



Jim Wells County

PROCUREMENT PACKET

Request for Proposal

RFP No: 2024-016

“Debris Monitoring and Management Services”

**Acceptance Due Date:
June 20th, 2024, 5:00pm**

Pedro “Pete” Trevino Jr
Jim Wells County Judge

6-3-2024

Company Name:

Authorized Representative

Address

City, State Zip Code

RE: Jim Wells County - REQUEST FOR PROPOSALS
RFP NO. 2024-016 Debris Monitoring and Management Services

Dear Prospect Offeror:

Jim Wells County Emergency Management Department welcomes and appreciates your interest and participation. For your review and consideration, enclosed find the procurement packet for the aforementioned project. Modifications and new requirements have been added and implemented. Please ensure to carefully read and review all instructions, requirements, and specifications.

If assistance is required, please do not hesitate to call the Emergency Management Department at 361-227-4812.

Sincerely,

Lance Brown

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This procurement packet includes the components marked below. If the item is not checked, it is not applicable to this solicitation. Offerors are asked to review the documentation to be sure that all applicable parts are included. If any portion of the documentation is missing, notify the Purchasing Department immediately. Offeror should be thoroughly familiar with all of the following items applicable to this procurement packet before submitting a response.

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PROCUREMENT OVERVIEW

PROCUREMENT OVERVIEW

THE RESPONDENT IS RESPONSIBLE FOR READING AND UNDERSTANDING ALL DOCUMENTS, FORMS, SPECIFICATIONS, AND INSTRUCTIONS WITHIN THIS ENTIRE DOCUMENT. Follow all instructions; you are responsible for obtaining any information needed in order to respond to this RFP. Further, the Respondent is responsible for providing any and all relevant information necessary to submit a proposal. Failure to do so will be at the Respondent's risk and may result in rejection of the proposal as non-conforming.

General Requirements apply to all advertised solicitations; however, these may be superseded, whole or in part, by OTHER DATA CONTAINED HEREIN. Review the Table of Contents. Be sure your proposal package is complete.

INTRODUCTION

Jim Wells County (hereinafter referred to as "County") is seeking proposals for "**Debris Monitoring and Management Services**" in accordance with the requirements attached hereto as **Appendix "A"**. The proposal should address all requirements. The respondent may suggest substitutions of features that they feel would be in the best interest of COUNTY; however, a strong rationale must be presented for any deviation from the requirements, COUNTY reserves the right to reject the deviation and its effect on the overall proposal.

AWARD

No award can be made until approved by Jim Wells County Commissioners Court. This RFP does not obligate the County to the eventual purchase of any product and/or service described, implied, or which may be proposed. Progress toward this end is solely at the discretion of the County and may be terminated at any time prior to the execution of an agreement.

TERM OF AGREEMENT

It is intended that the initial contract term will be for a five (5) year term with the County's option to renew/extend for an additional two (2) one (1) year terms, under the same rates, terms, and conditions.

GENERAL REQUIREMENTS/SUBMISSION DEADLINE & PROPOSAL OPENING

Submit one (1) hard copy and two (2) USBs in original PDF format on or before June 20th, 2024, at 5:00 p.m. Any Proposal received after this deadline will not be accepted and will be returned unopened to the sender.

PROPOSAL OPENING

The proposal opening is open to the public. Proposal opening participants may attend the proposal opening in person at the Jim Wells County Commissioner Court. Please be advised, public attendance at any in-person proposal opening may be limited due to capacity and will be on a first-come-first-serve basis.

HAND DELIVERED PROPOSAL

When hand delivering packet, Proposer should make sure that the package is stamped with the date and time received by the Jim Wells County Judge staff.

ELECTRONIC TRANSMISSION OF SUBMISSION

Jim Wells County will not accept telegraphic or electronically transmitted Proposals.
(Modify or specify for electronic delivery)

DELIVER TO:

US Postal Mail Address:
Name Jim Wells County Judge
ATTN: Lance Brown
Emergency Management Department
Address 200 N. Almond ST
Alice, Texas 78332

Physical Address:
Name Jim Wells County Judge
ATTN: Lance Brown
Emergency Management Department
Address 200 N. Almond ST
Alice, Texas 78332

SIGNING OF SUBMISSION

Submittals **must** be signed by an authorized representative of the firm. **Please sign the original in [blue ink](#) and ensure the copy is clearly labeled.**

QUESTIONS AND ANSWERS

Questions must be submitted via email to jwc-emc@co.jim-wells.tx.us, by **6-20-24, 2024, at 5:00 P.M.** Responses to submitted questions will be emailed to all participants who obtained their procurement packet directly from Jim Wells County Department by **6-20-24, 2024, at 5:00 P.M.** **Telephone inquiries will not be accepted.**

RESTRICTIVE OR AMBIGUOUS REQUIREMENTS

It is the responsibility of the Proposer to review the procurement packet and to notify the County Purchasing Department if the requirements are formulated in a manner that would unnecessarily restrict competition or request clarification of any requirements that are ambiguous. Any such protest or question regarding the requirements or proposal procedures must be received in writing via email by the deadline stated for Questions and Answers.

COST OF SUBMISSION

The County will not be liable for any costs incurred by the vendor in preparing a response to this procurement packet. Each Proposer acknowledges it is submitting a response at their own risk and expense. Further, no reimbursement for such charges or expenses shall be passed onto the County. The County makes no guarantee that any products or services will be purchased as a result of this solicitation and reserves the right to reject any and all submissions received. All responses and accompanying documentation will become the property of the County.

WAIVING OF INFORMALITIES

County reserves the right to waive minor informalities or technicalities when it is in the best interest of the County.

NOTICE OF COMMUNICATION

All communications by a vendor to the county, its officials, and department heads regarding this procurement shall be done through the Jim Wells County Purchasing Department. No vendor, its' representative, agent, or employee shall engage in private communication with a member of the Jim Wells County Commissioners Court or county department heads regarding any procurement of goods or services by the County from the date that this procurement packet is released. No private communication regarding the purchase shall be permitted until the procurement process is complete and a purchase order is granted or a contract is entered into. "Private Communication" means communication with any vendor outside of a posted meeting of the governing body, a regular meeting of a standing or appointed committee, or negotiation with a vendor which has been specifically authorized by the governing body.

VENDOR INSTRUCTIONS

Responses to this procurement packet shall be formatted and organized in the following order for consistency and easy screening:

- All submissions must be typed, single-spaced, and printed one-sided on 8 ½" by 11" paper.
- One (1) hard copy, marked "**ORIGINAL**" and two (2) USBs in PDF format. The original document must be submitted with a Cover Page containing the information listed in the Submission Outline/Checklist, under the Submission Cover Page.
- The complete response must be sealed in an appropriately sized envelope or box for delivery to the Jim Wells County Emergency Management Department, per instructions in the Procurement Packet Submission paragraph of the Legal Notice section contained within this procurement packet.
- All documents must be labeled with the vendor's name and the RFP number. Responses that are not identified with the RFP number on the outside, will be at risk of rejection.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.

SUBMISSION OUTLINE/CHECKLIST

To assist in ensuring all submissions received are complete, it is recommended for the Offeror to use this Submission Outline as a Checklist prior to submitting a response. All Responses must be submitted in the following order with the guidelines provided within this solicitation:

_____ Cover Sheet

Company Name, Company Address, Company Phone Number
Project Name: "Debris Monitoring and Management Services"
Procurement Number: RFP No. 2024-016
Opening Date: June 28th, 2024
Opening Time: 9:00am

_____ Table of Contents

_____ Required Documents

_____ Legal Notice Acknowledgement

_____ Appendix "A" - Requirements/Scope of Service

_____ I. Requirements

_____ II. Understanding of the Project

_____ III. Proposer Qualifications

_____ IV. Emergency Rental Relief Assistance Portal Contract Proposal

_____ Appendix "C" - Insurance Requirements

Proof of Insurance

Insurance Requirement Acknowledgement

Project Requirements Acknowledgement

_____ Appendix "D" - Conflict of Interest Questionnaire

CIQ Form - Copy of County Clerk File with fee receipt (when applicable)

_____ Appendix "E" - Vendor Forms

Vendor Enrollment Solution Form

HUB Declaration

_____ Appendix "F" - Certification Regarding Debarment

Signed Certification

SAM.gov Registration Acknowledgement

_____ Appendix "H" - Contracts Under Federal Award 2 - CFR 200

Byrd Anti-Lobbying Contract Clause

2 CFR 200 Certification

_____ Appendix "J" - Respondent's Affidavit

_____ Appendix "L" - Deficiencies and Deviations Form (when applicable)

_____ Appendix "M" - References

_____ Addenda (when applicable; see Addenda under Legal Notice)

LEGAL NOTICE

Jim Wells COUNTY PROCUREMENT - LEGAL NOTICE

These General Provisions are considered standard language for an Offeror (hereinafter referred to as “Offeror”, “Vendor”, “Respondent”, or “Contractor”) submitting a response for a Request for Bids, Proposals, Qualifications or other solicitation (hereinafter referred to as “Procurement Packet”) made by the County of Jim Wells (hereinafter referred to as “Jim Wells County” and “County” or any other governing body/agency for which the Jim Wells County Emergency Management Department has been authorized to perform procurement services. The Jim Wells County webpage may be found at www.JimWellsCounty.Com.

It is the Offeror’s sole responsibility to be in compliance of all federal, state, and local laws, requirements, rules, codes, ordinances, and regulations applicable to their proposed goods and/or services. In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall procurement packet, The County’s interpretation shall govern. Referenced appendices may be subject to change.

The following is a link to all adopted Jim Wells County policies ([link](#)) which for all purposes, when applicable and whether specified explicitly or not, are incorporated by reference as part of this procurement packet and any resulting agreement.

1. **ACCEPTANCE OF SUBMISSION.** Receipt of the submission shall under no circumstance obligate The County to accept the response, or make an award. The Offeror is responsible for obtaining any information needed in order to respond and for all costs of submitting its response. An Offeror’s submitted response is to remain firm for a minimum of ninety (90) days after opening. The County is not responsible for any missing, lost, or late submissions.
2. **ACCESS TO RECORDS.** In special circumstances, Vendor may be required to allow duly authorized representatives of the County, or the state and federal government access to contracts, books, documents, and records necessary to verify the nature and extent of the cost of services provided by Vendor. Vendor must keep records within the County or note in their submission that records will be available within the boundaries of the County to those representatives within one (1) business day of request by the County.
3. **ACCOUNT CREATION FOR PAYMENT.** Upon award and prior to execution of a contract, Offeror shall cooperate with and submit any required information to the County Auditor’s Office in order to establish an account with the County for payment, including information requested on County Vendor Enrollment Solution, **Appendix “E”** on this procurement packet. This information must be on file with the County Emergency Management Department. Failure to provide this information may result in a delay in payment and/or back-up withholding as required by the Internal Revenue Service.
4. **ADDENDA.** When specifications interpretations, amendments, corrections or changes are revised, the County Emergency Management Department will issue an Addendum addressing the nature of the change. All released Addenda will be e-mailed to all point of contact(s) who are known to have received or requested a copy of the procurement packet directly from the County Emergency Management Department. Offeror must **sign in blue ink and include it in the returned submission package.**
5. **ASSIGNMENT.** The successful Offeror shall not assign, sell, transfer, convey, or otherwise transfer its rights under any awarded contract, in whole or in part, without the prior written consent of County of Jim Wells County Commissioners Court (hereinafter referred to as “Commissioners Court”), or other applicable governing body.
6. **AWARD.** **Jim Wells County** reserves the right to award this contract on the basis determined on the Procurement Overview, and when applicable, listed on **Appendix “B”**, in accordance with the laws of the State of Texas, to waive any formality or irregularity, to make awards to more than one Offeror, and to reject any or all submissions received. After Jim Wells County Commissioners’ Court approves an award, and the awarded Contractor defaults in meeting the general requirements and/or specifications in complying with the contract agreement, Jim Wells County reserves the right to seek the services of the next lowest bidder(s) and/or qualified Offeror(s). In such event, the County shall charge the Awarded Vendor the difference for any additional cost of such item. Jim Wells County reserves the right to add or delete items during the term of the contract under the same rates and

conditions.

7. **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS.** The County will search a database maintained by the Texas State Comptroller which contains relevant vendor information. A contract may not be entered into with an entity that is identified therein. Search results shall be incorporated for all purposes as part of any resulting agreement entered into by the parties. The Offeror shall follow all federal, state, and local laws, requirements, rules, codes, ordinances, regulations and Jim Wells County Policy & Procedures applicable to their proposed goods and/or services, including, but not limited to those addressed within this procurement packet, the resulting agreement and the following:

7.1 Attestation Terrorist Organizations - TEX. GOVT. CODE CH. 2252. Pursuant to the Texas Government Code, including but not limited to Chapter's 2252, 806 and 807, the Offeror warrants, represents, certifies and attests that, by submitting a response to this procurement packet and/or at the time of execution of this Contract, Agreement, or supplemental agreement thereafter, neither the Offeror, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist or (ii) is a company listed by the Texas Comptroller of Public Accounts.

7.2 Breach of Ethics. Contracts awarded hereunder shall be in compliance with Tex. Loc. Govt. Code Chapter 171: Regulation of Conflicts of Interest of Officers of Municipalities, Counties and Certain Other Local Governments.

It shall be a breach of ethics to offer, give, or agree to give any elected official, department head or employee, or former elected official, department head or employee, of the County, or for any elected official, department head or employee or former elected official, department head or employee of the County, to solicit, demand, accept or agree to accept from another person, entity or organization, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or response to a request therefore pending before any department or agency of the County.

It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for the County, or any person associated therewith, as an inducement for the award of a subcontract or order.

7.3 Bonds. If this procurement packet requires submission of bid bond or proposal guarantee, and performance and payment bonds, an explanation of these requirements will be detailed on the Projects Requirements Acknowledgement listed in **Appendix "C"**. Responses submitted without the required bond or cashier's checks may be deemed unresponsive, thus disqualified from participation.

7.4 Boycott Energy Companies Verification – TEX. GOVT. CODE 2274. In accordance with changes to the law from the 87th Legislature in 2021, a for-profit company, not including a sole proprietorship, with ten or more full-time employees, is required to verify in writing that it does not boycott energy companies, and it will not boycott energy companies during the term of the Contract, if it is a contract for goods or services that has a value of at least \$100,000 that is paid wholly or partly from public funds of the governmental body. **Written verification may be provided by signing the Legal Notice Declarations page.** Please provide a written notification if your company is unable to provide the written verification referenced above.

As per Tex. Gov't. Code §809.001(1), "Boycott energy company" means "without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A)".

As per Ch. 2274(c), this verification requirement does not apply to the County if it determines that this requirement is inconsistent with the County's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

7.5 Boycott Israel Verification - TEX. GOVT. CODE 2270. In accordance with the Texas Government Code, including but not limited to Chapters 2270 and 808, a company, other than a sole proprietorship, with ten or more full time employees is required to certify in writing that it does not boycott Israel and will not boycott Israel during the term of the Contract, if the Contract has a value of \$100,000 or more.

7.6 Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion. The Offeror warrants and represents by execution of an award from their response to this procurement packet that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any Federal programs, or state assistance, as described under Executive Order 12549, "Debarment and Suspension." The Offeror agrees to include this certification in all contracts between itself and any subcontractors in connection with the services performed under any subsequent Contract or Agreement arising from this award. The Offeror also acknowledges that it is their sole responsibility to immediately notify The County, in writing, if they or a subcontractor is not in compliance with Executive Order 12549 during the term of this contract. Further, Offeror agrees to refund The County for any payments made to the contractor while ineligible. Pursuant to federal regulation 45 CFR Part 76, the Offeror is required to furnish a certification or acknowledgement stating that they are free from suspension and debarment through registration on System for Award Management at www.sam.gov with their response.

7.7 Davis-Bacon Act/The County Adopted Prevailing Wage Rate. When applicable, in accordance with Texas Government Code, Chapter 2258, as well as any other applicable laws, any Contractor or Subcontractor performing contracts in excess of \$2,000, for the construction, alteration, or repair (including painting and decorating) of public buildings or public works must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area as per the Davis Bacon Act or the rates adopted by The County.

The Offeror warrants and represents that it will pay all its workers all monies earned by its employees including, but not limited to regular wages, any overtime compensation, or any additional payments pursuant to the Fair Labor Standards Act, 29 U.S.C. Section 207 9a(1), as amended; the Texas Pay Day Act; the Equal Pay Act; Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, *et al.*, as amended; and/or any provisions of the Texas Labor Code Ann., as amended, without cost or expenses to the County.

Awarded Vendors, its officers, agents, and/or employees will not be entitled to any benefits of an employee or elected official of The County, including, but not limited to, benefits associated with The County's civil service system.

7.7 Disclosure of Conflict of Interest.

7.7.1 As an Offeror. Pursuant to Texas Local Government Code, Chapter 176, an Offeror must disclose an interest between the Offeror, the Offeror's employees and any Jim Wells County employees arising from relationships within the first degree of consanguinity or affinity. A financial interest arises if the County's elected official, department head, or employee, or a member of their family, received any gifts valued in excess of \$250 during the preceding twelve (12) month period, or employment of any County's elected official, department head, or employee, or the County official's family member.

The Offeror shall not use funds to directly or indirectly pay any person for influencing or attempting to influence any County employee or official in connection with the awarding of any contract or the extension, continuation, renewal, amendment or modification of any contract.

7.7.2 Certificate of Interested Parties (Form 1295). Jim Wells County cannot enter into a

contract until Form 1295 is submitted, as Texas law, including, but not limited to Tex. Govt. Code Ch. 2252, Title 1 Tex. Ethics Comm. Rules – Title 1, sec. 46 and the Tex. Admin. Code, requires all parties who enter into any contract with the County which must be approved by its governing body, to disclose all interested parties. Form 1295 must be completed in its entirety through the Texas Ethics Commission at the following website:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm prior to awarding the Contract. Failure to do so may result in delay of award, or deem your response unresponsive, thus disqualified from participation.

7.7.3 Collusion. The Offeror affirms that by responding to any solicitation made by The County, it has not communicated directly or indirectly the response made to any competitor or any other person engaged in such line of business. Any or all responses may be rejected if the County believes that collusion exists among the Offerors, and/or the County believes prices provided by the Offerors are inappropriately unbalanced. Respondent's Affidavit (**Appendix "J"**) must be included in the response.

7.7.4 Consultants Excluded from Competition. An outside Consultant or Contractor is prohibited from submitting a response for goods or services requested on a Jim Wells County project of which the Consultant or Contractor was a designer or other previous contributor, assisted in developing or drafting specifications, requirements, statements of work, or requests for goods and/or services must be excluded from competing for such procurements. If such, a Consultant or Contractor submits a response, that response shall be prohibited, and disqualified on the basis of conflict of interest, no matter when the conflict is discovered by Jim Wells County.

7.7.5 Disclosure of Interested Parties (Form CIQ). Offeror must fully disclose the existence of any relationships as defined above in its response to this procurement packet. The Conflict of Interest Questionnaire (CIQ), attached hereto as **Appendix "D"**, must be filed with the Jim Wells County Clerk, located inside the County Courthouse no later than the seventh business day after the date the person becomes aware of facts that require the statement to be filed. Jim Wells County Clerk contact information may be found at website. **Completion and submission of Form CIQ is the sole responsibility of the Offeror.** Additionally, the Offeror must immediately notify the County if the information provided in its response changes at any time.

7.7.6 Disclosure to Report Lobbying. When applicable, pursuant to 31 U.S.C.A. §1352 (2003), if at any time during the contract term funding to Contractor exceeds \$100,000.00, Contractor shall file with the County the Federal Standard Form LLL titled "Disclosure Form to Report Lobbying" as detailed in **Appendix "H"**.

7.8 Discrimination Against Firearm Entities or Trade Associations Verification - Tex. Gov't. Code Ch. 2274. In accordance with changes to the law from the 87th Legislature in 2021, a for-profit company, not including a sole proprietorship, with ten or more full-time employees, is required to verify in writing that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of the Contract, if it is a contract for goods or services that has a value of at least \$100,000 that is paid wholly or partly from public funds of the governmental body. Written verification may be provided by signing the Legal Notice Declaration page. Please provide a written notification if your company is unable to provide the written verification referenced above.

As per Tex. Gov't. Code §2274.001(3), except as otherwise indicated, to "discriminate against a firearm entity or firearm trade association" means "with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association".

As per Ch. 2274, this verification requirement does not apply to the County if it contracts with a sole-source provider, does not receive any bids from a company that is able to provide the required written verification above, or the contract is exempt from compliance under Tex. Gov't. Code sec. 2274.003 relating to the issuance, sale or delivery of notes.

7.9 Disqualification of Offeror. By submitting a response to this request, an Offeror offering to sell supplies, materials, services, or equipment to the County certifies that the Offeror has not violated the antitrust laws of this state codified in Texas Business and Commerce Code §15.01, et seq., as amended, or the federal antitrust laws. If multiple submissions are made by an Offeror and after they are opened, the Offeror requests to withdraw one of the submissions is requested to be withdrawn, the result will be that all of the responses submitted by that Offeror will be withdrawn; however, nothing herein prohibits an Offeror from submitting multiple responses for different products or services.

7.10 Ethical Business Practices. **Jim Wells** County operates its business ethically and in compliance with the law. We ask that any Offeror, their representative, and/or employee doing business with the County, who believes they have witnessed any suspected ethical violation or fraud immediately report the allegations to the Emergency Management Director, at 200 N Almond Street. Alice, Texas 78332

Jim Wells County Emergency Management Department will conduct a prompt and thorough investigation. At the conclusion of the investigation, The County Purchasing Department will refer any suspected criminal activity to the County District Attorney or other appropriate law enforcement agency. Any Offeror who reports suspected ethical violations or fraud can do so without fear of retaliation. Retaliating against any offeror for reporting suspected ethical violations or fraud is strictly prohibited.

7.11 Historically Underutilized Business/Disadvantaged Business Enterprises. The County is committed to ensuring that Historically Underutilized Businesses (HUB) and Disadvantaged Business Enterprises (DBE) such as small business enterprises (SBE), minority and women-owned business enterprises (MWBE) receive a fair and equal opportunity for participation in the County's procurement process. The County encourages the use of these enterprises both as prime and subcontractors as listed in **Appendix "E"**.

When federal funds are expended by the County, the County will take affirmative steps set forth in 2 CFR 200.321 to assure that small, minority, women-owned businesses and labor surplus area owned firms are used when possible. Pursuant to 2 CFR 321, the County requires that a prime contractor who uses sub- contractors take affirmative steps set forth in 2 CFR 200.321, including:

- a. Placing qualified small and minority business 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.
- f. Nothing in this section is to be construed to require the County to award a contract other than as required by law and County policies and procedures.

7.12 Independent Contractor. Offeror must comply with all applicable County policies and with any applicable federal, state, or local laws, regulations, orders, or ordinances applicable to the Services

provided by Offeror under a contract entered into by the parties. Notwithstanding the foregoing sentence, Offeror represents and maintains that Offeror is an Independent Contractor and is not an employee of the County, or any agency thereof, and represents and warrants that Offeror does not desire or request any fringe benefits provided to employees of County, and/or any agency of the County, including but not limited to benefits associated with the County's Civil Service Program. Any contract entered into between the parties and the performance of the same does not create an agency relationship or master-servant relationship. Offeror agrees to be responsible for any federal income tax, withholding or social security tax liability that might arise from payments received under a contract. Offeror will incur no financial obligation on behalf of the County without prior written approval of the County. Offeror will be responsible for all personal and professional expenses, including, but not limited to, membership fees and dues and expenses of attending conventions and meetings. The County will have no right to direct or control the details, manner or means by which Offeror or its affiliates provide the Services, except as otherwise set forth in this packet and/or any contract entered into by the parties. Offeror agrees to not take any action that is detrimental to, or not in the best interest of the County.

7.13 Nondiscrimination. By submitting a response to this procurement packet, the Offeror certifies that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended and related state and federal law. Offeror, during the performance of this contract, will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age, disability or any other protected class under law (except as allowed in the case of bona fide occupational qualifications).

7.14 Texas Public Information Act. The Offeror understands and agrees that the County is a governmental body for purposes of the Public Information Act, codified as Chapter 552 of the Texas Government Code and as such is required to release information in accordance with the Public Information Act (the "Act"). The County must rely on advice, decisions and opinions of the Attorney General of the State of Texas relative to the disclosure of data or information. Submissions will be kept confidential in accordance with the Act and applicable law, and **submissions are subject to inclusion into the public record after award.** To the extent permitted by law, Offeror may request in writing non-disclosure of any information that it considers to be confidential, proprietary, and/or trade secret in its submission. Such data shall accompany the submission, be readily separable from the response, and shall be CLEARLY MARKED "CONFIDENTIAL, PROPRIETARY and/or TRADE SECRET". The County will make reasonable efforts to provide Offeror notice in accordance with the Act in the event the County receives a request for information under the Act for information that the Offeror has marked as indicated above. E-mail addresses provided by Offeror to the County as part of its response to this procurement packet are not confidential. Additionally, Offeror provides its affirmative consent to the disclosure of its e-mail addresses, including from its employees, officers, and agents acting on its behalf, that are provided to the County. This consent shall survive termination of this agreement and apply to any e-mail address provided in any form for any reason whether related to this procurement packet or otherwise.

7.15 Title VI Notice. The County, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat.252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit Bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. Further, Title VI has been broadened by related statutes, regulations and executive orders as found in Appendices "A" through "E" as attached hereto as **Appendix "G"**. Offeror agrees to comply with Title VI as may be required.

- 8. CONTRACT OBLIGATION.** Before a contract becomes binding on Jim Wells County or the Offeror, it must be awarded by the Jim Wells County Commissioners Court, signed by the Jim Wells County Judge, funds for it must be certified by the Jim Wells County Auditor, and an official Jim Wells County Purchase Order must be issued for it by the Jim Wells County Purchasing Department. Elected officials, department heads, other County employees or representatives are NOT authorized to sign agreements for the County, unless prior authorization is approved by the Jim Wells County Commissioners Court, or respective governing body. Binding agreements shall remain in effect until all products and/or services covered by this procurement packet have been satisfactorily delivered and

accepted.

9. **CONTRACT RENEWALS.** Any extension or renewal of the agreement entered into by the parties are made at the County's sole discretion and under the same rates, terms and conditions as the initial agreement, or as amended.

10. **CONTRACT TRANSITION (Grace Period).** In the event services end by either contract expiration or termination, it shall be required that the successful respondent continue services if requested by the County Emergency Management Department, until new services can be completely operational. The successful respondent acknowledges its responsibility to cooperate fully with the replacement vendor and the County to ensure a smooth and timely transition to the replacement vendor. Such transitional period shall not extend more than sixty (60) days beyond the expiration/termination date of the contract, or any extension thereof. The successful respondent shall be reimbursed for services during the transitional period at the rate in effect when the transitional period clause is invoked by the County. During any transition period, all other terms and conditions of the contract shall remain in full force and effect as originally written and subsequently amended.

11. **COST OF GOODS AND SERVICES.** Discount payments will be considered when offered. If during the life of any contract, or response awarded, the successful respondent's net prices generally available to other customers for items awarded herein are reduced below the contracted price, it is understood and agreed that the benefits of such reduction shall be extended to the County. Failure by the Vendor to notify the County of a decrease in costs for items and/or supplies for which the Vendor was granted a price adjustment, may result in immediate termination of this contract and the County shall not be obligated to pay the Vendor the difference between the contract price and the price adjustment.

12. **EVALUATION.** Evaluation shall be used as a determinant as to which proposed items or services are the most efficient and/or most economical for the County, considering all factors which have a bearing on price and performance of the items in the user department's environment. All submissions, except for Requests for Bids, may be subject to evaluations and negotiations by the Jim Wells County Purchasing Department, or authorized The County representative as approved by Jim Wells County Commissioners Court, with recommendation to the appropriate governing body. Compliance with all requirements, delivery and needs of the user department are considerations in evaluating the responses received. **Pricing is NOT the only criteria for making a recommendation.** A preliminary evaluation by Jim Wells County will be held and appropriate responses will be subjected to the negotiating process and a request for a Best and Final Offer. Upon completion of the negotiations, Jim Wells County will make an award. All responses that have been submitted shall be available and open for public record after the contract is awarded, except for trade secrets or confidential information contained in the responses and identified as such.

Jim Wells County reserves the right to refuse and reject any or all submissions and to waive any or all formalities or technicalities, or to the qualifications considered the best and most advantageous to Jim Wells County. Additionally, Jim Wells County reserves the right to separate and accept or eliminate any item(s) listed under this procurement packet that it deems necessary to accommodate budgetary or operational requirements.

13. **FISCAL FUNDING.** Jim Wells County has the discretion to utilize grant funding or general funding, however, should grant funding be utilized "Grant Funding" rules will apply. The award of a contract hereunder will not be construed to create a debt of the County which is payable out of funds beyond the current fiscal year. Additionally, should funds not be appropriated by the applicable governing body to continue the lease or contract in their sole discretion, said lease or contract shall become null and void on the last day of the current appropriation of funds.

13.1 **General Funding.** A multi-year lease or lease/purchase arrangement, or any contract continuing as a result of an extension option, must include a fiscal funding out provision in the lease or contract. Funds for this procurement have been provided through the County budget for this fiscal year only. Jim Wells County, on an annual basis and at their discretion, has the right to reconsider a contract during the budget process for

ensuing years if financial resources of the County are insufficient to meet the liabilities of said contract. After expiration of the lease, leased equipment shall be removed by the Vendor from the user department without penalty of any kind or form to the County. All charges and physical activity related to delivery, installation, removal and re-delivery shall be the responsibility of the Vendor.

13.2 Grant Funding. Any contract entered into by the County that is to be paid from grant funds shall be limited to payment from the grant funding, and the Offeror understands that the County has not set aside any County funds for the payment of obligations under a grant contract. If grant funding should become unavailable at any time for the continuation of services paid for by the grant, and further funding cannot be obtained for the contract, then the contract shall be null and void.

Additionally, County contracts subject to assistance from the Federal Emergency Management Agency (FEMA), require inclusion of the contract terms found in **Appendix "H"**. It is the County's intention to comply with FEMA requirements; therefore, any conflict in terms should be resolved as such.

- 14. FORCE MAJEURE.** If by reason of Force Majeure either Party shall be rendered unable, wholly or in part, to carry out its responsibility under this contract by any occurrence by reason of Force Majeure, then the Party unable to carry out its responsibility shall give the other Party notice and full particulars of such Force Majeure in writing within a reasonable time after the occurrence of the event, and such notice shall suspend the Party's responsibility for the continuance of the Force Majeure claimed, but for no longer period. Force Majeure means acts of God, floods, hurricanes, tropical storms, tornadoes, earthquakes, or other natural disasters, acts of a public enemy, acts of terrorism, sovereign conduct, riots, civil commotion, strikes or lockouts, and other causes that are not occasioned by either Party's conduct which by the exercise of due diligence the Party is unable to overcome and which substantially interferes with operations.
- 15. GOVERNING LAW.** This procurement packet is governed by the competitive bidding requirements of the County Purchasing Act, Texas Local Government Code, §262.021 *et seq.*, as amended. Offerors shall comply with all applicable federal, state and local laws and regulations. **Offeror is further advised that these requirements shall be fully governed by the laws of the State of Texas and venue shall be performable in a federal or state court or competent jurisdiction in Jim Wells County, Texas. Jim Wells County** may request and rely on advice, decisions and opinions of the Attorney General of Texas and the Jim Wells County District Attorney concerning any portion of these requirements. The County does not agree to binding arbitration and does not waive its right to a jury trial.
- 16. HIPAA COMPLIANCE.** When applicable, the Offeror agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended; and TEX. HEALTH & SAFETY CODE ANN. §§81.046, as amended, 181.001 *et seq.*, as amended, 241.151 *et seq.*, as amended, and 611.001 *et seq.*, as amended collectively referred to as "HIPAA", to the extent that the Offeror uses, discloses or has access to protected health information as defined by HIPAA. The offer may be required to enter a Business Associate Agreement pursuant to HIPAA.
- 17. INDEMNIFICATION.** COMPANY SHALL INDEMNIFY AND HOLD COUNTY, ITS ELECTED OFFICIALS, EMPLOYEES AND AGENTS HARMLESS FROM ANY AND ALL CLAIMS, ACTIONS, LIABILITY, DAMAGES, LOSSES, AND EXPENSES (INCLUDING COSTS OF JUDGMENTS, SETTLEMENTS, COURT COSTS, AND ATTORNEYS' FEES, REGARDLESS OF THE OUTCOME OF SUCH CLAIM OR ACTION) CAUSED BY, RESULTING FROM, OR ALLEGING NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OR ANY FAILURE TO PERFORM ANY OBLIGATION UNDERTAKEN OR ANY COVENANT IN THIS CONTRACT, WHETHER SUCH ACT, OMISSION, OR FAILURE WAS THE COMPANY'S OR THAT OF ANY PERSON PROVIDING SERVICES HEREUNDER THROUGH OR FOR THE COMPANY. UPON WRITTEN NOTICE FROM THE COUNTY, THE COMPANY WILL RESIST AND DEFEND AT ITS OWN EXPENSE, AND BY COUNSEL REASONABLY SATISFACTORY TO THE COUNTY, ANY SUCH CLAIM OR ACTION. THE COMPANY WILL CARRY PROPER INSURANCE WITH THE COUNTY AS ADDITIONAL NAMED INSURED. THIS INDEMNIFICATION CLAUSE SHALL SURVIVE THIS AGREEMENT AND BE ENFORCEABLE AS A SEPARATE

AGREEMENT IN THE EVENT ITS SURVIVAL AND ENFORCEMENT BECOME NECESSARY.

- 18. INSPECTIONS & TESTING.** Jim Wells County reserves the right to inspect any item(s) or service location for compliance with specifications and requirements and needs of the user department. If an Offeror cannot furnish a sample of a proposed item, where applicable, for review, or fails to satisfactorily show an ability to perform, the County can reject the response as inadequate. The successful respondent shall warrant that all items/services shall conform to the specifications and/or all warranties provided under the Uniform Commercial Code and be free from all defects in material, workmanship and the like. Items supplied under a contract pursuant to this procurement packet shall be subject to the County's approval. Items found to be defective or not meeting specifications shall be replaced by the successful Offeror within two (2) business days at no expense to the County. Items that are not picked up within one (1) week after notification shall be deemed a donation to the County and may be used or disposed of at the County's discretion, without waiver of any other rights of the County as to the items' nonconformity.
- 19. INSURANCE.** Contractor shall procure and maintain, with respect to the subject matter of this procurement packet, appropriate insurance coverage including, as a minimum, public liability and property damage with adequate limits to cover contractor's liability as may arise directly or indirectly from work performed under terms of this procurement packet. Certification of such coverage must be provided to the County as part of this response. (See **Appendix "C": Insurance Requirements**). Prior to award, the County must be listed as a Certificate Holder to the policies.
- 20. LEGAL DOCUMENTS.** The offeror should submit any agreement for products and/or services which may be required by their organization to enter into a contract with the County. The awarded vendor will be required to execute an agreement with the County which finalizes the terms and conditions set forth in their response, best and final offer, and any negotiations between the Offeror and the County.
- 21. MARKET VOLATILITY AND UNIT PRICE ADJUSTMENTS.** When applicable, the County recognizes that during periods of national crisis and unstable economic conditions, unforeseen price increase might affect costs for goods and services contracted on an annual basis. As such, upon written request of the Vendor to the County Purchasing Agent, the County may review evidence of prevailing industry-wide market conditions that may warrant an adjustment in bid prices contained in the contract. When applicable, the following procedure and conditions may be employed to mediate price volatility:
- A Vendor shall:
 - make its Market Volatility and Unit Price Adjustment request in writing to the County Purchasing Agent.
 - tie any price change clause to an industry-wide or otherwise nationally recognized index, or some other form of verifiable document. Such written request must be accompanied by a certified copy of the supplier's advisory or notification to the Vendor of the price changes.
 - put the Purchasing Agent on the mailing lists for such publications so that the Purchasing Agent can monitor said changes. Such membership shall be at no cost to the County.
 - notify the County at the time when the Vendor's costs for items, supplies, and or services reduce due to stabilization in the market at which time prices for items on this contract shall be reduced accordingly. Failure by the Vendor to notify the County of a decrease in costs for items and/or supplies for which the Vendor was granted a price adjustment, may result in immediate termination of this contract and the County shall not be obligated to pay the Vendor the difference between the contract price and the price adjustment.
 - Price adjustment reviews may only be requested by the Vendor on a quarterly basis; however, the County may at its own discretion, conduct temporary price adjustment reviews at any time.
 - The County Purchasing Agent retains the right to determine whether or not such proposed price changes are in the best interest of the County.

- The County may only grant a price increase if the evidence presented is deemed reliable.
- No price escalation will be authorized in excess of the amount of the increase referred to in the supplier's notice.
- The total increase in contract price shall not exceed twenty-five percent (25%) of the original contract price during the contract term.
- Should the County allow a price increase, the approved price change shall be honored for all orders received by the vendor or contractor after the effective date of such price change. Approved price changes are not applicable to orders already issued and in process at time of price change.
- Price increases are only valid for the quarter in which they are requested and approved.
- Prices shall return to the original contract price at the beginning of the following quarter unless a Vendor notifies the County in writing within ten (10) days of expiration of the quarter in which the price increase is in effect, that it desires to have the price increase continue or that the Vendor is requesting a different price increase for the following quarter. Such request must be supplemented with sufficient justification to demonstrate that the price increase remains necessary. The County Purchasing Department shall have sole discretion whether to grant the price increase extension.
- The County Purchasing Agent and/or the County Auditor reserve the right to audit and/or examine any pertinent books, documents, papers, records or invoices relating directly to the contract transaction in question after reasonable notice and during normal business hours.
- The County too, shall have discretion to unilaterally reduce, eliminate or extend a price adjustment to the Vendor at any time upon written notice from the County to the Vendor demonstrating justification for such reduction, elimination or extension of the price adjustment.

- 22. MATERIAL SAFETY DATA SHEETS.** Under the "Hazardous Communication Act", commonly known as the "Texas Right to Know Act", an Offeror must provide to the County with each delivery, safety data sheets which are applicable to hazardous substances defined in the Act. Failure of the Offeror to furnish the required documentation will be cause to reject any response applying thereto.
- 23. MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE RESPONDENTS.** With their submitted response, the Offeror must affirmatively demonstrate their responsibility as listed on **Appendix "A"**. A prospective respondent, by submitting a response, represents to County that it meets the requirements listed.
- 24. NAME BRANDS.** Specifications may reference name brands and model numbers. It is not the intent of the County to restrict or preclude competition in any way, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Offerors may offer items of equal stature and the burden of proof of such stature rests with Offerors. The County shall act as sole judge in determining equality and acceptability of products offered.
- 25. NEW MILLENNIUM COMPLIANCE.** All products and/or services furnished as part of this contract must be compliant for the present year and forward. This applies to all computers including hardware and software as well as all other commodities with date sensitive embedded chips.
- 26. PAYMENT UNDER CONTRACT.** If the contract is for \$50,000 or less, no money will be paid to the contractor until completion and acceptance of the work or the fulfillment of the purchase obligation to the County, and, if applicable, the receipt by County of satisfactory evidence that all subcontractors and material men have been paid.
- 27. PERFORMANCE ENFORCEMENT. Jim Wells** County reserves the right to enforce performance of any contract, agreement, supplemental agreement, as amended, or participation in the professional services pool, in any manner prescribed by law or deemed to be in the best interest of the County. Jim Wells County reserves the right to terminate the contract awarded hereunder in any manner prescribed by law or deemed to be in the best interest of the County immediately in the event of breach or default by a successful respondent, including, but not limited to failure to maintain qualifications, meet schedules, pay any required fees or taxes, or otherwise failing to perform in accordance with the requirements of this procurement packet.
- 28. POST-AWARD DELIVERY INSTRUCTIONS.** Title and Risk of Loss of goods shall not pass to the County until the County actually receives and takes possession of the goods at the point or points of delivery.

Receiving times may vary with the user department. Generally, deliveries may be made between 8:30 a.m. and 4:00 p.m., Monday through Friday, except on County approved holidays. The Offeror is advised to consult the user department for instructions, and be given at least seventy-two (72) hours prior notice of delivery, if applicable, before delivery will be accepted. The place of delivery shall be identified in the Requirements/Specifications attached hereto as **Appendix "A"** of this procurement packet and/or on the Purchase Order as a "Deliver To:" address.

- 29. POST-AWARD INVOICES AND PAYMENTS.** Offerors shall submit an original, itemized invoice on company letterhead with their company name and address, detailing the deliverable(s) of goods and/or services provided, the respective price, product code, item number, quantity, etc. per line item, the name of receiving/requesting department or elected office, the delivery address, the awarded vendor's contract number, and issued purchase order number. Any invoice, which cannot be verified by the contract price and/or is otherwise incorrect, will be returned to the Offeror for correction. Under term contracts, when multiple deliveries and/or services are required, the Offeror may invoice following each delivery and the County will pay on invoice. Contracts providing for a monthly charge will be billed and paid on a monthly basis only. All payments are subject to compliance with the Texas Prompt Payment Act.

Deliverables or services will be considered complete only upon written acceptance by the County. No charges may be billed to the County unless such costs are explicitly included in the agreement or contract. For billing and payment questions please contact the County Auditor's Office, .200 N Almond St. Alice Texas 78332. 361-668-5701

- 30. PROCEDURES FOR VENDOR PROTEST.** Any potential Offeror has the right to protest a solicitation packet or contract award. Details for these procedures can be found on our County website: www.co.jim-wells.tx.us. The Vendor also understands that an awarded contract may immediately become void if the County determines that a lack of compliance with applicable policies and/or statutes has occurred at any time, whether in the procurement process, or after award.

- 31. PROCUREMENT PACKET FORM COMPLETION.** When submitting procurement packet response, Respondents must follow the procedures and requirements provided within the procurement packet, including, but not limited to those found in the Invitation Letter, Submission Details and Procurement Overview. An authorized representative of the Offeror should complete all necessary response documentation. **Failure to complete required forms or provide required information and/or to follow procedures and/or requirements may cause to reject the entire response.**

- 32. PROCUREMENT PACKET SUBMISSION.** Offeror must comply with the following procurement packet submission procedures.

32.1 Offeror must submit all completed responses in accordance with the provisions, procedures and requirements provided within the procurement packet, including, but not limited to those found in the Invitation Letter, Submission Details and Procurement Overview by the date and time indicated therein. **Failure to follow packet submission requirements may cause to reject the entire response. Late submissions will not be accepted for any reason.**

32.2 Supplemental Materials. Offerors are responsible for including all pertinent product data in the submitted response to this procurement packet. Literature, brochures, data sheets, specification information, completed forms requested as part of the procurement packet and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements, which the Offeror wishes to include as a condition of the submission, must also be in the submitted response. Failure to include all necessary and proper supplemental materials may cause to reject the entire response.

- 33. PROOF OF BUSINESS.** The offer must be in business under its current name and in its current form (e.g., proprietorship, Chapter S Corporation). Information to be included as part of the Vendor Application, **Appendix "E"**.

- 34. PURCHASE ORDER AND DELIVERY.** The successful Offeror shall not deliver products or provide services without a Jim Wells County Purchase Order, signed by the County Purchasing Director, or an authorized agent of the County Purchasing Department. When applicable, the fastest, most reasonable delivery time shall be indicated by the Offeror in the proper place on **Appendix “B”**. Any special information concerning delivery should also be included, on a separate sheet, if necessary. All items shall be shipped **F.O.B. INSIDE DELIVERY** unless otherwise stated in the specifications. This shall be understood to include bringing merchandise to the appropriate room or place designated by the user department. Every tender or delivery of goods must fully comply with all provisions of these requirements and the specifications including time, delivery and quality. Nonconformance shall constitute a breach which must be rectified prior to expiration of the time for performance. Failure to rectify within the performance period will be considered cause to reject future deliveries and cancellation of the contract by the County, without prejudice to other remedies provided by law. **Where delivery times are critical, the County reserves the right to award accordingly.**

Goods and/or Services must not be provided and **invoices will not be paid** without a purchase order signed by the County Purchasing Director.

- 35. QUALIFICATIONS OF OFFEROR.** The Offeror’s failure to qualify or maintain qualifications throughout the term of this agreement shall release the County from all obligations to the Offeror with regard to the services. In such an event, the County may elect to engage another qualified firm or reject all submissions and re- advertise.
- 36. RECYCLED MATERIALS.** The County encourages the use of products made of recycled materials and shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. The County will be the sole judge in determining product preference application.
- 37. REFERENCES.** If applicable, Offeror must provide a total of four (4) references in each response to a solicitation requested by the County. Offeror may provide this in form of Reference Letters from other individual(s)/entities or local government entities for whom the Offeror has provided similar services in the past as demonstration of their prior experience, or if Offeror prefers, may utilize the Reference Form **Appendix “M”**. Letters or reference sheet must include the following information:
- Organization/Client Name/Government Entity (Include population of any local governmental entity – some procurements may require a specific population).
 - Name of Contact Person
 - Contact Telephone, Address and Email
 - Name of Project
 - Scope of Work
 - Contract Period
 - Budget Project Amount; Actual Project Amount
 - Expected project timeframe; actual project timeframe
- 38. SCANNED OR RE-TYPED RESPONSE.** If in its response, Offeror either electronically scans, re-types, or in some way reproduces the County's published procurement packet, then in the event of any conflict between the terms and provisions of the County's published procurement packet, or any portion thereof, and the terms and provisions of the response made by the Offeror, the County's procurement packet **as published** shall control. Furthermore, if an alteration of any kind to the County's published procurement packet is only discovered after the contract is executed and is or is not being performed; the contract is subject to immediate cancellation. Regardless of how an Offeror requested or received a copy of this procurement packet to prepare a response, **the response must be submitted according to the instructions contained within this procurement packet.**

39. **SEVERABILITY.** If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.
40. **SILENCE OF SPECIFICATIONS.** The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. The manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item proposed.
41. **SUBCONTRACTING.** Vendor may not subcontract services to another firm without prior written request detailing goods and/or services that are to be subcontracted, and approval of said written request by the County Commissioners Court, or applicable governing body.
42. **TAXES.** The County is exempt from all federal excise, state and local taxes unless, otherwise stated in this document. The County claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Offerors are not to include tax in any cost figures (including in any supplemental project specific contracts applicable to pools). If it is determined that tax was included in the cost figure it will not be included in the tabulation of any supplemental project specific awards. Texas Limited Sales Tax Exemption Certificates will be furnished upon written request to the County Purchasing Department, and signed by the Agent, or authorized Purchasing Department representative.
43. **TERM OF CONTRACTS.** If the contract is intended to cover a specific time period, the term will be specified in the **Procurement Overview**. The awarded contract will be in effect until (a) the term expires, or (b) participation is terminated by County with thirty (30) days written notice prior to cancellation with or without cause. Any supplemental project-specific contract award to a successful respondent will be in effect until (a) the contract expires, (b) delivery and acceptance of products, and/or performance of services ordered, or (c) terminated by the County with thirty (30) days written notice prior to cancellation with or without cause, unless otherwise stated in the executed agreement.
44. **TERMINATION.** The County reserves the right to terminate the contract for default if Offeror breaches any of the terms therein, including warranties of Offeror or if the Offeror becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which The County may have in law or equity. Default may be construed as, but not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to The County's satisfaction and/or to meet all other obligations and requirements. The County may terminate the contract without cause upon thirty (30) days written notice, unless otherwise stated in the executed agreement.
45. **TERMINATION FOR HEALTH AND SAFETY VIOLATIONS.** The County has the option to terminate this contract immediately without prior notice if Offeror fails to perform any of its obligations in this contract if the failure (a) created a potential threat to health or safety or (b) violated a law, ordinance, or regulation designed to protect health or safety.
46. **USAGE REPORTS.** The County reserves the right to request and receive at no additional cost during the yearly contract period, a usage report detailing the services furnished to date under an agreement resulting from this procurement packet. The reports must be furnished no later than five (5) business days after written request and itemize all purchases to date by the County department, description of each service purchased, quantity of each service purchased, per unit cost and total amount of all services purchased.
47. **WAIVER OF SUBROGATION.** Offeror and Offeror's insurance carrier waive any and all rights whatsoever with regard to subrogation against the County as an indirect party to any suit arising out of personal or

property damages resulting from Offeror's performance under any award resulting from award from this procurement packet.

- 48. WARRANTIES.** Offerors shall furnish all data pertinent to warranties or guarantees which may apply to items in the response to this procurement packet. The offer may not limit or exclude any implied warranties. Further, Offeror warrants that product sold to the County shall conform to the standards established by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event product does not conform to OSHA Standards, where applicable, the County may return the product for correction or replacement at the Offeror's expense. If Offeror fails to make the appropriate correction within a reasonable time, The County may correct at the Offeror's expense.
- 49. CIVIL WORKS, CONSTRUCTION & PUBLIC WORKS PROJECTS.** Provisions of Tex. Govt. Code Ch. 2269 as amended by HB 2581 of the 87th Texas Legislature applicable to Civil Works and Construction Projects are hereby incorporated. Provisions of Texas Local Govt. Code Ch. 271, subchapter B applicable to competitive bidding on certain public works projects are hereby incorporated.

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LEGAL NOTICE DECLARATION

TO: Cindy Garcia, Purchasing Director
ATTN: Cindy Garcia Assistant Auditor
Jim Wells County Administration Building/Purchasing
200 N Almond St. Alice Texas 78332

RE: RFP No.: 2024-016 “**Debris Monitoring and Management Services**”

By providing a response to this solicitation, we acknowledge receipt of all of the pages of in this procurement packet. We understand that Jim Wells County reserves the right to reject any or all submissions, and further reserves the right to design the evaluation criteria to be used in selecting the lowest and best qualification.

We acknowledge that we have examined this procurement packet in its entirety and are familiar with the conditions to be met. In accordance with the Specifications, and subject to all laws and regulations of the United States, State of Texas, and local laws, we propose and commit to furnish all labor, equipment, material, software, and services as set forth in the documents herein before mentioned. Any purchase order or contract resulting from this process shall be considered null and void if the successful respondent fails to comply with any federal, state, or local laws.

We acknowledge that we are providing the required certifications, attestations, verifications and/or acknowledgments as referenced within this procurement packet. We further acknowledge that any and all specifications, provisions, and attachments of this response are incorporated into and made a part of any resulting agreement.

We agree that this response shall be good, and may not be withdrawn for a period of ninety (90) calendar days after the scheduled bid opening time and date for receiving the requested solicitation, as contained in the Specifications.

Lastly, we understand that any questions regarding compliance should be directed to our firm’s legal counsel. We acknowledge that the individual authorized to bind the company is signing this Acknowledgement Form. By signing this Acknowledgement Form we understand we are providing written verification and certification of the aforementioned, and the County cannot execute a contract for goods or services without this declaration.

Respectfully submitted,

Firm: _____

Address: _____

Printed Name: _____

Title: _____

Signature: _____ Date: _____

Appendix A

REQUIREMENTS/SCOPE OF SERVICES

REQUIREMENTS/SCOPE OF SERVICE

PURPOSE

Jim Wells County is seeking to establish a "pre-event" contract with a qualified firm to provide disaster debris monitoring and management services to ensure that debris removal operations are efficient, effective, and eligible for FEMA Public Assistance grant funding. The contract will be dependent upon the number of disasters and does not guarantee an annual minimum (as-needed basis). The awarded disaster debris monitoring management contractor shall advise and support the County during a disaster recovery effort and shall be responsible for coordinating with, and overall monitoring of, the County's debris removal contractor(s) and recommending efficiencies to improve and expedite DRC recovery work. **The County reserves the right to enter into contracts with more than one Prime Contractor in the event that no one firm can provide all of the necessary services.**

REQUIREMENTS/SCOPE OF SERVICE

Monitoring debris removal operations requires comprehensive observation and documentation of the debris removal work performed from point of collection to final disposal. In the event of a disaster or emergency, the debris monitoring contractor(s) (DMC) shall service the County first and be on-call to provide disaster debris monitoring management services necessary to ensure the safety and well-being of all County residents. Response will be activated only in the event of an emergency and in accordance with an awarded contract.

The response of the DMC to the disaster recovery process must be immediate, rapid, and efficient with acceptable cost controls, accountability procedures, written reports, and submittals to ensure compliance with Texas Commission on Environmental Quality (TCEQ) regulations, Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), FEMA reporting requirements, and any other federal, state or local regulation to ensure that the county shall have the means to be reimbursed for all eligible disaster recovery costs from the appropriate federal, state, and private agencies. The DMC shall monitor the debris removal contractor's (DRC) progress and suggest and assist with implementing recommendations to improve efficiency.

The contractor and personnel shall stay current with FEMA and FHWA policies and procedures and promptly notify the County's debris manager or designee as changes occur.

DESCRIPTION OF SERVICES:

The DMC shall provide disaster debris monitoring and management services to support the County in the management of disaster debris removal and recovery resulting from, but not limited to, catastrophic events such as hurricanes, floods, tornadoes and/or manmade disasters. When a major disaster occurs or is imminent, the County will contact the DMC to advise them of the intent to activate the contract. Monitoring Services will generally be limited to monitoring debris in, upon, or brought to public streets and roads, right's-of-way, County properties, municipal properties and facilities, and other public sites. In preparation for and/or in response to an imminent threat or natural disaster (environmental or manmade), monitoring crews may be asked to stage outside the strike area (site pre-designated by the County at activation of services). In this case, the DMC should be prepared to respond immediately after the imminent threat has been identified. The contractor shall be capable of assembling, directing, and managing a workforce that can complete the debris monitoring operations in a maximum of 120 calendar days.

The DMC shall monitor DRC activities to ensure satisfactory performance. Monitoring includes verification that all debris picked up is from county property or right-of-way and is a direct result of the disaster; measurement and inspection of trucks to ensure they are fully loaded; on-site inspection of pick-up areas, debris traffic routes,

temporary storage sites, and disposal areas; verification that the contractor is working efficiently and in its assigned contract areas; verification that all debris management sites have access control and security.

These services will include the following activities, but are not limited to;

1. Project Manager Responsibilities

- Ensure a sufficient number of trained debris monitors are available to monitor the "first push", cut and toss debris clearance operations;
- Ensure a sufficient number of trained debris monitors are available to monitor all "first pass" and subsequent passes of debris removal and hauling activities;
- Provide tower/disposal site monitors to observe and record all debris loads entering the debris management sites;
- Provide tower/disposal site monitors to observe and record all debris loads exiting the debris management sites for final disposal;
- Provide data entry and document processing personnel if applicable;
- Conduct safety meetings with field staff as necessary;
- Respond to, and document issues regarding complaints, damages, accidents, and incidents involving the DMC or DRC personnel and ensure that they are fully documented and reported to the County's Debris Manager or designee;
- Coordinate daily briefings with the County and the DRC, daily status reports of work progress and staffing;
- Ensure the timely acquisition and retention of documentation of environmental authorizations and or permits for debris management sites and final disposal;
- Review and reconcile debris removal contractor invoices submitted to the County; and,
- Ensure preparation and submission of interim operations and status reports and a final report, as directed by the County.

2. Field Monitoring Staff Responsibilities

DMC shall provide trained staff in sufficient numbers to adequately monitor all operations supervised by the Field Managers. Duties of monitors shall include, but are not limited to, the following:

- Accurately measure and certify truck capacities (recertify on a regular basis);
- Quality assurance/control of truck certification measurements throughout the life of the project;
- Provide documentation for all eligible debris removal activities from Federal Aid eligible roadways – first push (cut & toss) and first pass and for second and subsequent passes on all roadways, as directed by the County;
- Properly and accurately complete and physically control load tickets (in tower and field);
- Ensure that trucks are accurately credited for their load;
- Ensure that trucks are not artificially loaded (ex: debris is wetted, debris is fluffed or not compacted);
- Validate hazardous trees, including hangers, leaners, and stumps;
- Ensure that hazardous wastes are not mixed in loads;
- Ensure that all debris is removed from trucks at Debris Management Sites (DMS);
- Report if improper equipment is mobilized and used;
- Report if contractor personnel safety standards are not followed;
- Report if general public safety standards are not followed;
- Report if completion schedules are not on target;
- Ensure that only debris specified in the contract is collected (and is identified as eligible or ineligible);

- Assure that force account labor and/or DRC work is within the assigned scope of work;
 - Monitor site development and restoration of DMS;
 - Report to supervisor if debris removal work does not comply with all local ordinances as well as State and Federal regulations (i.e., proper disposal of hazardous wastes);
 - Record the types of equipment used (Time & Materials contract);
 - Record hours equipment was used, including downtime of each piece of equipment by day (Time & Materials contract);
 - Disposal Site / Tower Monitors shall observe and record truck quantity estimates of inbound and outbound debris;
 - Exit Site Monitors shall observe that all outbound trucks are fully discharged of their loads prior to exit from DMS;
 - Ensure that accurate, legible, and complete documentation is provided through load tickets, truck certifications and/or other logs and reports, as required;
 - Maintain photographic documentation of debris removal trucks and activities, specifically hazardous stump removal process, hangers, leaners or tree removal and/or other special or unusual occurrences in the field;
 - Document and report activities to the County which may require remediation such as fuel spills, hazardous materials collection locations, and other similar environmental concerns;
 - Document and report to the County damages which occur on public or private property as a result of DRC operations;
 - Document and report to the County any violations of TCEQ debris site conditions; and
 - If TCEQ debris site conditions are violated, the DMC shall oversee tasks to satisfy the TCEQ.
3. Data collection/documentation.
 4. Management of designated debris staging and processing sites.
 5. Review and validate DRC invoices prior to submission to County for processing and payment.
 6. Provide other project management services including emergency communications.
 7. FEMA compliance monitoring/audit oversight, and reimbursement support, including but not limited to:
 - Field monitoring;
 - Truck and trailer certification;
 - Load ticket process development, validation, and all accounting services;
 - Filing/reporting of documents for FEMA reimbursement process; and
 - Infrastructure damage and repair assessments.

DATA MANAGEMENT AND DOCUMENTATION

The DMC shall ensure all necessary documentation is provided to the County as follows:

1. Ensure all eligible debris removal operation activities are documented and tracked specifically to the FEMA Public Assistance program or other applicable federal, state or local agencies.
2. Furnishing and operating an automated/electronic (paperless) debris management system (ADMS).
3. Documentation of the number of crews and types of equipment utilized, actual hours of operation and locations of work performed during the time and materials phase of operations.
4. Completion of truck certifications, equipment certifications, and establishment of a Quality Assurance and Quality Control (QA/QC) program throughout the life of the project.
5. Load tickets documenting the eligible debris removal and/or disposal activities by the applicable program e.g., FEMA PA, other federal, state or local programs, etc.
6. Documentation of eligible hazardous stump removal, hangers, leaners or tree removal which includes photographic records, GPS coordinates, street or milepost identifier and/or other information as available and applicable.

7. Environmental authorizations and/or permits as applicable.

● Daily electronic spreadsheet summaries of cubic yards/tons collected, specified by governing federal public assistance program. The daily summary shall be communicated to the County Debris Manager or designee.

8. Production in electronic format (scanned) and paper copies of all documentation for submittal to federal and/or state agencies.

9. Provide a certified weighmaster if requested.

10. Assist the County in creating field maps using GIS or equivalent, as well as track and present contractor progress in GIS, or equivalent, with the use of an ADMS system.

11. Organize, maintain and provide to the County electronic copies of cost justification documentation in a satisfactory manner. All documentation and information related to the project shall be surrendered to the County upon completion of the project.

REPORTING

The DMC shall provide daily status reports, unless otherwise specified, of the debris removal operations, preparation of interim reports (as directed by the County), as well as a final report of the debris removal operations.

The daily status report shall include at a minimum: the daily cubic yards/tons collected by material, cumulative totals in cubic yards/tons by debris type, number of debris removal crews and equipment operating, number of debris monitors in the field, cubic yards/tons by debris type hauled to final disposition and location of final disposal, and total cubic yards/tons hauled to recycling or salvage facilities.

An interim status report may be required at the discretion of the County. A final report covering the history of the operations; the locations of debris management sites; remediation and debris management site closure activities, including any environmental reports or authorizations generated; and the locations of final disposal sites and permits, recycling facilities and salvage facilities used during operations. The report may include the identification of weaknesses in the operations and recommendations for future debris activities.

MEETINGS/COMMUNICATIONS

- Conduct daily meetings with the County and the DRC;
- Conduct field meetings as needed; and
- Provide phone consultations and reference information to County staff upon request.

PERMITS

DMC shall:

- Assist the County with permit applications and coordination with environmental agencies, clarifying and resolving any compliance issues;
- Assist the County with any pre/post-sampling of soil and groundwater; and,
- Monitor compliance by the DRCs to any permit requirements.

COMMUNITY RELATIONS SUPPORT SERVICES

In addition, the DMC will be required to provide comprehensive community relations support during all phases of the disaster debris recovery including but not limited to:

- Providing the County with comprehensive progress reports;
- Damage complaint investigations and resulting resolution reports;

- Media relations;
- Preparing any necessary audio/visual products, including fact sheets;
- Establishing telephone call centers; and
- Participate in public meetings.

ANNUAL SERVICES

DMC shall provide the following annual services at no additional cost to the County:

- Attend one (1) meeting annually for pre-event planning;
- Review and visit with County staff, the DMS location(s) to be used (as applicable).

MONITORING LOCATIONS

Anticipated locations to be monitored:

- Public rights-of-way
- Debris Management Site(s) and/or final disposal locations

Emergency Management Planning, Training, and Staff/Equipment Augmentation

As directed by the County Debris Manager the Consultant shall provide:

- Development of a debris management plan- including identification of an adequate number of debris site locations. Staff training as necessary.
- Procurement assistance for debris removal contractors and associated services.
- Hazard mitigation plan and programs.
- Other emergency management plans and documents as directed by the County.
- Staff and equipment to support the County in various functional areas as required following an emergency event.
- Other consulting services as requested by the County

Grant Management Consulting Services

As directed by the County, the consultant shall provide:

- Identification of eligible emergency and permanent work (Category A-G);
- Damage Assessment
- Assistance in attaining Immediate Needs Funding;
- Prioritization of recovery workload;
- Loss measurement and categorization;
- Insurance evaluation, documentation adjusting and settlement services;
- Project Worksheet formulation, generation and review.
- FEMA, FHWA, HMGP, CDBG, NRCS and additional reimbursement support;
- Staff augmentation with experienced Public Assistance Coordinators and Project Officers;
- Interim inspections, final inspections, supplemental Project Worksheet generation and final review;
- Appeal services and negotiations;
- Reconstruction and long-term infrastructure planning; and
- Final review of all emergency and permanent work performed

INVOICING/PAYMENT

- DMC shall submit invoices on a monthly basis to the County.
- DMC shall ensure all contract quantities for both DRC and DMC are documented and recorded according to current federal requirements, including time at disposal sites and estimating loads on incoming and outgoing debris loads.

- Maintain a database of all contract quantities and perform DRC invoice verification for the County and resolve any discrepancies that may exist.
- All invoices shall be submitted in an acceptable format to the County in an electronic and hard copy format with daily reports as supporting documentation. The invoices shall be submitted in accordance with federal, state, and local rules, regulations, and laws.
- Payment Schedule: Invoices will be processed for payment only after approval by the County's Debris Manager or designee. Approval for payment shall not be granted until appropriate deliverables are received and determined to be correct, accurate and consistent by the County's Debris Manager or designee.
- All labor rates are to be fully burdened to include benefits, handling charges, equipment, mileage, rentals, per diem, housing, reproduction, clerical/administrative tasks, record-keeping tasks, reporting tasks, quality control, overhead, profits and any other expenses necessary to the execution of a contract to be developed as a result of this RFP.
- No administrative, reporting and/or clerical expenses will be paid. Administrative, reporting and/or clerical expenses, including the use of a required ADMS system are to be burdened to labor rates for the Project Manager, Supervising Monitors, Loading Site Monitors, Debris Management Site Monitors, and Roving Debris Monitors. Billable time shall be limited to hours when debris-hauling trucks are in operation. The County's Debris Manager or designee shall determine the hours of truck operation and shall specify a starting time for truck operation. The ending time of truck operation shall be determined by the truck load tickets.
- All load tickets, forms, reports, and other deliverables shall be accurately and correctly submitted in the initial instance of submittal. The DMC shall not bill and shall not be paid for time spent by any personnel to correct a load ticket, form, report, or other deliverables.
 - No overtime rates will be paid.
 - The final invoice shall be submitted to the County no later than thirty (30) calendar days following final acceptance of the individual task requested by the County.
 - Payment of expenses considered incidental to the execution of the contract is at the sole discretion of the County. Examples of such expenses include but are not limited to the following: radio and/or television advertising, mass mailings, hanging of doorknockers, and roadside signs. Typically, those expenses related to public information on a County-wide basis would be considered incidental. In determining if an expense is considered incidental, the County will review all documentation and determine how easily the expenses could have been foreseen by the County or DMC. The more difficult to predict the expense(s), the more likely the expense will be considered incidental to the contract and paid separately from the contract. The County reserves the right to be the sole judge in determining if an expense is considered incidental to the execution of this contract.

DEFINITIONS

- ADMS: Automated Debris Management System used to electronically track debris collection and disposal activities.
- Data Manager: Manager of data collected from monitoring operations and employed by the DMC.
- Debris Removal Contractor (DRC): Contractor(s) under contract with the County to remove storm deposited debris according to state and federal guidelines.
- Debris Management Site (DMS): A Texas Commission on Environmental Quality authorized site where debris is stored, reduced, burned, grinded, or sorted. Debris resides at the site for a relatively short period prior to the final disposal.
- Disposal Site/Tower Monitor: Employee of DMC assigned to the debris management site to monitor DRC performance. Duties include, but are not limited to, ensuring the debris is eligible, to quantify and accurately document debris loads consistent with FEMA and FHWA guidelines.
- Debris Monitoring Contractor (DMC): Debris monitoring contractor, including employees, partners, principals, agents and assignees who are a party to the agreement for the purposes of providing services.
- TCEQ: Texas Commission on Environmental Quality.
- TxDOT: Texas Department of Transportation.
- FEMA (Federal Emergency Management Agency): A funding source to the County through the State of Texas, for activities during an event declared a disaster by the President of the United States.

- Field Supervisor: Employee of the DMC who oversees field monitor crews.
- Field Monitor: Employee of the DMC who oversees the DRC's debris removal activities and issues load tickets.
- FHWA (Federal Highway Administration): The FHWA, through the Emergency Relief Program administered by the Texas Department of Transportation, is a federal funding source for work on Federal-Aid ("on-system") roadways and facilities.
- Project Manager (PM): Employee of the DMC who functions as the primary point of contact for the County and is responsible for the overall project management and coordination of the debris monitoring services.

SECTION II: UNDERSTANDING OF THE PROJECT (limited to 5 pages)

This section should demonstrate the proposer's understanding of the project needs, the services required, and any local issues or concerns to demonstrate the company's familiarity with Debris Monitoring and Management Services. Provide demonstrated knowledge, experience, and expertise in all requirements and regulations established by the Federal Emergency Management Agency (FEMA) Reimbursement Rules & Procedures, Federal Highway Administration (FHWA), Texas Department of Transportation (TxDOT), Natural Resources Conservation Service (NRCS), U.S/ Army Corp of Engineers (USACE), Federal Aid Construction requirements, and any other governmental agency with jurisdiction over the scope of services described in this RFP.

SECTION III: PROPOSER QUALIFICATIONS

- a. **Proposer History** – This section should include the proposer's history, the company's background and identify the principal officers. It should include an organizational chart, and a description of project team organization and names of team members. Additionally, it should state the company's commitment and ability to commence services immediately after successfully negotiating a contract for services. Past Performance. Provide a list of firm's disaster debris monitoring projects completed within the past ten (10) years (include all projects within the State of Texas) that are the same or larger to the magnitude for this RFP, including the public agency, their contact information, FEMA contacts, name of the project, and the dollar value. Documentation of past safety performance. Include the company's safety log summaries submitted to OSHA and those of proposed subcontractors for 2019, 2020, and 2021 calendar years. Describe the types of problems your firm has encountered on similar projects and explain what your firm did to resolve the problems and what steps were taken to avoid such problems on future projects. List of all closed, active, and pending FEMA disputes, audits, or lawsuits, and the judgment or outcome of each. List and provide an explanation of all unrecovered FEMA reimbursements that occurred on Disaster Debris Monitoring projects for which the Proposer served as the primary contractor during the last five (5) years. Provide a statement of any litigation or regulatory action that has been filed against your firm(s) in the last three (3) years. If an action has been filed, state and describe the litigation or regulatory action filed, and identify the court or agency before which the action was litigated, the applicable case or file number, and the status or disposition for such reported action. If no litigation or regulatory action has been filed against your firm(s), provide a statement to that effect.
- b. **Resources and Availability** – The proposer should provide an organizational chart for the project and a summary paragraph of the project work to be performed by each proposed staff member. Subcontractors: Provide a list of subcontractors and the percentage of work to be performed by each one. Indicate participation by local subcontractors. Equipment: Provide details of the firm's fleet, inventory of equipment, and supplies that will be available following a disaster event. Include the location of the warehouse(s) used to store the firm's equipment and supplies. The County expects that the supporting equipment will be sufficiently maintained so as to be available to operate in a safe and reliable manner. Provide an estimate of the current workload and future commitments to other emergency response contracts both in man-hours per year and a percentage of total workload for all key project personnel. Current Contracts: Provide a list of all of the firm's contractual obligations within Texas for similar disaster debris monitoring services. Include the name of the public agency, their contact information, and FEMA contacts (if available). Describe the firm's ability to manage the activation of multiple contracts. Provide reasonable assurance that such contracts will not interfere with or preclude the awarded firm from responding to the County with the firm's full force of manpower and equipment.

c. Project Approach and management- The information presented shall be in enough detail to enable the County to ascertain the Proposer understands the effort to be accomplished and should essentially outline the steps in the total services proposed.

1. Provide your firm's procedures for disaster debris monitoring including but not limited to:
 - Mobilizing procedures (including subcontractors). Provide a breakdown of the time required to each associated task.
 - DMS monitoring procedures, including, truck capacity monitoring, truck load verification, ineligible debris, C & D debris, hazardous waste, HHW, e-waste, white goods, wet debris, soil/mud/sand, vehicles/vessels, putrescent debris, infectious waste, chemical/biological/radiological/nuclear-contaminated debris, and site safety plan.
 - Tracking source location, debris type, and documentation to County and FEMA.
 - Managing subcontractors and field staff
 - Specialized debris removal services
 - Data management, including ADMS and reporting systems.
 - Incident Reporting
 - Quality Control program
 - Vehicle certification procedures
 - Complying with requirements of FEMA, FHWA, TxDOT, NRCS, USACE, Federal Aid Construction and any other governmental agency with jurisdiction
 - Load tickets and associated reporting processes
 - Documenting, tracking, and resolving issues or damages
 - Documenting, tracking and resolving complaints
 - Reporting (daily progress reports, etc.)
 - DRC invoice reconciliation and data management
 - Communications during a disaster event recovery
 - Demobilization
 - Audit support
2. Provide additional pertinent information as needed.
3. Describe materials and assistance needed from the County.

d. Proof of Licenses and Certifications – This section will contain copies of any and all current state certifications and licenses, and any other applicable licenses and certifications as required by the State of Texas.

SECTION IV: PROPOSAL

Attach a copy of a contract proposed by your corporation with fee information.

Appendix B

EVALUATION PROCEDURES

EVALUATION PROCEDURE

The Respondent's **RFP** will be evaluated based on the criteria presented below. These criteria will be scored on the scale shown on the enclosed "**Evaluation Form.**"

Submission of a **RFP** implies the Respondent's acceptance of the evaluation criteria and Respondent's recognition that subjective judgments must be made by the **Evaluation Committee.**

EVALUATION PROCESS

First, the County will evaluate, rank, and score the Respondents, based on the **RFP**, which shall demonstrate competence, qualifications, experience, and pricing for **Debris Monitoring and Management Services.** All **RFP** will be examined by an **Evaluation Committee** designated by the County.

Request for Proposals ("**RFP**") that do not conform to the instructions or which do not address all the services as specified may be eliminated from consideration; however, the County reserves the right to accept such a **RFP** if it is determined to be in the best interest of the County.

While the County appreciates a brief, straightforward, concise reply, the proposer must fully understand that the evaluation is based on the totality of information provided. Accuracy and completeness are essential. Omissions, ambiguous and equivocal statements may be construed against the Respondent. The **RFP** may be incorporated into any contract which results from this procurement packet, and respondents are cautioned not to make claims or statements it is not prepared to commit to contractually. Failure of the Respondent to meet such claims will result in a requirement that the respondent provide resources necessary to meet submitted claims, without extending an additional cost to the County.

Jim Wells County Purchasing Department may initiate discussions with selected Respondents; however, Respondents may not initiate discussions. Respondents shall not contact any County personnel during the procurement process without the express permission from the County Purchasing Department. The County Purchasing Department may disqualify any Respondent who has made visits and/or contacted County personnel or distributed any literature without authorization from the County Purchasing Department.

All correspondence relating to this procurement from the advertisement to the award shall be sent to Jim Wells County Purchasing Department. The County Purchasing Department shall coordinate all presentations and/or meetings between the County and the Respondent relating to this solicitation.

Selected Respondents may be expected to make a presentation and demonstration to the **Evaluation Committee.** Respondent's **RFP**, presentations and evaluations may develop into negotiating sessions with Respondent(s) as selected by the **Evaluation Committee** and approved by the County.

EVALUATION AND SELECTION CRITERIA

COMPARATIVE EVALUATION CRITERIA

The following criteria will be applied to those proposals which have met the minimum requirements:

1. Demonstrated understanding of the needs presented by the proposal.
2. Soundness of consultant's approach to the needs presented by the project, including consultants' methodology for achieving specific tasks and objectives.
3. Experience and capacity of offeror, including recent and related experience.
4. Qualifications of project personnel and consultant's ability to commit a capable staff and support for a project of this size and under the time constraints as listed in the RFP.
5. Reasonableness of Consultant's fee in relation to the Scope

EVALUATION FORM

DATE: _____

RFP#: _____ TITLE: _____

EVALUATOR: _____

OFFEROR: _____

Proposals will be judged on the final criteria:

		POINT RANGE	POINTS ASSIGNED
1.0	Demonstrated understanding of the needs presented by the proposal.	0-25 Points	
2.0	Soundness of consultant's approach to the needs presented by the project, including consultant's methodology for achieving specific tasks and objectives.	0-20 Points	
3.0	Experience and capacity of consultant, including recent and related experience.	0-20 Points	
4.0	Qualifications of project personnel and consultant's ability to commit a capable staff and support for a project of this size and under the time constraints as listed in the RFP.	0-20 Points	
5.0	Consultant's reasonableness of fee in relation to the scope	0-15 Points	
		Total Points	

Each evaluator will score the proposal using the evaluation form. Each column will be totaled. The Respondent with the highest number will be the highest ranked and scored. Rankings will be provided to Commissioners Court for discussion, consideration, and approval to engage in negotiations with an evaluated Respondent.

Evaluations by the Evaluation Committee shall not obligate the County to the eventual purchase of any Debris Monitoring and Management Services described, implied or which may be proposed. Progress toward this end is solely at the discretion of the County and may be terminated at any time prior to execution of an agreement.

NEGOTIATION PROCESS

The committee will determine whether acceptance of the most favorable initial proposal without discussion is appropriate, or whether interviews and/or discussions should be conducted with Proposers that fall within the competitive range.

Negotiations. Jim Wells County reserves the right to negotiate directly with the highest ranked proposer or with each proposer whose proposal falls within the overall competitive range. Each Proposer remaining within the overall competitive range at the close of negotiations may be allowed to submit a final supplement called a "best and final offer." The County reserves the right to negotiate all elements that comprise the successful Contractor's response to ensure that the best possible consideration be afforded to all concerned.

Best and Final Offer: The best and final offer will contain all information and documents necessary to state the Proposer's entire proposal without reference to the original proposal or to any supplements that may have been submitted during negotiations. All Proposers that submit best and final offers will be evaluated by the committee, or designated committee members, based upon those best and final offers.

The County expects to conduct negotiations with vendor's representatives authorized to contractually obligate the respondent with an offer.

If the Respondent is unable to agree to contract terms and conditions, the County reserves the right to terminate contract negotiations with that respondent and initiate negotiations with the next Respondent. The contract will be awarded to that responsible offeror(s) whose offer, conforming to the solicitation, will be most advantageous to the county, price and other factors considered.

After such negotiation of terms, the price for the most advantageous for **Debris Monitoring and Management Services** recommendation shall be presented to Commissioners' Court for consideration and approval of award of the contract found by the Commissioners Court to be satisfactory, fair, and reasonable. **The County Commissioners Court reserves the right to accept a waiver if a Respondent does not meet all competencies, qualifications, and/or experience.**

No award can be made until approved by Jim Wells County Commissioners Court. This RFP, the Respondent's presentation, nor an evaluation by the Evaluation Committee shall not obligate the County to the eventual contract of any Debris Monitoring and Management Services described, implied or which may be proposed. Progress toward this end is solely at the discretion of the County and may be terminated at any time prior to execution of an agreement.

Bid Form

1. The undersigned bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with to perform and furnish all work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the deposition of Bid Security. This Bid will remain subject to acceptance for 60 calendar days after the day of Bid opening. BIDDER will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within 15 calendar days after the date of COUNTY'S Notice of Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:

A. BIDDER has examined copies of all the Bidding Documents and of the following

Addenda (receipt of all which is hereby acknowledged):

Date: _____ Number: _____
Date: _____ Number: _____

B. BIDDER has familiarized itself with the nature and extent of the work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.

C. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation, and is not submitted in conformity with any Agreement or rules of any group, association, organization, or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm, or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over OWNER.

4. BIDDER will complete the Work for the following price: (Note: Bid item is for work complete in place). These prices are to cover all expenses incurred in performing the work required under the Contract Documents, including related work that may not be specifically mentioned.

Company Representative (Printed)

Company Representative (Signature)

Date

Cost Sheet

Position	Hourly Rate
Project Manager	
Operation Managers	
Field Supervisors	
GIS Analyst	
Environmental Specialists	
Billing/Invoicing/Data Managers	
Project Coordinators	
Monitors (collection, tower, resident dropoff)	
Data Entry	

Emergency Management Planning, Training, and Staff/Equipment Augmentation	
Senior Planner	
Planner	

Grant Management Consulting Services	
Program Manager	
Senior Public Assistance/ Grant Management Consultant	
Public Assistance/ Grant Management Consultant	
Program Planner/ Scientist/ Assessor/ Analyst/ Environmental Specialist	
Consulting Aide	
Administrative Specialist	

Appendix C

INSURANCE REQUIREMENTS

EXHIBIT "C"

Insurance Requirements

Applicable to the Acquisition of Goods and/or Services (Other than Professional Services)

The Bidder awarded the contract shall furnish proof of insurance, which will also include any subcontractor that is subcontracted by the bidder in at least the following limits, to be in place prior to providing any services under this Contract and to continue at all times in force in effect during the term of this Contract and any extension hereof:

1. **Comprehensive General Liability insurance** policy with limits of not less than Five Hundred Thousand Dollar (\$500,000.00) providing additional coverage to all underlying liabilities of County. Policy shall cover, but not be limited to, Bidder's activities in providing the Services for County; all persons, vehicles, equipment connected with providing Services; and theft or loss of Bidder's property.
 2. **Automobile liability insurance** policy, covering all owned, non-owned or hired/leased automobiles, with limits of at least Three Hundred Thousand Dollars (\$300,000.00) per person and Five Hundred Thousand Dollars (\$500,000.00) per occurrence. Coverage should include injury to or death of persons and property damage claims with limits up to five Hundred Thousand (\$500,000.00) arising out of the services provide d to County hereunder.
 3. **Uninsured/Underinsured motorist coverage** in an amount equal to the auto liability limits set forth immediately above;
 4. **Workers Compensation Insurance:** Workers Compensation insurance in amounts established by Texas law, unless the Bidder is specifically exempted from the Texas Workers Compensation Act, Texas Labor Code Chapter 401, et. seq. Workers Compensation policies must include other States Endorsement to include TEXAS if the business is domiciled outside the State of Texas.
- *Bidder shall obtain and maintain any and all other insurances which may be necessary in providing the good/service applicable to this procurement or are otherwise required by law.*
 - *Any and all insurance policies shall be in amounts prescribed by law or otherwise specified by the County, but in no event less than the minimum amounts prescribed by law.*

Additional Insurance Requirements:

- a. The Bidder shall furnish to County certificate(s) of insurance, and all renewals throughout the duration of the Project, issued by the insurer that such insurance is in full force and effect.
- b. Certificates of insurance shall be submitted to the County for approval prior to any services being performed by Bidder.
- c. **The County will only accept certificates of insurance on an Acord form (as attached hereto).**

Page 2 of 2: Continuation of Exhibit “C”: Insurance Requirements Applicable to the Acquisition of Goods and/or Services (Other than Professional Services)

- d. For each policy, except Workers’ Compensation, Bidder shall name the County as an additional insured.
- e. Each policy of insurance required hereunder shall extend for a period equivalent to, or longer than the term of the Contract, and any insurer hereunder shall be required to give at least thirty (30) days written notice to the County prior to the cancellation of any such coverage on the termination date, or otherwise.
- f. This Contract shall be automatically suspended upon the cancellation, or other termination, of any required policy of insurance hereunder, and such suspension shall continue until evidence of adequate replacement coverage is provided to County. If replacement coverage is not provided within thirty (30) days following suspension of the Contract, this Contract shall automatically terminate.
- g. All insurance policies will be endorsed to provide a waiver of subrogation in favor of the County.
- h. County reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverage and their limits when deemed necessary and prudent by County based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Bidder.
- i. Insurance policies shall be obtained at Bidder’s sole expense. County does not maintain and will not obtain insurance of any type to protect Bidder against loss, damage or injury that may in any way result from Bidders performance of the services.
- j. In no event shall the County be liable for any loss, damage to or destruction of any property belonging to the Bidder.
- k. The bidder is responsible for ensuring all required insurance policies are valid for the duration of the contract.
- l. All insurance policies are to be issued by an insurance company authorized to do business in the State of Texas and acceptable to County.
- m. The bidder shall make any other insurance documentation available to County upon request.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No. Ext):	FAX (A/C, No.):
	EMAIL:	
	ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXPI (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY						EACH OCCURRENCE \$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	CLAIMS-MADE						MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
							GENERAL AGGREGATE \$
	GENL AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$
	POLICY						
	PROJECT						
	LOC						
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	ANY AUTO						BODILY INJURY (Per person) \$
	ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$
	HIRED AUTOS						
	NOT-OWNED AUTOS						
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	DED						
	RETENTION \$						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS OTHER \$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/EMPLOYEE EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

CANCELLATION

HIDALGO COUNTY ATTN: PURCHASING DEPARTMENT 2812 S. HIGHWAY BUS. 281 EDINBURG, TEXAS 78539	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	---

ACORD 25 (2010/05)

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INSURANCE REQUIREMENT ACKNOWLEDGEMENT

I, _____, authorized representative for _____,
Company/Vendor

hereby acknowledge receipt of the County's required insurance limits. Said requirements:

- will be acquired within 10 working days after notification from Purchasing Department of award of the project by the County Commissioners' Court;
- will acquire additional amount needed to meet the County's requirements within 10 working days after notification from Purchasing Department of award of the project by the County Commissioners' Court; currently carry the following:

Professional Liability (Errors & Omissions): \$ _____
Automobile Liability: \$ _____ General Liability: \$ _____

- have already been met, see attached copy of certificate of insurance.

Authorized Representative

Date

Notice to Bidder:

A certificate of insurance for the required insurance limits shall be provided to the Purchasing Department in order to qualify for award of the project and to execute a contract between your Company and the County.

Failure to provide Certificates of Insurance to the Purchasing Department's Contract Managers will cause the award of the project to be rescinded and then re-awarded to next qualified vendor. Certificates of Insurance will be monitored and verified on a **quarterly basis** to ensure coverage policy is in place. It is the Company's obligation to maintain the appropriate insurance coverage throughout the term of the contract.

THIS FORM MUST BE ACCOMPANY YOUR RESPONSE

PROJECT REQUIREMENTS ACKNOWLEDGMENT

This is to certify that I, _____, possess all of the **APPLICABLE**:

1. Licenses: _____

2. Bonds: _____

3. Certificates: _____

4. Permits: _____

5. Other: _____
necessary to carry out the required project. Furthermore, I am providing copies of the required documentation so that, if my company is awarded this project, I may be eligible to enter into a contract with the County and proceed to complete the project in a timely manner.

*** Any licenses, bonds, certificates, permits, etc. which are required must be presented as part of the bid packet in order to expedite the bid evaluation process. Failure to provide said documentation will result in the disqualification of your bid or response.**

Authorized Signature

Date

Company

Address

City, State, Zip

Appendix D

CONFLICT OF INTEREST QUESTIONNAIRE (CIQ)

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

☐

2 Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

☐

3 Name of local government officer about whom the information is being disclosed.

☐

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐☐

Yes

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐☐

Yes

No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

☐

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

☐

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

Appendix E

VENDOR ENROLLMENT SOLUTION AND HUB DECLARATION

VENDOR ENROLLMENT SOLUTION

Describe Vendor Process if various solicitation systems are used

Example:

The Vendor Registration Form has been automated and will only be accepted through online submission.

The Vendor Registration Form can be found on the Jim Wells County website:

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.

HISTORICALLY UNDERUTILIZED BUSINESS (HUB) DECLARATION

The primary objective of the Jim Wells County HUB Program is to ensure Historically Underutilized Businesses receive a fair and equal opportunity for participation in the County's procurement process. This fact holds true for Services (Professional & Non-Professional), Commodities, and Construction contracts and any subcontracts thereto. The program strongly encourages Prime Contractors to provide subcontracting opportunities to Certified Hub Contractors/Vendors. Our goal for HUB contractor/vendor participation, as well as HUB subcontractor participation is 30%. To be considered as a "Certified HUB Contractor/Vendor" the contractor/vendor must have been certified by, and hold a current and valid certification with any of the three agencies listed below.

Have you been Certified as a HUB or an MBE/WBE source?: ☐ Yes ☐ No

If yes, by whom?: ☐ Texas Building & Procurement Commission ☐ Other _____

Indicate Certification No(s): _____ or Are Certificate(s) Attached?: ☐ Yes ☐ No

LIST OF CERTIFIED HUB SUBCONTRACTORS

(Attach additional pages if necessary)

What percentage of the Bid, RFP, or RFQ is to be subcontracted with Certified HUB sources?: _____%
(List HUB Subcontractor information below).

HUB Subcontractor Name: _____ HUB Status: _____
Certifying Agency (Check all applicable): ☐ Texas Building & Procurement Commission ☐ Other
Address: _____ City: _____ State: _____ Zip: _____
Contact Person: _____ Title: _____ Phone No.: ()
Subcontract Amount: \$ _____ Description of Work to be Performed: _____

HUB Subcontractor Name: _____ HUB Status: _____
Certifying Agency (Check all applicable): ☐ Texas Building & Procurement Commission ☐ Other
Address: _____ City: _____ State: _____ Zip: _____
Contact Person: _____ Title: _____ Phone No.: ()
Subcontract Amount: \$ _____ Description of Work to be Performed: _____

HUB Subcontractor Name: _____ HUB Status: _____
Certifying Agency (Check all applicable): ☐ Texas Building & Procurement Commission ☐ Other
Address: _____ City: _____ State: _____ Zip: _____
Contact Person: _____ Title: _____ Phone No.: ()
Subcontract Amount: \$ _____ Description of Work to be Performed: _____

Appendix F

CERTIFICATION REGARDING DEBARMENT

Certification
Regarding Debarment, Suspension and Ineligibility

As is required by the Federal Regulations Implementing Executive Order 12549, Debarment and Suspension, 45 CFR Part 76, Government-wide Debarment and Suspension, the applicant certifies, to the best of his or her knowledge and belief, that both it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;
- b. Have not within a three-year period preceding this bid proposal and/or application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity with commission of any of the offenses enumerated herein; and
- d. Have not within the three-year period preceding this bid proposal and/or application had one or more public transactions terminated for cause or default.

Signature: _____
Print Name: _____
Title: _____
Telephone Number: _____
Date: _____

If the bidder is unable to certify to all of the statements in this Certification, such bidder should attach an explanation to this proposal.

Appendix G

TITLE VI APPENDICES “A”-“E”

APPENDIX A

THE TITLE VI CONTRACTOR ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor will comply with the Regulations relative to nondiscrimination in federally assisted programs of the United States Department of Transportation Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income or Limited English Proficiency in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, or disability.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the federal funding agency (FHWA or FTA) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Recipient or the Federal Funding Agency, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Non-compliance:** In the event of the contractor's non-compliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Funding Agency may determine to be appropriate, including, but not limited to:
 - a. withholding contract payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Funding Agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with, litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B
CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the **COUNTY OF Jim Wells** will accept title to the lands and maintain the project constructed thereon in accordance with (Name of Appropriate Legislative Authority), the Regulations for the Administration of (Naming of Appropriate Program), and the policies and procedures prescribed by the (Federal Highway Administration) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the **COUNTY OF Jim Wells** all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto **COUNTY OF Jim Wells** and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the **COUNTY OF Jim Wells**, its successors and assigns.

The **COUNTY OF Jim Wells**, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and] * (2) that the **COUNTY OF Jim Wells** will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction]. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C
CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE
ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the **COUNTY OF Jim Wells** pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, **COUNTY OF Jim Wells** will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the **COUNTY OF Jim Wells** will have the right to enter or re-enter the lands and facilities thereon, and the above-described lands and facilities will there upon revert to and vest in and become the absolute property of the **COUNTY OF Jim Wells** and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.

APPENDIX D
CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER
THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by **COUNTY OF JIM WELLS** pursuant to the provisions of Assurance 7(b)”

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, **COUNTY OF JIM WELLS** will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, **COUNTY OF JIM WELLS** will there upon revert to and vest in and become the absolute property of **COUNTY OF JIM WELLS** and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

Appendix H

REQUIRED CONTRACT CLAUSES FOR CONTRACTS UNDER FEDERAL AWARD

APPENDIX “H”

(IF APPLICABLE)

**2 C.F.R. § 200.327 & 2 C.F.R. PART 200, APPENDIX II, REQUIRED
CONTRACT CLAUSES FOR NON-FEDERAL ENTITY CONTRACTS
UNDER FEDERAL AWARDS**

&

**REQUIRED CONTRACT CLAUSES FOR NON-FEDERAL ENTITY
CONTRACTS UNDER FEDERAL AWARDS WITH THE FEDERAL
EMERGENCY MANAGEMENT AGENCY (FEMA)**

2 C.F.R. § 200.327 & 2 C.F.R. PART 200, APPENDIX II, REQUIRED CONTRACT CLAUSES FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

The United States Office of Management and Budget (OMB) issued in 2 C.F.R. 200: *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* (Uniform Guidance). Subpart D: Post Federal Award Requirements: 2 CFR §§200.317-200.327 of the Uniform Guidance contain provisions applicable to procurements made with federal grant funding. [Except as otherwise provided, updated Post Federal Award Requirements (i.e.: 2 CFR §§200.317-200.327) apply to declarations and awards issued on or after November 12, 2020].

As a non-Federal entity, the County of The's ("County") contracts must contain the applicable contract clauses described in Appendix II to the Uniform Guidance (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. (2 C.F.R. §200.327). If applicable, the following clauses shall supersede any existing, similar clauses stated within the bid document, contract, and/or Terms and Conditions. *The term "Contractor" used herein refers to the proposer, bidder or other entity/individual responding to the applicable procurement packet.*

If applicable, the regulations in 2 CFR, Part 200 and Appendix II to the Uniform Guidance, as it may be amended from time to time, and the contract clauses below, are incorporated by reference as part of this procurement packet and any resulting agreement.

To procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. The following provisions are required and apply when federal funds are expended by the County of The for any contract resulting from this procurement process.

1. Remedies.

- a. **Applicability.** This requirement applies to all Federal grant and cooperative agreement programs.
- b. **Standard.** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- c. **Statement.** Pursuant to Federal Rule (A) above, when federal funds are expended by the County, the County reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party. Contractor shall comply with all applicable Federal, State of Texas, and local laws, rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the performance of the services, and any provision of equipment and material ("Applicable Law"). All transactions related to any of the Contract Documents shall be governed by the laws of the State of Texas, and trial of any action brought in connection with the bid or the Contract Documents shall be held exclusively in a state court in the County of The, Texas.

2. Termination for Cause and Convenience.

- a. **Applicability.** This requirement applies to all Federal grant and cooperative agreement programs.
- b. **Standard.** All contracts in excess of \$10,000 shall address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement as follows. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- c. **Statement. Termination.** County may terminate this Agreement for any reason upon ten (10) days written notice to the other party. County may terminate this Agreement immediately upon written notice if Contractor.

breaches this Agreement. In the event of any termination, Contractor shall promptly deliver to the County any and all Work Materials prepared for the County prior to the effective date of such termination, all of which shall become County's sole property. After receipt of the Work Materials, County will pay Contractor for the services which the County determines were satisfactorily performed as of the effective date of the termination.

Excuses for Non-Performance. Either party shall be absolved from its obligations under this contract when and to the extent that performance is delayed or prevented (and in the County of The's case when and to the extent that its need for the articles, materials or work to be supplied hereunder is reduced or eliminated) by reason of acts of God, fire explosion, war riots, strikes, labor disputes, or governmental laws, orders or regulations.

Default. If Contractor or Subcontractor shall breach any provision hereof or shall become insolvent, enter voluntary or involuntary bankruptcy or receivership proceedings or make an assignment to the benefit of creditors, County of The shall have the right (without limiting any other rights or remedies which it may have hereunder or by operation of law) to terminate this contract by written notice to Contractor whereupon County shall be relieved of all further obligation hereunder except the obligation to pay the reasonable value of Contractor's prior performance (at not exceeding the contract rate), and Contractor shall be liable to County for all costs incurred by County in completing or procuring the completion of performance in excess of the contract price herein specified. The County's right to require strict performance of any obligation hereunder shall not be affected by any previous waiver, forbearance of course of dealing. Time is of the essence thereof.

3. **Equal Employment Opportunity.**

- a. **Applicability:** This requirement applies to all Federal grant and cooperative agreement programs.
- b. **Standard.** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. 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 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
- c. **Key Definitions:**
 - (1) *Federally Assisted Construction Contract.* The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
 - (2) *Construction Work.* The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction
- d. **Statement:** Contractor will comply with the Nondiscrimination Civil Rights Act of 1964, as amended and all Federal regulations relative to nondiscrimination in Federally assisted programs. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract 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, 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.”

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies 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 Transit Security Grant Program. **It does not apply to other Federal grant and cooperative agreement programs, including the Public Assistance Program.**

- b. Standard. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities 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 at 29 C.F.R. 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 non-Federal entity 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 non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. 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 Copeland Anti-Kickback 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 FEMA or applicable Federal entity. See 2 C.F.R. Part 200, Appendix II, ¶ D.

- c. Statement. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti-Kickback Act.” However, for purposes of grant programs where both clauses do apply, FEMA or applicable Federal entity requires the following contract clause:

“Compliance with the Copeland “Anti-Kickback” Act.

(1) *Contractor.* The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as Federal requirements may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) *Breach.* A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

5. Contract Work Hours and Safety Standards Act.

- a. Applicability: This requirement applies to all Federal grant and cooperative agreement programs.
- b. Standard. Where applicable (see 40 U.S.C. § 3701), 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 at 29 C.F.R. Part 5.

Under 40 U.S.C. § 3702, 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. See 2 C.F.R. Part 200, Appendix II, ¶ E.

The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

c. Statement.

“Compliance with the 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 (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 (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 County of The 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.”

6. **Rights to Inventions Made Under a Contract or Agreement.**

- a. Applicability: Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance**

to Individuals and Households – Other Needs Assistance Grant Program, as FEMA or Federal awards under these programs do not meet the definition of “funding agreement.”

- b. Standard. If the FEMA or Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity 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 non-Federal entity must comply with the requirements of 37 C.F.R. 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 FEMA or applicable awarding agency. See 2 C.F.R. Part 200, Appendix II, ¶ F.
- c. Key Definition: The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” 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.

7. Clean Air Act and the Federal Water Pollution Control Act.

- a. Applicability and Standard: Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor 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. See 2 C.F.R. Part 200, Appendix II, ¶ G.
- b. Statement: Included in contracts as provided in section “7a” above.
 - (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. and 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 Federal awarding agency (e.g. Federal Emergency Management Agency-FEMA) and the Regional Office of the Environmental Protection Agency. Contractor understands and agrees that each violation reported to the County of The will, in turn, be reported as required to assure notification to the Federal awarding 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 the applicable Federal awarding agency (e.g. FEMA).

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all Federal grant and cooperative agreement programs.
- b. Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and Chapter IV, ¶ 6.d and Appendix C, ¶ 2. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General

Services Administration that 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. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; Chapter IV, ¶ 6.d and Appendix C, ¶ 2.

In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.

Specifically, a covered transaction includes the following contracts for goods or services:

- (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
- (2) The contract requires the approval of FEMA or applicable Federal entity, regardless of amount.
- (3) The contract is for Federally-required audit services.
- (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or applicable Federal entity or is in excess of \$25,000.

- c. Statement. The following provides a debarment and suspension clause. It incorporates a method of verifying that contractors are not excluded or disqualified:

For maximum protection, provide a print or electronic document for every prime and subcontractor, from www.sam.gov in order to ensure that they are not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities.

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).

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.

This certification is a material representation of fact relied upon by (insert name of subrecipient). 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 (name of entity serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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.”

9. Byrd Anti-Lobbying Amendment.

- a. Applicability. This requirement applies to all Federal grant and cooperative agreement programs.
- b. Standard. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, ¶ 4. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or

organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

- c. Statement. The following statement in bold provides a Byrd Anti-Lobbying contract clause:

(IF APPLICABLE, PLEASE FILL IN BLANKS AND SIGN)

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

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.”

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned Contractor, _____ certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

3. The undersigned 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.

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.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all Federal grant and cooperative agreement programs.
- b. Standard. A non-Federal entity 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, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.323; *PDAT Supplement*, Chapter V, ¶ 7.

The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. 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 by 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.

- c. Statement. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the 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.
- (2) 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>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

11. Prohibition on Contracting for Covered Telecommunications Equipment or Services – 2 CFR § 200.216 (FEMA Interim Policy #405-143-1 effective August 13, 2020).

- a. Applicability: This requirement applies to all Federal grant and cooperative agreement programs and/or as provided below, and is effective August 13, 2020.

- b. Standard. A non-Federal entity is prohibited against using federal funds to purchase telecommunications and video surveillance equipment and services (such as but not limited to mobile phones, land lines, internet, video surveillance, and cloud servers) from certain companies/entities in covered foreign countries for national security reasons. This regulation is being incorporated into federal grants and contracts received by the County through 2 CFR 200.216 and/or Federal Acquisition Regulations (FAR) clause 52.204-25; as well as guidance provided through Federal Emergency Management Agency (FEMA) Policy #405-143-1. See 2 C.F.R. Part 200, Appendix II, ¶ K

Currently, applicable federal provisions provide that Covered Foreign country means the People's Republic of China and covered telecommunications equipment or services means –

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
- ii. 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);
- iii. Telecommunications or video surveillance services provided by such entities or using such equipment; or
- iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of 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.

The definition of “Affiliate” can be found in FAR 2.101. Listing of subsidiaries and affiliates can be found in Supplement Number 4 to 15 CFR Part 744.

- c. Statement. Federal awards recipients and subrecipients, as well as their contractors and subcontractors, include the following required contract clause in applicable new, extended, or renewed contracts and subcontracts as per the provisions discussed above.

PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

- (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 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 service that uses covered telecommunications equipment or services as a 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;
 - (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
 - (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—
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - b. 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:
 - a. 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.
 - b. 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 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) Within 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.

12. **Domestic Preferences for Procurements**

- a. **Applicability:** This requirement of this section must be included in all subawards including all contracts and purchase orders for work or products under Federal award applies to all contracts and purchase orders for work or products using federal funds.
- b. **Standard.** As appropriate, and to the extent consistent with law, Non Federal Entities 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. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products. See 2 C.F.R. Part 200.322 and 2 C.F.R. Part 200, Appendix II, ¶ L
- c. **Statement.** The following provides the required Domestic Preferences for Procurements contracts clause that is incorporated herein by reference.

“Domestic Preference for Procurements

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.

For purposes of this clause:

- *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.
- *Manufactured products* mean 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.”

ADDITIONAL REQUIRED CONTRACT CLAUSES FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS WITH THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

Additional FEMA or applicable Federal Requirements. In addition to the requirements above, non-Federal entity contracts under Federal award subject to financial assistance from FEMA are required to contain the following additional contract clauses. The Uniform Guidance authorizes FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:

These clauses are incorporated by reference as part of this procurement packet and any resulting agreement.

1. **Changes.**

- a. **Standard.** To be eligible for FEMA assistance under the non-Federal entity’s Federal grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA or applicable Federal entity recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method,

price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

- b. Statement. The following provides a contract clause regarding access to records:

“The contractor shall secure written authorization before proceeding with any additional work, whether requested by the County or required to complete the contract. The cost for any changes to the contract price, whether requested by the County or the Contractor will be approved only after submitting the contractor’s true costs for the work and related equipment costs and site expenses.”

2. **Access to Records.**

- a. Standard. All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA or applicable Federal entity access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

- b. Statement. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide the County of The, the FEMA or applicable Federal 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 or applicable Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

3. **DHS Seal, Logo, and Flags.**

- a. Standard. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS officials without specific FEMA or applicable Federal entity pre-approval. See DHS Standard Terms and Conditions, v3.0, ¶ XXV (2013).

- b. Statement. The following provides a contract clause regarding DHS Seal, Logo, and Flags:

“The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS officials without specific FEMA or applicable Federal entity pre- approval.”

4. **Compliance with Federal Law, Regulations, and Executive Orders.**

- a. Standard. All non-Federal entities must place into their contracts an acknowledgement that FEMA or applicable Federal financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA or applicable Federal policies, procedures, and directives.

- b. Statement. The following provides a contract clause regarding Compliance with Federal Law, Regulations and Executive Orders:

“This is an acknowledgement that Federal financial assistance will be used to fund the contract only. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA or applicable Federal policies, procedures, and directives.”

5. **No Obligation by Federal Government.**

- a. **Standard.** The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the 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.

- b. **Statement.** The following provides a contract clause regarding no obligation by the Federal Government:

“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.”

6. **Program Fraud and False or Fraudulent Statements or Related Acts.**

- a. **Standard.** The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

- b. **Statement.** The following provides a contract clause regarding Fraud and False or Fraudulent Related Acts:

“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.”

7. **FEMA Contract requirement regarding Prohibition on Contracting for Covered Telecommunications Equipment or Services – 2 CFR § 200.216 (FEMA Interim Policy #405-143-1 effective August 13, 2020).**

FEMA recipients and subrecipients and their contractors and subcontractors are required per 2 C.F.R. Part 200, Appendix II ¶ K to include a contract provision in all FEMA-funded contracts and subcontracts, including any purchase orders. To satisfy this requirement, the contract provision found in Number 11 above is incorporated by reference by the County of the in all new, extended, or renewed contracts and subcontracts. Applicable County contractors and subcontractors shall also comply with the applicable law and requirements. (See Number 11 above).

8. **FEMA Contract requirement regarding Domestic Preferences for Procurements**

For purchases in support of FEMA declarations and awards issued on or after November 12, 2020, all FEMA recipients and subrecipients are required per 2 C.F.R. Part 200, Appendix II ¶ L to include in all contracts and purchase orders for work or products the contract provision included in number 12 above encouraging domestic preference for procurements.

Contractor agrees to comply with all federal, state and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that the Contractor read and understands all provisions, laws, acts, regulations, etc. as specifically noted above and certifies compliance with the same.

Vendor’s Name/Company Name: _____

Printed Name and Title of Authorized Representative: _____

Signature of Authorized Representative: _____

Date: _____

Appendix I

FHWA 1273

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants /

Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment situations unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding (29 CFR 5.5)

The contracting 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 the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees (29 CFR 5.5)

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. **Apprentices and Trainees (programs of the U.S. DOT).**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility (29 CFR 5.5)

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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. 29 CFR 5.5.

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 (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 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* 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. 29 CFR 5.5.

* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

3. Withholding for unpaid wages and liquidated damages.

The FHWA or the contracting 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. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 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. 29 CFR 5.5.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees 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 Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal 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.

b. 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 Federal 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. 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. 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

Appendix J

RESPONDENT'S AFFIDAVIT

EXHIBIT J
PROPOSER'S AFFIDAVIT

**PROPOSER'S AFFIDAVIT OF NON-COLLUSION, NON-CONFLICT OF INTEREST, AND
ANTI-LOBBYING**

STATE OF TEXAS
COUNTY OF JIM WELLS

Affiant, _____, being first duly sworn, deposes that:

- (1) Affiant does hereby state neither the proposer nor any of the proposer's officers, partners, owners, agents, representatives, employees, or parties in interest, has in any way colluded, conspired, agreed, directly or indirectly with any person, firm, corporation, or another proposer, or potential proposer, to provide any money or other valuable consideration for assistance in procuring or attempting to procure a contract or fix the prices in the attached proposed or the proposal of any other proposer, and further states that no such money or another reward will be hereinafter paid.
- (2) Affiant further states they have neither recommended nor suggested to The County or any of its officials or employees, any of the terms or provisions set forth in their Request for Proposal and subsequent agreement, except at a meeting open to all interested proposers, of which proper notice was given.
- (3) Affiant, further states their officers, employees, or agents have not, and will not attempt to lobby, directly or indirectly, Jim Wells County Commissioner's Court between proposal submission date and award by the County Commissioner's Court.
- (4) Affiant further states no officer, or stockholder of the proposer is a member of the staff, or related to any employee of the County except as noted herein below:

Signature/Title: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My commission expires: _____, 20____

APPENDIX K

DRAFT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF JIM WELLS §

CONTRACT FOR SERVICE
C-23-0128-XX-XX

THIS CONTRACT is made and entered into this _____ day of _____, 20____, by and between the **County of The, Texas** by and through the **Jim Wells County Commissioners Court** (the "**County**"), and _____ ("**Company**").

WHEREAS, County requested responses to notices for Request for RFP ("RFP") for: "Debris Monitoring and Management Services" for the **County** (the "**Services**"). A copy of the procurement packet, including applicable specifications, is attached hereto as **Exhibit "A"** (the "**Procurement Packet**"), and is incorporated herein for all purposes;

WHEREAS, Company submitted a response to provide services in accordance with the specifications as proposed. A copy of the Company's response to the Procurement Packet is attached hereto as **Exhibit "B"** (the "**Response**"), and is incorporated herein for all purposes;

WHEREAS, County has determined that Company has submitted the lowest and best bid to meet County's requirements for the Service, as herein described.

WHEREAS, Company represents that it is qualified and desires to perform such services; and

WHEREAS, in recognition of and in consideration of Company's agreement to perform the Services in accordance with the Procurement Packet, the Commissioners Court of County awards this contract to Company.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. County and Company hereby agree that this Contract is entered into in order to provide the Services to County. This Contract does not extend to any third parties any duties or benefits conferred in any manner hereunder or otherwise.
2. During the term of this Contract, Company shall be obligated and hereby promises and agrees to render and provide the Services in accordance with specifications and terms contained in **Exhibit "A"** Procurement Packet and **Exhibit "B"** Company's Response. Services shall be performed within Jim Wells County. The Company will not begin to work or incur costs until authorized in writing by the County with the release of an authorized Purchase Order or other appropriate written authorization by the County or its designated agent. Company agrees in

performing the Services that it will use proper professional standards, comply with any and all appropriate laws and regulations in providing the Services, and devote such time as is necessary to safely and efficiently provide the Services. County reserves the right to evaluate any services provided by the Company and to reject the same if not in compliance with the specifications as provided in **Exhibits “A” and “B”**. If the County finds it necessary to require changes in the work provided because of errors made by the Company, the County shall require the Company to correct the work at no cost to the County and without amendment to the Agreement. Further, Jim Wells County reserves the right to request these services from other sources other than the successful vendor and shall not be in violation of any terms or conditions of said contract.

3. **Term.** This Contract shall be for a period of _____ (____) year(s), commencing on [[MONTH]] [[DAY]], 20__ and expiring on [[MONTH]] [[DAY]], 20__, unless sooner terminated. The term of this agreement may be extended at the County’s sole discretion for one (1) additional two (2) one (1) year term(s) under the same rates, terms and conditions. The County also reserves the right to continue this bid for an additional sixty (60) day grace period, under the same rates, terms, and conditions for the unforeseen delay in award of new bid for the next contract term.

4. **Consideration.** As consideration for rendering the Service provided for in this Contract, the County agrees to pay Company the amounts specified in **Exhibit “B”**, payable against written invoice submitted by Company in accordance with the Texas Prompt Payment Act, Tex. Govt. Code Ch. 2251.

5. **Licenses/Certifications.** As a condition of this Contract, Company shall hold and maintain throughout the term of this Contract all licenses and permits required, or which may be required by any authority, including the State of Texas, during the term hereof to provide the Services. Company further represents that it is qualified to perform and execute the services described above. If such license or permit is suspended or revoked, this Contract shall automatically be terminated and Company shall immediately notify the County. Company shall provide the County with all current state certifications, permits, and/or licenses with applicable seals, or as otherwise required by the State of Texas.

6. **Equipment.** If applicable, Company shall provide a sufficient number of trucks, vehicles, personnel and equipment available to safely and efficiently provide the Services. All trucks or vehicles operated by the Company to perform the Services shall contain all equipment required by any authority to operate on streets and roads and all persons in the employ of Company who operate such trucks or vehicles shall have the required licenses, qualifications, skill, and expertise to perform such Services and shall comply with all laws, rules, and regulations prescribed by any agency or authority having jurisdiction with regard to the operation of such trucks or vehicles in providing the Services.

7. **Independent Contractor.** The Company must comply with all applicable County policies and with any applicable federal, state, or local laws, regulations, orders, or ordinances applicable to the Services provided by Company under this Agreement. Notwithstanding the foregoing sentence, Company represents and maintains that Company is an Independent Contractor and is not an employee of the County, or any agency thereof, and represents and

warrants that Company does not desire or request any fringe benefits provided to employees of County, and/or any agency of the County, including but not limited to benefits associated with the County's Civil Service Program. This Contract and the performance by the Parties hereunder does not create an agency relationship or master-servant relationship. Company agrees to be responsible for any federal income tax, withholding or social security tax liability that might arise from payments received hereunder. Company will incur no financial obligation on behalf of the County without prior written approval of the County. Company will be responsible for all personal and professional expenses, including, but not limited to, membership fees and dues and expenses of attending conventions and meetings. The County will have no right to direct or control the details, manner or means by which Company or its affiliates provide the Services, except as otherwise set forth in this Agreement. Company agrees to not take any action that is detrimental to, or not in the best interest of the County.

8. **Termination.** County may terminate this Agreement without cause upon thirty (30) days written notice.

9. **Non-Exclusive Services of Company.** Jim Wells County reserves the right to request this Product, Good and/or service from other sources other than the Company and shall not be in violation of any terms or conditions of this Agreement.

10. **Insurance.** Consistent with its status as an independent contractor and at its sole expense, Company agrees that throughout the duration of the work under this contract and any extension hereof, it shall provide and maintain any and all insurances and abide by any requirements which are specified in the Procurement Packet/Specifications and/or which may be necessary in providing Services or are otherwise required by law. Insurance policies shall cover, but are not limited to, Company's activities and all persons, vehicles, equipment and property connected with providing Services, to include theft or loss. The amount of insurance required shall be in accordance with amounts specified by the County or as prescribed by law, but in no event shall any amount be less than the minimum amounts prescribed by law, including, but not limited to the Texas Tort Claims Act. These requirements do not establish limits of Company's liability. Any and all applicable insurance requirements and amounts are incorporated herein by reference for all purposes. Company is responsible for ensuring all required insurance policies are valid for the duration of the contract. All insurance policies are to be issued by an insurance company authorized to do business in the State of Texas and acceptable to County. Company shall cause all subcontractors utilized by Company to also comply with these specifications. Company shall furnish to County certificate(s) of coverage, and all renewals throughout the duration of the Project, issued by the insurer that such insurance is in full force and effect. (See **Exhibit "C"** attached hereto and incorporated herein for all purposes). For each applicable policy, Company shall name the County as an additional insured. Company shall notify County a minimum of thirty (30) days in advance of cancellation of all or part of a policy. Company shall make any other insurance documentation available to County upon request. Company will be considered in breach of contract should the Company fail to maintain an insurance policy in the minimum limits of liability and requirements identified above while performing services for and under this Agreement, and will be subject to default and immediate termination of the Agreement. Additionally, Company covenants and agrees to use its best efforts to maintain an insurance policy

in the minimum limits of liability and requirements identified above until one year following the conclusion of this Agreement.

11. INDEMNIFICATION. COMPANY SHALL INDEMNIFY AND HOLD COUNTY, ITS ELECTED OFFICIALS, EMPLOYEES AND AGENTS HARMLESS FROM ANY AND ALL CLAIMS, ACTIONS, LIABILITY, DAMAGES, LOSSES AND EXPENSES (INCLUDING COSTS OF JUDGMENTS, SETTLEMENTS, COURT COSTS, AND ATTORNEYS' FEES, REGARDLESS OF THE OUTCOME OF SUCH CLAIM OR ACTION) CAUSED BY, RESULTING FROM, OR ALLEGING NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OR ANY FAILURE TO PERFORM ANY OBLIGATION UNDERTAKEN OR ANY COVENANT IN THIS CONTRACT, WHETHER SUCH ACT, OMISSION, OR FAILURE WAS THE COMPANY'S OR THAT OF ANY PERSON PROVIDING SERVICES HEREUNDER THROUGH OR FOR THE COMPANY. UPON WRITTEN NOTICE FROM THE COUNTY, THE COMPANY WILL RESIST AND DEFEND AT ITS OWN EXPENSE, AND BY COUNSEL REASONABLY SATISFACTORY TO COUNTY, ANY SUCH CLAIM OR ACTION. THE COMPANY WILL CARRY PROPER INSURANCE WITH THE COUNTY AS AN ADDITIONAL NAMED INSURED. THIS INDEMNIFICATION CLAUSE SHALL SURVIVE THIS AGREEMENT AND BE ENFORCEABLE AS A SEPARATE AGREEMENT IN THE EVENT ITS SURVIVAL AND ENFORCEMENT BECOME NECESSARY.

12. Notice. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests, or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to County: The County of Jim
 Wells
 Attn: County Judge
 Address
 200 N Almond St
 Alice, Texas 78332
 City, State, Zip Code

If to Company: Company Name:
 Attention:
 Address
 City, State, Zip Code

Each notice, demand, request, or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addresses or if mailed at such time as it is deposited in the United States mail.

13. GENERAL PROVISIONS.

- a. **Assignment.** Except as otherwise herein provided, Company shall not assign the obligations or rights under this Agreement to any person without the prior written consent of County.

- b. **Conflict with Applicable Laws.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any

provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event, the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- c. **No Waiver.** No waiver by County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.
- d. **Governing Law.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Jim Wells County, Texas. The Company hereby consents to personal jurisdiction in Jim Wells County, Texas.
- e. **Successors.** This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.
- f. **Commitment of Current Revenues Only.** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon ninety (90) days written notice to Company. County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of County. *Agreements for the acquisition, including lease of real or personal property under Tex. Loc. Govt. Code §271.903:* In the event that, during any term hereof, the Commissioner's Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon ninety (90) days written notice to Company, County agrees, however, to use a best efforts attempt to obtain and appropriate funds for payment of the Agreement. The parties intend this provision, if applicable, to be a continuing right to terminate this at the expiration of each budget period of County in accordance with the Texas Local Government Code.
- g. **Immunities.** Nothing in this Agreement is intended to and County does not hereby waive, release or relinquish any right to assert any of the defenses County enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action of any person, entity, or individual against County.

- h. **Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.
- i. **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.
- j. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by an agreement in writing executed by County and Company, and not otherwise.
- k. **Purchasing Ethics.** Company represents and warrants it has not, during the process of being awarded this contract violated the following ethical standards of County and, upon and after the execution of this Agreement, agrees to abide by the following ethical standards of County:
 - i. It shall be a breach of ethics to offer, give or agree to give any elected official, department head or employee, or former elected official, department head or employee, of County, or for any elected official, department head or employee or former elected official, department head or employee of County, to solicit, demand, accept or agree to accept from another person, entity or organization, a gratuity or an office of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before any department or agency of County.
 - ii. It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for County, or any person associated therewith, as an inducement for the award of a subcontract or order.
- l. **Void Contract.** Company understands that an awarded contract may immediately become void if the County determines that a lack of compliance with applicable policies and/or statutes has occurred in the procurement process.
- m. **Nondiscrimination.** Company, including subcontractors, assignees and successors in interest, ensures that no person shall on the grounds of race, religion, color, national origin, sex, age, or disability, or any other protected class under law, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation in any federally or non-federally funded program or activity when providing any services described herein under

this contract/agreement. Applicable nondiscrimination statements and provisions of Title VI of the Civil Rights Act of 1964, as amended, were provided as part of the initial procurement packet and are incorporated herein and made a part of this agreement for all purposes.

- n. **Additional Documents.** The parties hereto covenant and agree that they will execute each such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.
- o. **Required Contract Provision for Contracts Subject to Federal Award (*if applicable*).** Pursuant to 2 CFR 200.327, a non-federal entity's contracts must contain the applicable provisions described in appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards. Additionally, County contracts under Federal award which are subject to assistance from the Federal Emergency Management Agency (FEMA) are also required to contain additional contract clauses. The applicable required contract clauses were provided as part of the initial procurement packet and are incorporated herein and made part of this agreement for all purposes.
- p. **Authority to Execute.** The execution and performance of this Agreement by County and Company have been duly authorized by all necessary laws, resolutions, or corporate action, and this Agreement constitutes the valid and enforceable obligations of County and Company in accordance with its terms.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED as of the day and year first written above.

APPROVED BY COMMISSIONERS' COURT ON _____.

Agenda Item No. _____

Executive Office: _____

VENDOR:

COUNTY:

Jim Wells County, Texas

Name, Title

Hon. Pedro "Pete" Trevino Jr., County Judge

APPROVED AS TO FORM

Office of the Jim Wells County

Name / Title

ATTEST:

_____, ADA

Name / Title

ATTACHMENTS:

- A. REQUEST FOR (_____) (RF _____)
PROCUREMENT PACKET _____
- B. RESPONSE
- C. CERTIFICATE OF INSURANCE

SUPPLEMENTAL SIGNATURES:

(If Applicable)

Appendix L

DEFICIENCIES AND DEVIATIONS FORM

This form must be signed and included in your submission.

-
- Company Name

Signature of Authorized Company Official

Name of Authorized Company Official

Title of Authorized Company Official

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

If necessary, please use additional sheets.

Appendix M

REFERENCE FORM

REFERENCE FORM

Reference One

Client's Name: _____

Type of Organization: _____

Address: _____

Contact Person: _____ Title: _____

Telephone: _____ E-mail: _____

Project Information

Name of Project: _____

Scope of Work: _____

Contract Period: From _____ to _____

Cost: Projected \$: _____ Actual \$: _____

Timeframe (Include Unit Measure) Projected _____ Actual _____

Status as of _____ (Circle One) Complete In Progress Canceled
Date

Reference Two

Client's Name: _____

Type of Organization: _____

Address: _____

Contact Person: _____ Title: _____

Telephone: _____ E-mail: _____

Project Information

Name of Project: _____

Scope of Work: _____

Contract Period: From _____ to _____

Cost: Projected \$: _____ Actual \$: _____

Timeframe (Include Unit Measure) Projected _____ Actual _____

Status as of _____ (Circle One) Complete In Progress Canceled
Date

Reference Three

Client's Name: _____

Type of Organization: _____

Address: _____

Contact Person: _____ Title: _____

Telephone: _____ E-mail: _____

Project Information

Name of Project: _____

Scope of Work: _____

Contract Period: From _____ to _____

Cost: Projected \$: _____ Actual \$: _____

Timeframe (Include Unit Measure) Projected _____ Actual _____

Status as of _____ (Circle One) Complete In Progress Canceled
Date

Reference Four

Client's Name: _____

Type of Organization: _____

Address: _____

Contact Person: _____ Title: _____

Telephone: _____ E-mail: _____

Project Information

Name of Project: _____

Scope of Work: _____

Contract Period: From _____ to _____

Cost: Projected \$: _____ Actual \$: _____

Timeframe (Include Unit Measure) Projected _____ Actual _____

Status as of _____ (Circle One) Complete In Progress Canceled
Date