



Nice Matters!

Town of Emerald Isle
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Emerald Isle, NC 28594

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www.emeraldisle-nc.org

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Mayor Pro-Tem
Floyd Messer, Jr.

Board of Commissioners
Steve Finch
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Mark Taylor
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Town Manager
Matt Zapp
mzapp@emeraldisle-nc.org

February 16, 2023

Request for Bids

Purchase of Equipment – New Compact Utility Tractor with Attachments

I. BIDS DUE

All bids are requested by February 28, 2023, no later than 2:00 p.m. (EST).

Interested bidders may submit written bids to the attention of Candace Dooley, Parks and Recreation Director.

Written bids may be submitted in the following methods:

Mailing Address: Town of Emerald Isle, 7500 Emerald Drive, Emerald Isle, NC 28594

Physical Deliveries: Town of Emerald Isle, 203 Leisure Lane, Emerald Isle, NC 28594

Email Address: cdooley@emeraldisle-nc.org

Email Subject: **New Compact Utility Tractor with Attachments**– *please note email submissions must be acknowledged by return receipt of message.*

II. RIGHTS

The Town of Emerald Isle Commissioners reserve the right to waive any informalities, to reject any or all bids, and to accept that bid or bids which appear to be in the Town's best interest. The Town reserves the right to award all or part of this Request for Bids.

III. BACKGROUND

The Town of Emerald Isle has been awarded FEMA Federal grant funding under the Section 428 program for Emergency Equipment and Vehicles. This procurement will use Federal funds, and the Town and Bidder agree to comply with all applicable Federal contract provisions outlines in section IX of this Request for Bids.

The Town of Emerald Isle Parks & Recreation Department requires equipment for use immediately following storm events to clear debris from public property including public rights-of-way and the Town's approximate 12 miles of public beach strand. Equipment will need to be versatile and have ability to drive on the beach strand.

IV. SCOPE - EQUIPMENT SPECIFICATIONS

The Emerald Isle Parks & Recreation Department is seeking quotes on the following equipment

(1) Compact Utility Tractor with 4-in1 Bucket and Debris Grapple Bucket

- Minimum 42.5 Horsepower Diesel, 4 cylinder
- PTO 25kW, 33.6 Horsepower Minimum
- Category 1 Hitch Type
- Lift Capacity 2500 lb, 3- point hitch, Quick Connect
- eHydro Transmission or equivalent,
- Cruise Control
- Fuel tank 15 gallons minimum
- Hydrostatic power steering
- Front Axle Capacity 3,528 lb.
- Rear Axle Capacity 5,292 lb.
- Farm tires

(1) 72" 4 in 1 Bucket – with ability to doze, grade, lift, and move materials

(1) 72" Debris Grapple Bucket – minimum dimensions: opening 34.5"; depth 32"; height 22"

V. BIDS

All bids should include the following:

- Copy of full unit specifications
- Completed and Signed Bid Form (Attached).

VI. TERMS & CONDITIONS

The terms of this Request for Bids and your response thereto will be incorporated into the terms of the final agreement if your company is the successful bidder.

- The bidder awarded this contract shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least five (5) years after completion of the contract resulting from this RFB.
- The bidder agrees to the following Federal provisions as applicable: Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324) - See Section IX-Federal Contract Provisions for full context.
- The bidder agrees to comply with the E-Verify requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if contractor utilizes a subcontractor, contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
- The Town of Emerald Isle reserves the right to reject any and all bids.

VII. CONTACTS & ADDITIONAL INFORMATION

For additional information please contact: Candace Dooley, Parks & Recreation Director (252) 354-6350.

VIII. BID FORM – TOWN OF EMERALD ISLE
New Compact Utility Tractor with Attachments

DATE: _____

VENDOR _____

ADDRESS _____

CITY/ST/ZIP _____

TELEPHONE _____

Total Price BID: The undersigned having carefully reviewed the Equipment items listed in the attached Request for Bids for (1) Compact Utility Tractor 42.5 Horsepower, with 4-in1 Bucket and 72” Debris Grapple Bucket, dated _____ including applicable addenda, for the following total price:

\$ _____

COMPANY NAME: _____

SIGNATURE: _____

TITLE: _____

CORPORATE SEAL

IX. FEDERAL CONTRACT PROVISIONS – TOWN OF EMERALD ISLE

The Parties shall comply with all federal laws and regulations applicable to the receipt of FEMA grants, including, but not limited to the contractual procedures set forth in Title 2 of the Code of Federal Regulations, Part 200 (“2 CFR 200”), including Appendix II to such Part (“Appendix II”).

In addition, the Parties agrees as follows:

1. The Town is entitled to exercise all administrative, contractual, or other remedies permitted by law to enforce Contractor’s compliance with the terms of this Agreement, except to the extent expressly provided otherwise by this Agreement.
2. The Town may, at its sole discretion, terminate this Agreement for cause or convenience in accordance with the procedures set forth in this Agreement.
3. This Agreement may be amended only by written document executed by a duly authorized representative of each of the parties.
4. **Equal Employment Opportunity**
Applicable to federally assisted construction contracts. The following clause shall be inserted.

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

- A. 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 a conspicuous place, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. 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 considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. 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 worker’s 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.
- D. 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.

- E. 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.
- F. 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.
- G. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provision 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 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.

- 5. Compliance with the Davis-Bacon Act and Copeland Anti-Kickback Act, as applicable, to the Contractor's performance pursuant to this Agreement. *The Davis Bacon Act is applicable to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security*

Grant Program, and the Transit Security Grant Program. It **DOES NOT** apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program. If the Davis-Bacon Act is not applicable, the Copeland Anti-Kickback Act is not applicable. In the event the two acts apply to a federal grant the required contract language can be found in at 29 CFR §5.5(a)(1)-(10).

6. Contract Work Hours and Safety Standards Act

Applicability. This requirement applies to all FEMA contracts awarded by the non-federal entity in excess of \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

1. *Overtime requirements.* No contractor or sub-contractor 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 work week 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 work week.

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 \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard work week 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 Town of Emerald Isle, 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.

7. Rights to Inventions Made Under a Contract or Agreement

This clause is not applicable to the FEMA Public Assistance Program, but may be applicable to other federal grant or cooperative agreement programs. The clause is required for funding agreements relative to performance of experimental, developmental or research on behalf of the federal government under a funding agreement as defined by 37 CFR §401.2(a). Specific language of the clause can be found in 37 CFR Part 401.

8. Compliance with the Clean Air Act and the Federal Water Pollution Control Act.

a. Clean Air Act

(i) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §7401 et seq.

- (ii) Contractor agrees to report each violation to The Town and understands and agrees that The Town will, in turn, report each violation as required to assure notification to FEMA and the appropriate Environmental Protection Agency Regional Office.
- (iii) Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

b. Federal Water Pollution Control Act

- (i) 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.
- (ii) Contractor agrees to report each violation to the Town, the Contractor understands and agrees that The Town will, in turn, report each violation as required to assure notification to North Carolina Department of Public Safety, Federal Emergency Management Agency (FEMA) and appropriate Environmental Protection Agency Regional Office.
- (iii) 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.

9. Suspension and Debarment

- a. 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 neither the Contractor, its 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).
- b. 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 related in any way to the performance of this Agreement.
- c. This certification is a material representation of fact relied upon by the Town. If it is later determined that 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 the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d. The Contractor 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 Agreement is valid and throughout the period of any contract that may arise from the performance of this agreement. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. Compliance with Byrd Anti-Lobbying Amendment

- a. Contractor hereby certifies to the best of its knowledge that:
 - (i) No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (ii) 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, grant, loan, or cooperative agreement, Contractor shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- b. Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. 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.
- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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 each such failure.
- d. By executing this Agreement, Contractor hereby certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

11. Procurement of Recovered Materials

- a. In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired
 - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- b. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

12. Prohibition on certain telecommunications and video surveillance services or equipment.

- a. Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause.
- b. Prohibitions.
 - (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 - (2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - (i) Procure or obtain any equipment, system, or services that uses covered telecommunications equipment or services as substantial or essential component of any system, or as critical technology of any system;

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

c. Exceptions.

(1) This clause does not prohibit contractors from providing:

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and

ii. Are not used as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

d. Reporting Requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) With 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

13. Domestic Preferences for Procurements

(a) As appropriate and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

(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.

14. Affirmative Socioeconomic Steps

If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. §200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus firms are used when possible. Those steps are outlined below:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever there are potential sources.
- Dividing total requirements, when economically feasible, into smaller task or quantities to permit maximum participations by small and minority businesses, and women's business enterprises.
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

15. Access to Records

The following access to records requirement applies to this Agreement:

- a. Contractor agrees to provide, the Town, the North Carolina Department of Public Safety, 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.
- b. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. 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.
- d. In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the Town 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.

16. Use of DHS Seal

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. The contractor shall include this provision in any subcontract.

17. Compliance with Federal Law

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion the Agreement only. The Contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

18. No Obligation of Federal Government

The Federal Government is not a party to this Agreement 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.

19. Program Fraud and False or Fraudulent Statements or Related Acts

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.

20. License and Delivery of Works Subject to Copyright and Data Rights

Applies to contracts related to producing copyrightable subject matter and/or data and provides the federal government certain rights as defined in 2 CFR §200.315(b) and (d).

The Contractor grants to the Town of Emerald Isle, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in performance of this contract, the Contractor will identify such data and grant to the Town of Emerald Isle or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. §102, for example, any written reports or literary works, software and/or source code, music choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Town of Emerald Isle data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Town of Emerald Isle.

21. Safeguarding of Sensitive Information and Information Technology Security and Privacy Training (reference Homeland Security Acquisition Regulation (HSAR 3052.204-71 Contractor Access)

(a) Sensitive Information, as used in this clause, means any information, which if lost, misused, disclosed, or, without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense homeland security or foreign policy. This definition includes the following categories of information:

- (1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Pub. L. 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);
- (2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, part 1520, as amended, "Policies and Procedures of Safeguarding and Control of SSI," as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);
- (3) Information designated as "For Official Use Only," which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and
- (4) Any information that is designated "sensitive" or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

(b) "Information Technology Resources" include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.

(c) Contractor employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Contractor's employees shall be fingerprinted, or subject to other investigations as required. All Contractor employees requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under Departmental procedures.

(d) The Contracting Officer may require the Contractor to prohibit individuals from working on the contract if the Government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence or security concerns.

(e) Work under this contract may involve access to sensitive information. Therefore, the Contractor shall not disclose, orally or in writing, and sensitive information to any person unless authorized in writing by the Contracting Officer. For those Contractor employees authorized access to sensitive information, the Contractor shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after contract performance.

The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

22. Assurances of Compliance with Title VI of the Civil Rights Act of 1964

Contractor and any Subcontractor, or the successor, transferee, or assignee of Contractor or any Subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this contract. Title VI also provides protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d et seq., as implemented by Treasury's Title VI regulations, 31 U.S.C. Part 22, and herein incorporated by reference and made a part of this Contract.