of the Contractor, its agents or employees have caused, or reasonably could cause, a person's life, health or safety to be jeopardized;
- C) The Contractor fails to comply with all laws, regulations, ordinances and orders related to the execution of this Contract or the completion of the Project;
- D) The Contractor furnished any statement, representation or certification in connection with this Contract or its related bidding documents which is materially false, deceptive, incorrect or incomplete.
- E) The Contractor breaches the Contract;
- F) The Contractor becomes the subject of any bankruptcy or insolvency proceeding;
- G) The Contractor has otherwise engaged in conduct that has or may expose the State or the Department to liability, as determined in the Department's sole discretion;
- H) The Department determines that continuation of completion of the work is not in the public's interest; and
- I) The Department determines that the occurrences of any of the actions or inactions in subparagraphs (A) through (G) above, unforeseen circumstances, unanticipated design changes, or other reasons beyond the control of the Contractor would prevent or unreasonably delay completion of the Contract.

If there is a default event caused by the Contractor as described above, the Department may either provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Department's written notice to the Contractor, or may terminate the Contract in whole or in part, without the payment of any penalty or incurring any further obligation to the Contractor.

8.3 The Contractor's Termination Duties. The Contractor upon receipt of notice of termination or upon request of the Department, shall cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, work completed, materials delivered and any other matters the Department may require; shall immediately cease using and return to the Department any personal property or materials, whether tangible or intangible, provided by the Department to the Contractor; and shall comply with the Department's instructions for the timely transfer of any materials provided by the Contractor under this Contract. Material paid for pursuant to section 8.4 shall become the property of the Department and shall be disposed of as directed by the Department.

8.4 Following termination, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to the Department up to and including the date of termination. For finished portions of items canceled, the Contractor will be paid at the Contract unit prices. For materials ordered and delivered for the unfinished portion of such canceled or omitted items, the Department will pay cost plus five percent as an overhead charge. The Contractor's expense for work of handling or transporting such material shall be included in computing the cost. The Department will also pay any actual expenses sustained by the Contractor by reason of such cancellation or omission and not represented by work completed or material delivered. In computation of material cost or expenses sustained, no anticipated profit will be included.

ARTICLE 9 - INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General's Office, and the costs, expenses and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Contract, including but not limited to any claims related to, resulting from, or arising out of: any breach of this Contract; any negligent, intentional or wrongful act or omission of the Contractor; the Contractor's performance or attempted performance of this Contract; or any failure by the Contractor to make all reports, payments and withholdings required by federal and state law and which are required by the Contractor to conduct business in the State of Iowa. The Contractor's duties and obligations under this section shall survive the termination of this Contract and shall apply to all acts or omissions taken or made in connection with the performance of this Contract regardless of the date any potential claim is made or discovered by the Department or any other Indemnified Party.

ARTICLE 10 - WARRANTY

The Contractor shall warrant that the work, for a period of one year from the date of final acceptance by the Department, shall remain free from all defects in workmanship and material and that it shall comply with the requirements of this Contract governing the work. It is understood and agreed that in the event of defects and the necessity of making repairs to the work during the warranty period, the Department will notify the Contractor and provide a reasonable time to the Contractor to make such repairs. The Contractor shall submit all notices of guarantees, warranties and certificates complying with this section prior to final payment being made.

ARTICLE 11 - RIGHT TO REVIEW AND OBSERVE; ACCESS TO RECORDS

The Department shall have the right to review and observe, at any time, completed work or work in progress related to the Contract. The Contractor shall permit the Department or its agents to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, reports, papers and records of the Contractor relating to orders, invoices, or payments or any other documentation or materials pertaining to this Contract. Upon the request of the Department, the Contractor shall deliver to the Department or its agents said documentation or materials.

ARTICLE 12 - PUBLIC RECORDS; RECORDS RETENTION

All records created pursuant to this Contract shall be public records and subject to Iowa Code chapter 22, the Iowa Open Records Law. All records created pursuant to this Contract shall be submitted to the Department within 5 business days of its request. All records created pursuant to this Contract shall be retained in accordance with the relevant state of Iowa records retention schedule.

ARTICLE 13 - SURVIVAL OF AGREEMENT

If any portion of this Contract is held to be invalid or unenforceable, the remainder shall be valid and enforceable.

ARTICLE 14 - GOVERNING LAW

This Contract shall be interpreted in accordance with the law of the State of Iowa, and any action relating to the Contract shall only be commenced in the Iowa District Court for Polk County or the United States District Court for the Southern District of Iowa.

ARTICLE 15 - COMPLIANCE WITH LAWS

The Contractor agrees that, during the duration of and as a condition of the Department's duty to perform under the terms of this Contract, it shall be in compliance with all applicable laws and regulations of the state and federal government, including but not limited to Equal Employment Opportunity provisions, Occupational Health and Safety Act, minimum wage requirements, records retention, audit requirements, and allowable costs.

ARTICLE 16 - ASSIGNMENT AND DELEGATION

The Contractor may not assign, transfer or convey in whole or in part this Contract without the prior written consent of the Department. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Department.

ARTICLE 17 - WRITING REQUIRED

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.

ARTICLE 18 - IMMUNITY FROM LIABILITY

Every person who is a party to the Contract is hereby notified and agrees that the State, the Department, and all of their employees, agents, successors, and assigns are immune from liability and suit for the Contractor's activities involving third parties arising from the Contract.

ARTICLE 19 - CERTIFICATION REGARDING SALES AND USE TAX

By executing this Contract, the Contractor certifies that it is either (a) registered with the Iowa Department of Revenue, collects and remits sales and use taxes as required by Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code sections 423.1(47) and (48). The Contractor also acknowledges that the Department may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Department filing action for damages for breach of Contract.

Upon execution of this Contract, an Iowa Construction Sales Tax Exemption Certificate will be available upon request.

ARTICLE 20 - INDEPENDENT CONTRACTOR

The status of the Contractor shall be that of an independent Contractor. The Contractor, and its employees and agents performing under this Contract are not employees or agents of the State or any agency, division or Department of the State. Neither the Contractor nor its employees shall be considered employees of the Department or the State for Federal or State tax purposes. The Department will not withhold taxes on behalf of the Contractor. The Contractor shall be responsible for payment of all taxes in connection with any income earned from performing this Contract.

ARTICLE 21 - DELAY OR IMPOSSIBILITY OF PERFORMANCE

The Contractor shall not be in default under this Contract if performance is delayed or if the Contractor may not reasonably perform the Contract due to an act of God. In each such case, the delay or impracticability must be beyond the reasonable control and anticipation of the Contractor, and without the fault or negligence of the Contractor. If delay results from the Contractor's negligence or fault, or from circumstances which by the exercise of reasonable diligence the Contractor should have been able to anticipate or prevent, then the Contractor shall be in default and this paragraph

shall not be applicable. It shall be the responsibility of the Contractor to prove that performance was delayed or impracticable within the meaning of this paragraph.

ARTICLE 22- FEDERAL FUNDING CONDITIONS

As federal funding may be used for this Contract, the Contractor shall comply with all applicable federal requirements, including but not limited to 2 CFR Chapter I, Chapter II, Part 200, et al. (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule). See Appendix A, below.

Appendix A

(aka Appendix II to 2 CFR Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards)

In addition to other provisions required by the Federal agency or non-Federal entity, all Contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold (equal to or greater than \$250,000), which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, Contractual, or legal remedies in instances where Contractors violate or breach Contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All Contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all Contracts that meet the definition of “federally assisted construction Contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with [Executive Order 11246](#), “Equal Employment Opportunity” ([30 FR 12319](#), [12935](#), [3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by [Executive Order 11375](#), “Amending [Executive Order 11246](#) Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) Reserved.
- (E) Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all Contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or Contracts for transportation or transmission of intelligence.
- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and DNR as the recipient or subrecipient wishes to enter into a Contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” DNR as the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act ([42 U.S.C. 7401-7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689) - A Contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

- (I) Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- (J) 2 CFR § 200.323 Procurement of recovered materials
- (a) A recipient or subrecipient that is a State agency or agency of a political subdivision of a State and its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, [42 U.S.C. 6962](#). The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- (b) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are bio-based, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.
- (K) 2 CFR § 200.216 Prohibition on certain telecommunications and video surveillance equipment or services.
- (a) DNR as the Recipient or Subrecipient, and Contractors and Subrecipients entering into Contracts or Subrecipient Agreements with DNR, are prohibited from obligating or expending loan or grant funds to:
- (1) Procure or obtain covered telecommunications equipment or services;
 - (2) Extend or renew a Contract to procure or obtain covered telecommunications equipment or services; or
 - (3) Enter into a Contract (or extend or renew a Contract) to procure or obtain covered telecommunications equipment or services.
- (b) As described in section 889 of [Public Law 115-232](#), “covered telecommunications equipment or services” means any of the following:
- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
 - (2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 - (3) Telecommunications or video surveillance services provided by such entities or using such equipment;
 - (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country;
- (c) For the purposes of 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.
- (d) In implementing the prohibition under section 889 of [Public Law 115-232](#), heads of executive agencies administering loan, grant, or subsidy programs must prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.
- (e) When the recipient or subrecipient accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The recipient or subrecipient is not

required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.

(f) For additional information, see section 889 of [Public Law 115-232](#) and [§ 200.471](#).

(L) 2 CFR § 200.322 Domestic preferences for procurements

(a) DNR as the recipient or subrecipient should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, Contracts, and purchase orders under Federal awards.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(3) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in [2 CFR part 184](#).