



ARPA Grant Programs Subrecipient's Contract Guide

In addition to basic contractual provisions (which DED does not attempt to provide in this document), contracts funded in full or in part with American Recovery Plan Act (ARPA) financial assistance have to meet various special requirements due to the State's grant agreement with the Treasury Department for ARPA State Fiscal Recovery Fund (SFRF) funding, federal laws, and federal regulations. This Guide is for DED ARPA Grant Programs that are funded with SFRF funding. DED makes no effort to address various Missouri state laws that must be met or should be considered for specific inclusion as a contract term, except for state debarred/suspended vendors, businesses being registered and in good standing in the State of Missouri, the Anti-Discrimination Against Israel Act, and the prohibition on employment of unauthorized aliens/E-Verify participation law. State Prevailing Wage and other laws may apply to your project independently of this funding being through the state or the fact that it is federal ARPA funding. Such requirements are not addressed in this Guide, but you still need to determine if the laws apply to your project and follow the law.

Sample language is provided for most of the laws, regulations, and executive orders. Sample language is simply one option of many for wording in a contract. If a law or regulation mandates specific language, it is noted as "required language." (You could also refer to your Grant Agreement with DED for how DED drafted the requirement for your entity, noting some wording should be changed).

The sample or required language is set forth in a text box like this.

This Guide provides citations to statutes, regulations, and executive orders that may be helpful to you or your attorney and will help DED in its efforts to keep the Guide is kept up to date.

In some cases, excerpts from federal regulations are included, in a text box like this.

DISCLAIMER

The information provided in this Guide does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available in this Guide or documents referenced in this Guide are for general informational purposes only.

Readers of this Guide should contact their attorney to obtain advice with respect to any particular legal matter.

No reader or user of this Guide should act or refrain from acting on the basis of information in this Guide without first seeking legal advice from counsel. Only your individual attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation.

1. **Title VI of the Civil Rights Act of 1964, as amended (Nondiscrimination in Federally Assisted Programs)**

42 USC § 2000d-2000d-4

Treasury: Applicable per 31 C.F.R. Part 22 and the government-wide regulations contained in 28 CFR part 42

DED Grant Agreement § 13.1

Language required under the Missouri-Treasury SFRF Grant Agreement:

The contractors, subcontractors, successors, transferees, and assignees 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 CFR part 22, which are herein incorporated by reference and made a part of this agreement. Title VI also includes 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 the Department of the Treasury's Title VI regulations 31 CFR part 22, and herein incorporated by reference and made a part of this agreement.

2. **Executive Order 13166 Improving Access to services for Persons with Limited English Proficiency**

DED Grant Agreement § 13.2

Sample language from Missouri-Treasury Grant Agreement:

Contractor acknowledges that [federal Executive Order 13166](#), "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English Proficiency ("LEP"). Contractor understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and Treasury's implementing regulations. Accordingly, Contractor must initiate reasonable steps, or comply with Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Contractor understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in Contractor's programs, services, and activities.

3. **Title VIII of the Civil Rights Act of 1968 (Fair Housing Act)**

42 U.S.C. §§ 3601-19

DED Grant Agreement § 13.1

Sample language:

Contractor will comply with all relevant requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601-19, known as the Fair Housing Act), and implementing regulations, which provide that no person shall, on the basis of race, color, religion, sex,

familial status, national origin, or disability, be discriminated against in the sale, rental, and financing of dwellings, and in other housing-related transactions.

4. **Section 504 of the Rehabilitation Act of 1973**

29 U.S.C. § 794

DED Grant Agreement § 13.1

Sample language:

Contractor will comply with all relevant requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and implementing regulations, which provide that no otherwise qualified person shall, solely by reason of his or her disability, be subjected to discrimination in any program or activity receiving federal financial assistance.

5. **Age Discrimination Act of 1975**

42 U.S.C. §§ 6101 – 6107

Treasury: Applicable per 31 CFR Part 23

DED Grant Agreement § 13.1

Sample language:

Contractor will comply with all relevant requirements of the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 – 6107), and implementing regulations, which provide that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

6. **Title II of the Americans with Disabilities Act (all services, programs, and activities provided or made available by public entities)**

42 U.S.C. 12101 *et seq.*; 28 CFR part 35

DED Grant Agreement § 13.1

Sample language:

Contractor will comply with all relevant requirements of Title II of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) and implementing regulations, which prohibits discrimination on the basis of disability in services, programs, and activities provided or made available by state or local governments or instrumentalities or agencies thereto.

7. **Equal Employment Opportunity (construction¹ contracts)**

Executive Order 11246, as amended

¹ "Federally assisted construction contract" means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with federal funds. 41 CFR § 60-1.3. "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing

Treasury: Applicable per 2 CFR part 200, Appendix II (C)

2 CFR part 200, Appendix II, states:

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.

(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."

Excerpt from 41 CFR § 60-1.4(b)-(f): Equal Opportunity Clause for Federally Assisted Construction Contracts and Subcontracts:

(b) Federally Assisted Construction Contracts

(1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The [subrecipient] hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

Required language from regulation:

60-1.4(b) Equal Employment Opportunity Clause

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

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

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for

utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction. 41 CFR § 60-1.3.

training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

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

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

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

The [Subrecipient] 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 [Subrecipient] 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 [Subrecipient] agrees that it will assist and cooperate actively with [the State of Missouri, the Department of Treasury 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 [State of Missouri, Office of Treasury] and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the [State of Missouri and Office of Treasury] in the discharge of Treasury's] primary responsibility for securing compliance.

The [Subrecipient] further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by [Treasury] or the Secretary of Labor pursuant to part II, Subpart D of the Executive Order. In addition, the [Subrecipient] agrees that if it fails or refuses to comply with these undertakings, the [State of Missouri or Treasury] 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 [Subrecipient] under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such [Subrecipient]; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

* * *

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

8. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms – 2 CFR 200.321; E.O. 11625 and 12138:

Prior to awarding contracts, the ARPA subrecipient and any contractor awarding subcontracts must take the following affirmative steps in accordance with 2 CFR 200.321:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. 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.

No sample language is provided.

9. **New Restrictions on Lobbying (contracts exceeding \$100,000)**

31 CFR part 21

Treasury: Applicable per 2 CFR part 200, Appendix II (I)

Sample language (from regulation):

The contractor certifies, to the best of its knowledge and belief, 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, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and 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.
- iii. Contractor must require that 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.

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 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 each such failure.

10. **Bonding Requirements (Construction or facility improvement contracts \$250,000 or greater)**

The simplified acquisition threshold is \$250,000. 48 CFR § 2.101 (Definitions).

These are minimum requirements for contracts. If Subrecipient has stricter requirements in its own policies or practices, it should follow the stricter requirements.

2 CFR part 200 includes minimum bonding requirements as follows:

2 CFR § 200.326 Bonding requirements.

For construction or facility improvement contracts or sub contracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A **bid guarantee** from each bidder equivalent to **five percent of the bid price**. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A **performance bond** on the part of the contractor for **100 percent of the contract price**. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A **payment bond** on the part of the contractor for **100 percent of the contract price**. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

No sample language is provided.

11. **Davis-Bacon Act (if the Project has a Total Approved Budget amount greater than \$10 million)**

40 U.S.C. 3141-3148; and 29 CFR parts 1, 3, 5, 6 and 7

Treasury: Applicable per 2 CFR part 200, Appendix II (D)

2 CFR part 200, Appendix II, states:

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

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by [Subrecipient] must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of

Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The [Subrecipient] must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The [Subrecipient] must report all suspected or reported violations to the Federal awarding agency.

No sample language is provided.

12. **Copeland Anti-Kickback Act (applies when Davis Bacon applies)**

40 U.S.C. 3145; 29 CFR part 3

Treasury: Applicable per 2 CFR part 200, Appendix II (D)

2 CFR part 200, Appendix II, states:

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.

(D) . . . a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

No sample language is provided.

13. **Contract Work Hours and Safety Standards Act (contracts exceeding \$100,000 that involve the employment of mechanics or laborers)**

40 U.S.C. Chapter 5, Sections 326-332; and 29 CFR part 4, 5, 6 and 8; 29 CFR part 70 to 240

Treasury: Applicable per 2 CFR part 200, Appendix II (E)

2 CFR part 200, Appendix II, states:

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.

(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.

No sample language is provided.

14. **Rights and Remedies for Breach, Penalties and Sanctions (contracts exceeding \$250,000)**

Treasury: Applicable per 2 CFR part 200, Appendix II (A)

2 CFR part 200, Appendix II, states:

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, 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.

Note: The simplified acquisition threshold as is \$250,000. 48 CFR § 2.101 (Definitions)

No sample language is provided.

15. **Termination for Cause and for Convenience (contracts exceeding \$10,000)**

Treasury: Applicable per 2 CFR part 200, Appendix II (B)

2 CFR part 200, Appendix II, states:

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.

(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.

Termination for Convenience – example from Missouri State procurement documents:

The [government entity] reserves the right to terminate the contract at any time, for the convenience of the [government entity], without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. In the event of termination pursuant to this paragraph, all documents, data, reports, supplies, equipment, and accomplishments prepared, furnished or completed by the contractor pursuant to the terms of the contract shall, at the option

of the [government entity], become the property of the [government entity]. The contractor shall be entitled to receive compensation for services and/or supplies delivered to and accepted by the [government entity] pursuant to the contract prior to the effective date of termination.

Termination for Cause – example from Missouri State procurement documents:

a. In the event of material breach of the contractual obligations by the contractor, [government entity] may cancel the contract. At its sole discretion, [government entity] may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide [government entity] within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.

b. If the contractor fails to cure the breach or if circumstances demand immediate action, [government entity] will issue a notice of cancellation terminating the contract immediately. If it is determined [government entity] improperly cancelled the contract, such cancellation shall be deemed a termination for convenience in accordance with the contract.

c. If [government entity] cancels the contract for breach, [government entity] reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as [government entity] deems appropriate and charge the contractor for any additional costs incurred thereby.

16. **Rights to Inventions (contracts for performance of experimental, developmental, or research work)**

Treasury: Applicable per 2 CFR part 200, Appendix II (F)

2 CFR part 200, Appendix II, states:

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.

(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 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,” 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.

**"Funding agreement" is defined in 37 CFR § 401.2(a) as "any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or*

subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph."

No sample language is provided.

17. **Clean Air Act and Clean Water Act (contracts exceeding \$150,000)**

Treasury: Applicable per 2 CFR part 200, Appendix II (G)

2 CFR part 200, Appendix II, states:

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.

(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).

Sample language:

During the performance of this contract, the contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 7401 et seq., the Clean Water Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, as amended.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner the following:

- (a) A stipulation by the contractor or subcontractors that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the list of Violating Facilities issued by the Environmental Protection Agency (EPA).
- (b) Agreement by the contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 7413) and Section 308 of the Clean Water Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (c) A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, or EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.

(d) Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (a) through (d) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

18. **Debarment and Suspension (Federal and State)**

Prohibits the use of debarred, suspended, or ineligible contractors and participants.

Treasury: Applicable per 2 CFR part 200, Appendix II (H)

State: Grant Agreement § 16.6(a)

2 CFR part 200, Appendix II, states:

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.

(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 government wide 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.

2 CFR § 2424.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

To communicate the requirements to lower-tier participants, you must include a term or condition in the transaction requiring compliance with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Sample language:

Contractor certifies that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal or State of Missouri assistance programs or activities. Contractor certifies that it shall not contract with a subcontractor that is so debarred or suspended.

19. **Businesses Registered to Do Business in Missouri and in Good Standing**

State: Grant Agreement § 16.6(b)

Sample language:

Contractor must ensure that its vendors, contractors, or subcontractors are registered and in good standing with the State of Missouri (unless not required by law to register under law) by checking the entity on the [Missouri Secretary of State's business entity search](#) or by requiring a copy of a certificate of good standing.

20. **Prohibition on Employment of Unauthorized Aliens/E-Verify Participation Requirement (§§ 285.525 – 285.550, RSMo)**

Sample language:

Pursuant to subsection 1 of section 285.530, RSMo, no contractor or subcontractor shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri.

Contractor covenants that it is not knowingly in violation of subsection 1 of Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the Project, and that its employees are lawfully authorized to work in the United States.

Pursuant to section 285.530, RSMo, for contracts in excess of \$5,000, Contractor affirms its enrollment and participation in a federal work authorization program (as of the date hereof, the Employment Eligibility Verification Program (E-Verify) authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended).

In accordance with sections 285.525 to 285.550, RSMo, a general contractor or subcontractor of any tier shall not be liable when such contractor or subcontractor contracts with its direct subcontractor who violates subsection 1 of section 285.530, RSMo, if the contract binding the contractor and subcontractor affirmatively states that:

- a. The direct subcontractor is not knowingly in violation of subsection 1 of section 285.530, RSMo, and shall not henceforth be in such violation.
- b. The contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States.

21. **Access to Records and Record Retention**

2 CFR 200.334-.337

Sample language:

Contractor shall maintain records in accordance with requirements prescribed by Treasury, the State of Missouri, with respect to all matters covered by this contract. Such records shall be maintained for a period of five (5) years after receipt of the final payment under this contract. If, however, any litigation, claim or audit is started before the expiration of the five year period, then records must be retained for five years after the litigation claim or audit is resolved.

All documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

Contractor must give the State, DED, Treasury, Treasury's Office of the Inspector General, the Government Accountability Office, the Missouri State Auditor, and their authorized representatives, access to any records (electronic and otherwise) of Contractor related to this Subaward in order to conduct inspections, audits, or other investigations. Contractor must also give timely and reasonable access to its personnel for the purpose of interview and discussion related to such records.

22. **General Reporting Obligations**

Sample language:

The Contractor agrees to complete and submit all reports, in such form and according to such schedule, as may be required by Treasury, the State of Missouri or the local government entity. The Contractor further agrees to require any subcontractors to submit reports that may be required and to incorporate such language in its agreements.

23. **Procurement of recovered materials (limited applicability)**

Treasury: Applicable per 2 CFR part 200, Appendix II (J)

2 CFR §200.323 states:

A 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. The requirements of Section 6002 include procuring only items designated in 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.

No sample language is provided.

24. **Prohibition on certain telecommunications and video surveillance services or equipment (limited applicability)**

Treasury: Applicable per 2 CFR part 200, Appendix II (K)

2 CFR § 200.216 states:

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems 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. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) 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).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) 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.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall 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 communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also §200.471.

No sample language is provided.

25. **Domestic preferences for procurements (goods, products, materials)**

Treasury: Applicable per 2 CFR part 200, Appendix II (L)

2 CFR § 200.322 states:

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, 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 including all contracts and purchase orders for work or products under this award.

(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.

Sample language:

Buy American Preference. Recipients of ARPA funds are hereby notified that they are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or subaward that is chargeable under this Award.

26. **Anti-Discrimination against Israel Act (§ 34.600, RSMo, passed in 2020)**

Required to be in public entity contracts “to acquire or dispose of services, supplies, information technology, or construction” unless the total potential value of the contract is less than \$100,000 or the contractor has fewer than ten employees.

“Public entity” is defined as “the state of Missouri or any political subdivision thereof, including all boards, commissions, agencies, institutions, authorities, and bodies politic and corporate of the state created by or in accordance with state law or regulations.”

Sample language:

Contractor certifies that it is not currently, and will not for the duration of the contract, engage in a boycott of goods or services from: (a) the State of Israel; (b) companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or (c) persons or entities doing business in the State of Israel, and agrees to not engage in these activities for the duration of this contract.

27. **Text Messaging while Driving**

Federal Executive Order 13513, 74 FR 51225

Missouri-Treasury Grant Agreement

Sample language:

Contractor is encouraged to adopt and enforce policies that ban text messaging while driving.