

HAZARD MITIGATION GRANT PROGRAM
CFDA #97.047
HMGP 4563-0006
Baldwin County Commission Ragland, Katie ISR Project
State-Sub-recipient Disaster Assistance Agreement

This agreement between the State of Alabama (the “State”) and the Baldwin County Commission will be effective on the date signed by the State and the Sub-recipient. It shall apply to all assistance funds provided by or through the State to the Sub-recipient as a result of a presidentially declared disaster occurring within the State of Alabama.

The designated representative of the Sub-recipient certifies that:

1. The Sub-recipient has appointed by resolution a sub-recipient’s local agent/designated representative to act on the jurisdiction’s behalf [attach a copy of the resolution to the application].
2. He/She has legal authority to apply for federal assistance on behalf of the Sub-recipient.
3. The Sub-recipient will provide all necessary financial and managerial resources to meet the terms and conditions of receiving federal and state disaster assistance.
4. The Sub-recipient will use the disaster assistance funds solely for the purposes for which these funds are provided and as approved by the Governor's Authorized Representative/State EMA Director or his or her designee. Allowable costs shall be determined in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 44 CFR §206 and 2 CFR Part 200.
5. The payments for approved projects will be on a cost reimbursement basis and subject to receipt and approval of invoices.
6. The Sub-recipient is aware that there is no state funding available for mitigation cost sharing and that the Sub-recipient will be required to provide the full non-federal share for such mitigation activities.
7. The Sub-recipient agrees to provide the necessary local share of funding for completion of the project.
8. The Sub-recipient will establish and maintain a proper accounting system to record expenditure of disaster assistance funds in accordance with generally accepted accounting standards or as directed by the Governor's Authorized Representative/State EMA Director or his or her designee.
9. The Sub-recipient will comply with 2 CFR Part 200 for all audit requirements.
10. The local cost share funding will be available within the specified time.
11. The Sub-recipient will give all state and federal agencies designated by the Governor's Authorized Representative/State EMA Director or his or her designee access to and the right to examine all books, records, papers and other documents related to use of disaster assistance funds.

12. The Sub-recipient will maintain all documentation relating to the project for **three (3) years from the date of the Final SF 425 submitted to FEMA from AEMA. The SF 425 is the final expenditure report sent to FEMA from AEMA to close out the entire grant.**
13. The Sub-recipient will return to the state, within 15 days of such request by the Governor's Authorized Representative/State EMA Director or his or her designee, any funds which are not supported by audit or other federal or state review of documentation maintained by the Sub-recipient for **three (3) years from the date of the Final SF 425 submitted to FEMA from AEMA. The SF 425 is the final expenditure report sent to FEMA from AEMA to close out the entire grant.**
14. The Sub-recipient will comply with all applicable codes and standards relative to this project and agrees to provide maintenance, as appropriate.
15. The Sub-recipient will comply with all applicable provisions of federal and state laws, Executive Orders and regulations governing this program.
16. The Sub-recipient will comply with the Lead-Based Paint Poisoning Prevention Act which prohibits the use of lead based paint in the construction or rehabilitation of residence structures.
17. The Sub-recipient will begin project work within 90 days of approval of the award and complete all items of work within the specified period of performance (ending June 20, 2025) unless an extension is granted to extend the time frame.
18. The Sub-recipient will comply with all federal and state statutes and regulations relating to non-discrimination including, but not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibit discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255) as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made, and (j) the requirements on any other nondiscrimination statute(s) which may apply to the application.
19. The Sub-recipient will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally assisted programs.
20. The Sub-recipient will comply with provisions of the Hatch Act limiting the political activities of public employees.

21. The Sub-recipient will comply, as applicable, with provisions of the Davis-Bacon Act relating to labor standards.
22. The Sub-recipient will comply with the National Flood Insurance Program requirements, including, but not limited to, Section 102(a) of the Flood Disaster Protection Act of 1973.
23. The Sub-recipient will not enter into cost-plus-percentage-of-cost contracts for completion of Hazard Mitigation Grant projects.
24. The Sub-recipient will comply with all environmental standards including but not limited to: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.O. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.O. 93-205).
25. The Sub-recipient will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
26. The Sub-recipient will comply with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
27. The Sub-recipient will not enter into any contract, with respect to this award, with a condition for payment to the contractor being the receipt of state or federal funds by the Sub-recipient.
28. The Sub-recipient will not enter into any contract with any party, which is debarred or suspended, from participating in federal assistance programs.
29. The project's scope-of-work will not be changed without prior written approval from FEMA.
30. The Sub-recipient will not dispose of, modify the use of, or change the terms of the real property title, or interest in the site or facilities without permission and instructions from FEMA. The Sub-recipient will record the federal interest in the title of real property in accordance FEMA directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project.
31. The Sub-recipient will comply with the requirements of FEMA with regard to the drafting, reviewing, and approval of construction plans and specifications.
32. The Sub-recipient will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed project conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by FEMA or the State.

33. The Sub-recipient will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
34. The Sub-recipient will promptly reimburse the State in the event of a reduction in the approved amount described in the project application the amount of the reduction. If the Sub-recipient fails to promptly reimburse the State, the State may withhold from this award or any other federal award administered by the State which is awarded to the Sub-recipient any amounts owed to the State.
35. The Sub-recipient certifies to the best of its knowledge and belief that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from cover transactions by any Federal department or agency;
 - B. Have not within a 3-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; or violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses enumerated in paragraph B of this certification; and
 - D. Have not within a 3-year period preceding this application or proposal had one or more public transactions (Federal, State, and Local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 U.S.C. §1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

36. The Sub-recipient certifies that it will provide a drug-free workplace by:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Sub-recipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - B. Establishing a drug-free awareness program to inform employees about:
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Sub-recipient's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed on employees for drug abuse violations occurring in the workplace;
 - C. Making it a requirement that each employee to be engaged in the performance of the project be given a copy of the statement required by paragraph (A);
 - D. Notifying each employee in the statement required by paragraph (A) that, as a condition of employment under the award, the employee must:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;
 - E. Notifying the Award Official within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;
 - F. Taking one of the following actions, within 30 days of receiving notice under subparagraph (D)(ii), with respect to any employee who is so convicted:

- G. Making a good-faith effort to continue to maintain a drug-free workplace through implementation of paragraphs A - F.

The Sub-recipient shall insert in the space provided below the site(s) of the performance of work done in conjunction with the specific award.

Place of performance (street, city, county, state, zip code)

11852 County Road 87 Elberta, (Baldwin County) Alabama 36530

37. The Sub-recipient certifies, to the best of its knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sub-recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee or a member of Congress in connection with the awarding of any Federal contract, the making of any Federal award, the making of any Federal loan, the entering into any cooperative agreement, or modification of any Federal contract, award, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, award, loan, or cooperative agreement, the Award Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Sub-recipient shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-awards, and contracts under awards, loans, and cooperative agreement(s) and that all sub-recipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of the certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

38. The Sub-recipient will provide copies of audit reports that include funds provided under this agreement to:

State of Alabama
Department of Examiners of
Public Accounts
P. O. Box 302251
Montgomery, AL 36130-2251

and

State of Alabama
Emergency Management Agency
P.O. Drawer 2160
Clanton, AL 35046
Attn: Hazard Mitigation

Attn: Audit Report Repository

39. Contracts must be of reasonable cost, generally must be competitively bid, and comply with Federal, State, and local procurement standards. FEMA will reimburse only fair and reasonable costs of any contract entered into by the Sub-recipient. The Sub-recipient must consider costs, conflicts of interest, and all Federal, State, and local laws and regulations when hiring a contractor. Compliance with local procurement practices and the procurement competition requirements specified in 2 CFR Part 200.317-200.326 are essential to successfully receiving Mitigation award funding. The Federal procurement regulations ensure that sub-recipient's procure contracts in a manner that provides full and open competition, and provide financial and record-keeping requirements. In addition, the Sub-recipient should maintain a written code of standards for conduct governing the performance of employees, officers, or agents who select and award contracts. It is important that applicants secure contracts with reputable and qualified licensed contractors. The Sub-recipient's should conduct reference checks on a contractor's history of performance with the State's contractor licensing board and with the contractor's previous clients before awarding contracts. Pursuant to 2 CFR Part 200.319 (a)(1)-(7), the Sub-recipient may not restrict the bidding in order to disqualify a population of bidders. Some of the situations considered to be restrictive of competition include, but are not limited to:
- Placing unreasonable requirements on firms in order for them to qualify to do business
 - Requiring unnecessary experience and excessive bonding
 - Noncompetitive pricing practices between firms or between affiliated companies
 - Noncompetitive awards to consultants that are on retainer contracts
 - Organizational conflicts of interest
 - Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement
 - Any arbitrary action in the procurement process

If the Sub-recipient has a pre-qualified lists of persons, firms, or products, it must keep such lists current in order to ensure open and free competition during the bidding process, in accordance with 2 CFR Part 200.319(d), which states: *"Recipients and sub-recipients will ensure that all pre-qualified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, recipients and sub-recipients will not preclude potential bidders from qualifying during the solicitation period."*

Methods of Procurement

The Sub-recipient may request that FEMA review its procurement process to determine whether the process meets the standards set forth in 2 CFR 200.317-200.326. FEMA finds the following four methods of procurement acceptable:

Small purchase procedures procurement, an informal method for securing services or supplies that do not cost more than \$100,000 by obtaining several price quotes from different sources.

Sealed bids procurement, a formal method where bids are publicly advertised and solicited, and the contract is awarded to the responsible bidder whose proposal is the lowest in price. This method is the preferred method for procuring construction contracts.

Competitive proposals procurement, a method similar to sealed bid procurement in which contracts are awarded on the basis of contractor qualifications instead of on price. This method is often used for procuring architectural or engineering professional services. In addition, this

method normally involves more than one source submitting an offer and is used when conditions are not appropriate for sealed bids.

Noncompetitive proposals procurement, a method whereby a proposal is received from only one source. Noncompetitive proposals should only be used when the award of a contract is not feasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies:

- The item is available only from a single source
- There is an emergency requirement that does not permit a delay
- Solicitation from a number of sources has been attempted, and competition is determined to be inadequate

A contract may be regarded as noncompetitive if the Sub-recipient has only one responsive bidder. In this case, the Sub-recipient is required to comply with 2 CFR Part 200.321(f), which states in part: *“...A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.”*

The Sub-recipient is required by 2 CFR Part 200.323(b) to negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. Consideration shall be given to the complexity of the work performed, risk borne to the contractor, contractor’s investment, amount of subcontracting, quality of the contractor’s record of past performance, and industry profit rates in the surrounding geographical area for similar work.

FEMA provides reimbursement for four types of contracts:

Lump sum contracts, for work within a prescribed boundary with a clearly defined scope and a total price

Unit price contracts, for work done on an item-by-item basis with cost determined per unit

Cost-plus-fixed-fee contracts, either lump sum or unit price contracts with a fixed contractor fee added into the price

Time-and-materials contracts, where the contractor bills the applicant for labor, equipment, materials, and overhead. These contracts should be avoided, but may be allowed. Time-and-materials contracts are allowed in circumstances when they are more cost-effective and appropriate for the amount and type of eligible work to be performed. The costs must be reasonable for the type of work required. The Sub-recipient must engage in comprehensive active monitoring activities to ensure contractor efficiency. If a time-and-materials contract is awarded, the applicants must:

- Monitor and document contractor expenses;
- Have a cost ceiling or “not to exceed” provision in the contract; and
- Contact the State to ensure proper guidelines are followed.

The Sub-recipient should work closely with the State and FEMA when awarding the time-and-materials contracts to ensure eligibility requirements are met.

Contract Scope of Work Recommendations

The contract scope of work should reference “eligible work,” “work eligible under FEMA Mitigation regulations, policies, and guidance,” “work performed on public property and/or public rights-of-way,” or other similar elements.

Piggyback Contracts

FEMA does not favor “piggyback contracts.” The variables associated with the scope of work and costs generally make this an option to be avoided. The competitive procurement requirements of 2 CFR Part 200.319 are also a prime concern. If FEMA encounters a request for reimbursement of costs derived from such a contract, the reimbursable costs for eligible work will be based on reasonableness.

Prohibited Contracts

In accordance with 2 CFR Part 200.323(d), cost plus percentage of cost contracts shall not be used. Use of such contracts may result in FEMA limiting the Mitigation grant to an amount determined to be reasonable based on the eligible work performed. Contracts that are awarded by an applicant to debarred contractors are prohibited pursuant to 2 CFR 200.205(d) and Part 100; thus, no Federal funding can be awarded for eligible work completed.

Additional Contract Requirements

Contract payment provisions should address the obligations between parties to the contract only and not include any language that makes payment to the contractor contingent upon the applicant’s receipt of funding from FEMA.

All contracts in excess of \$10,000 must contain a provision for termination for cause and for convenience by the Sub-recipient, including the manner by which it will be effected and the basis for settlement, according to 2 CFR Part 200.340.

For contracts over \$100,000 the applicant must have the following minimum bonding requirements, in accordance with 2 CFR Part 200.325(b)-(c):

- A bid guarantee from each bidder equivalent to five percent of the bid price;
- A performance bond on the part of the contractor for 100 percent of the contract price; and
- A payment bond on the part of the contractor for 100 percent of the contract price.

In accordance with 2 CFR Part 200.318(h): *“Recipients and sub-recipients will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.”*

Documentation requirements are specified in 2 CFR Part 200.318 (i) and include, but are not limited to, rationale for the procurement method, contract type, contractor selection or rejection, and the basis for contract price.

Signed for the Sub-recipient:

Matthew McKenzie - Chair
Name (Typed)


Title

Signature

Date

Signed for the State:

Jeff Smitherman
Director



Signature

December 2, 2024
Date