

REGION 7 CONTRACT FOR DEBRIS REMOVAL MONITORING SERVICES

INTRODUCTION

The Association of County Commissions of Alabama (hereinafter "the Association") recently conducted a bid offering for regional debris removal monitoring services through its Alabama County Joint Bid Program. Alabama's 67 counties were divided into seven regions for the purposes of this bid offering. Counties in Region 7 include Etowah, Cherokee, Colbert, DeKalb, Franklin, Jackson, Lauderdale, Limestone, Lawrence, Madison, Marshall and Morgan. Pursuant to resolution adopted by each county in Region 7, Etowah County has been selected to serve as the awarding authority for all counties in the region for purposes of awarding the bid to the lowest responsible bidder meeting bid specifications and executing a contract with the successful bidder on behalf of all Region 7 counties. Copies of the counties' resolutions are on file at the Association office.

Bids for debris removal monitoring services in Region 7 were opened at the Association office on September 6, 2018 and on October 2, 2018, the Etowah County Commission awarded the regional debris removal monitoring services contract for Region 7 to Thompson Consulting Services, Inc. as the lowest responsible bidder meeting bid specifications. Copies of all bids submitted in response to this bid offering are on file at the Association office. A copy of the bid submitted by Thompson Consulting Services, Inc. including the Invitation to Bid, is attached hereto as Exhibit A and incorporated herein by reference. By executing this agreement, Thompson Consulting Services, Inc. agrees to provide all services included in its bid, and under the terms and conditions set out in said Invitation to Bid, Bid Specifications, and accompanying documentation, including but not limited to those provisions specifically set out below.

GENERAL TERMS OF CONTRACT

As a result of the foregoing, this agreement is entered into pursuant to Code of Alabama 1975, § 41-16-50(b) between the Etowah County Commission, the awarding authority for Region 7 counties, through its chairperson, and Thompson Consulting Services, Inc. hereinafter referred to as "the Contractor", through the undersigned authorized agent, for debris removal monitoring services in all counties in Region 7 under the following terms and conditions:

1. Contractor agrees to provide any and all debris removal monitoring services in compliance with the provisions and requirements of the Invitation to Bid and Bid Specifications attached as Exhibit A to any and all counties in Region 7;
2. Contractor understands and agrees that it may be necessary to provide such services simultaneously in more than one county in the Region and that failure to provide such services in all counties at any time necessary shall be deemed a default of this agreement;
3. Both parties agree that only services specifically set out in Exhibit A shall be provided by the contractor under a Notice to Proceed and that such services shall be provided as set out therein;
4. Both parties agree that, under the terms of this agreement, no services shall be provided within the jurisdictional limits of a municipality within the county unless the county and the municipality have entered into a written memorandum of understanding that meets FEMA guidelines and regulations, whereby the county agrees to assume responsibility for debris removal monitoring services on behalf of the municipality;

5. Contractor agrees to comply with the Services Activation Procedures included in the Bid Specifications by responding within 24 hours of receipt of a Notice to Proceed from any county in the Region ;
6. Contractor also agrees to comply with the Notice to Proceed Procedures attached hereto as Exhibit B and incorporated herein by reference;
7. Contractor agrees to provide each county in Region 7 with proper contact information for delivery of a Notice to Proceed at the time of execution of this contract and where necessary, to provide updated information regarding same throughout the term of this agreement;
8. Contractor agrees to execute a payment and performance bond in the amount of \$1,000,000 at the time of execution of the contract made payable to Etowah County on behalf of all counties in the Region, which bond shall be called in on behalf of a county sending a Notice to Proceed in the event the Contractor fails to execute the performance bond required under this agreement upon receipt of a Notice to Proceed or fails to satisfy any other obligations under this agreement;
9. Contractor has provided proof of insurance as part of its bid and hereby agrees to maintain that general and professional liability insurance at all times throughout the terms of this agreement and to notify Etowah County and the Association immediately in the event there is a change in insurance coverage or insurance provider different from that submitted with the contractor's bid;
10. Contractor shall agree, in compliance with 2C.F.R.200.318(j)(1)-(j)(2) requirements for time and materials contracts, compensation under this Agreement shall not exceed 15% of the total debris removal services cost per incident without mutual and/or prior agreement of the County Commission and the contractor and approval provided by FEMA.
11. Both parties agrees to comply with the Pricing and Payment Procedures set out in Exhibit A;
12. Both parties agree that all billing and payment processing will be handled as provided in Exhibit A and shall be handled directly between the contractor and the county in which debris removal monitoring services are provided pursuant to a Notice to Proceed received from the activating county;
13. Contractor agrees to exercise due care in the performance of all activities performed for an activating county and to be responsible for damages to any property caused by its equipment or workers at no expense to the activating county as provided in Exhibit A;
14. Contractor agrees to notify the activating county immediately of any damages to any property which occur during debris removal activities as provided in Exhibit A;
15. Contractor agrees to perform all debris removal monitoring activities in compliance with and consistent with the policies and publications of the Alabama Emergency Management Agency, Federal Emergency Management Agency, and Federal Highway Administration in effect at the time of the work being performed as provided in Exhibit A;
16. Both parties agree that only work identified in the Scope of Services set out in Exhibit A shall be performed pursuant to this agreement and there shall be no change in scope of services performed or time frames for completion of the project;
17. Contractor agrees to be responsible for any and all corrective action and/or payment of any resulting fines or penalties required in response to any notices of violations issued by any federal, state, or local agency as a result of the Contractor's actions while conducting activities on behalf of the activating county as provided in Exhibit A;
18. Both parties agree that, as provided in Exhibit A, this contract may be renewed for a second and third year under the identical price, terms, and conditions upon mutual consent of both parties approved in writing by both parties no later than 90 days prior to the expiration of the existing contract;

19. Both parties agree that this contract shall be in full force and effect from November 1, 2018 to October 31, 2019.

WARRANTIES AND REPRESENTATIONS

The contractor shall at all times during the term of this agreement comply with all federal, state, county, and municipal laws, ordinances, and regulations. The contractor shall not discriminate against any employee or applicant due to sex, race, color, creed, national origin or ancestry. The contractor certifies that it is eligible to perform this contract under federal, state, and local law, is not now and has never been debarred from performing federal or state government contracts and that all subcontractors used in the performance of this contract have the same qualifications.

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

COMPLIANCE WITH FEDERAL LAW AND REGULATIONS

The contractor shall at all times during the term of this contract comply will all applicable federal law and regulations for debris removal monitoring services in all counties in Region 7. Further, during the performance of this contract, the contractor shall agree to the following federal laws and regulations:

41 C.F.R. Part 60-1.4(b) Compliance

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, 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, 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 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 considerations for employment without regard to race, color, religion, sex, or national origin.
- 3) 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.

- 4) 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.
- 5) 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.
- 6) 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 as 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.
- 7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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."

Contract Work Hours and Safety Standards Act

- 1) Overtime requirements. No contractor or subcontractor 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 workweek 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 workweek.
- 2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (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, 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 (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- 3) Withholding for unpaid wages and liquidated damages. The FEMA Agency 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 (2) of this section.
- 4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (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 (1) through (4) of this section."

Clean Air Act

- 1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- 2) The contractor agrees to report each violation to activating county and understands and agrees that the entity will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 3) 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.

Federal Water Pollution Control Act

- 1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- 2) The contractor agrees to report each violation to the activating county and understands and agrees that the entity will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 3) 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.

2 C.F.R. 200.318(j)(1)-(j)(2) Time and Materials Contract Compliance

- 1) Contractor shall agree, in compliance with 2C.F.R.200.318(j)(1)-(j)(2) requirements for time and materials contracts. Compensation under this Agreement shall not exceed 15% of the total Debris Removal Services cost per incident without mutual and/or prior agreement of the County Commission and the contractor and approval provided by FEMA.

Suspension and Debarment

- 1) 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 none of 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).
- 2) The 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 it enters into.
- 3) This certification is a material representation of fact relied upon by Etowah County and the Association. If it is later determined that the 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 Etowah County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 4) The bidder or proposer 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 offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment, 31 U.S.C §1352 (as amended)

- 1) 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.

Access to Records

- 1) The contractor agrees to provide Etowah County, the Association, 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.
- 2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- 3) The 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."

Department of Homeland Security Seal, Logo, and Flags

- 1) The 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.

Compliance with Federal Law, Regulations, and Executive Orders

- 1) The contractor acknowledges that FEMA financial assistance will be used to fund this contract. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- 2) The contractor acknowledges the Federal Government is not a party to this contract 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.

Program Fraud and False or Fraudulent Statements or Related Acts

- 1) The 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.

PENALTIES, TERMINATION AND DEFAULT

Time is of the essence in providing the services required in this agreement as set out in Exhibit A. As such, the contractor shall be assessed liquidated damages in the amount of \$5000 per calendar day for each day in which contract activities extend beyond the maximum allowable time established.

This contract may be terminated by the awarding authority at any time for the convenience of the counties in the Region for any reason. Any county who has activated the services of the contractor through a Notice to Proceed agrees to pay the contractor for all work completed through the termination date.

This contract shall be terminated for cause if the contractor defaults in the performance of any of the terms of this agreement, including but not limited to: unsatisfactory job performance or progress, defective work, disputed work, failure to comply with material provisions of the contract, third party claims filed or reasonable evidence that a claim will be filed, or other reasonable cause; or otherwise fails to cure any other deficiency identified by an activating county within 24 hours of delivery of notice of said deficiency. Under the terms of this agreement, the contractor is in default if he or she fails to respond to a Notice to Proceed issued by any of the counties in the Region or fails to complete a project in any county in the Region after work has begun pursuant to a Notice to Proceed issued by said county. Etowah County and all counties in the Region retain all other legal or equitable rights or remedies existing as a result of said default, including but not limited to any legal process

necessary to obtain any sureties securing this contract. Any reasonable attorney's fee incurred in enforcing this contract will not exceed 5% of said contract price.

This contract is binding upon and insures to the benefit of the counties in the Region and is the whole agreement of the parties and governed by the law of the State of Alabama. There shall be no change orders or modifications of this agreement or services to be performed pursuant to Exhibit A by the contractor or any of the counties in the Region.

The contractor shall save and hold harmless all counties in the Region, State of Alabama, the U.S. Government, their respective employees, officials and agents from and against all liability, claims and demands on account of personal injuries (including without limitation workmen's compensation and death claims) or property loss or damages of any kind whatsoever, which arise out of or be in any manner connected with, or are claimed to arise out of or be in any manner connected with, the performance of this agreement, regardless of whether such injury, loss or damage shall be caused by, or be claimed to be caused by, the negligence or other fault of the contractor, any subcontractor, agent or employee.

Executed on this the 2nd, day of Oct 2018.



Chairperson
Etowah County Commission



Company Representative
Thompson Consulting Services, Inc.