



**CAMERON COUNTY
PURCHASING DEPARTMENT
REQUEST FOR QUALIFICATIONS**

RFQ NUMBER: 220802

RFQ TITLE:

ARCHITECTURAL / ENGINEERING SERVICES – SANTA ROSA COMMUNITY PARK PHASE II IMPROVEMENTS

DATE DUE: SEPTEMBER 20, 2022

DUE NO LATER THAN: 11:00 A.M.

RFQ's will be opened at the Cameron County Courthouse, 1100 East Monroe Street, Brownsville, Texas in the Purchasing Department – 3rd Floor – Room # 345 at 11:01 a.m. (as per Purchasing Dept. time clock) on deadline due date. RFQs received later than the date and time above will not be considered.

Please return **ORIGINAL AND EIGHT (8) COPIES** RFQ in sealed envelope. Be sure that return envelope shows the RFQ Number, Description and is marked "SEALED RFQ".

RETURN RFQ TO:

by U.S. mail or delivered to the office of Purchasing Dept., **County Courthouse (Dancy Bldg.)
1100 E. Monroe St, 3rd Floor, Room 345, Brownsville, Texas 78520.**

For additional information or to request addendum email: Mike Forbes or Dalia Loera at mforbes@co.cameron.tx.us or dalia.loera@co.cameron.tx.us

YOU MUST SIGN BELOW IN INK; FAILURE TO SIGN WILL DISQUALIFY THE OFFER.
All prices must be typewritten or written in ink.

Company Name: _____

Company Address: _____

City, State, Zip Code: _____

Historically Underutilized Business (State of Texas) Certification VID Number: _____

Telephone No. _____ Fax No. _____ e-mail _____

SIGNATURE: _____ **Print Name:** _____

How did you find out about this RFQ? _____ (ex: Newspaper, Web, Mail)

Is Proposer's principal place of Business within Cameron County? Yes - No

If yes what City: _____

(Your signature attests to your offer to provide the goods and/or services in this RFQ according to the published provision of this RFQ. When an award letter is issued, this RFQ becomes the contract. If a RFQ required specific Contract is to be utilized in addition to this RFQ, this signed RFQ will become part of that contract. When an additional Contract is required a RFQ award does not constitute a contract award and RFQ / Contract is not valid until contract is awarded by Commissioners Court (when applicable) signed by County Judge) and Purchase Order is issued.

CHECK LIST

Items checked below represent components which comprise this RFQ/proposal package. If the item **IS NOT** checked, it is **NOT APPLICABLE** to this RFQ/proposal. Offerors are asked to review the package to be sure that all applicable parts are included. If any portion of the package is missing, notify the Purchasing Department immediately. It is the Offeror's responsibility to be familiar with all the Requirements and Specifications. Be sure you understand the following before you return your RFQ packet.

- Cover Sheet**
Your company name, address and your signature (**IN INK**) should appear on this page.
- Instructions to Proposers**
You should be familiar with all of the Instructions to Proposers.
- Special Requirements**
This section provides information you must know in order to make an offer properly.
- Specifications / Scope of Work**
This section contains the detailed description of the product/service sought by the County.

Attachments

- Attachments A, B, C, D, E, F, G, H, I**
Be sure to complete these forms and return with packet.
- Bid Guaranty & Performance Bond Information & Requirements**
This form applies only to certain bids/proposals. All public work contracts over \$25,000 require a Payment Bond and over \$100,00 must also have a Performance Bond in a form approved by the County. Please read carefully and fill out completely.
- Minimum Insurance Requirements**
Included when applicable
- Worker's Compensation Insurance Coverage Rule 110.110**
This requirement is applicable for a building or construction contract.
- Financial Statement**
When this information is required, you must use this form.

Other - Final Reminders To double check before submitting RFQ

- Is your RFQ sealed with RFQ #, title, Proposer Name, & return address, on outside?
- Did you complete, sign and submit page 1?
- Did you complete and submit attachments A,B,C,D,E , F, G, H, I ?
- Did you provide the number of copies as required on the cover page?
- Did you visit our website for any addendums?

<https://www.cameroncounty.us/purchasing-bids-rfpq-addms-tabs/>

If not interested in Bidding please let us know why e-mail to: Purchasing@co.cameron.tx.us

INSTRUCTIONS FOR SUBMITTING RFQ'S

These General Instructions apply to all offers made to Cameron County, Texas (herein after referred to as "County") by all prospective vendors (herein after referred to as "Proposers") on behalf of Solicitations including, but not limited to, Invitations to RFQ and Requests for Quotes.

Carefully read all instructions, requirements and specifications. Fill out all forms properly and completely. Submit your RFQ with all appropriate supplements and/or samples. Prior to returning your sealed RFQ response / submittal, all Addendums - if issued - should be reviewed and downloaded by entering the County Purchasing web <https://www.cameroncounty.us/purchasing-bids-rfpq-addms-tabs/>

Addendums Column (updated Addendums). These Addendums must be signed and returned with your RFQ in order to avoid disqualification. All Tabulations can also be viewed and downloaded at this site. Annual RFQ award information can be accessed at: <https://www.cameroncounty.us/purchasing-bids-rfpq-addms-tabs/>

Review this document in its entirety. Be sure your RFP is complete, and double check your Bid / RFP for accuracy.

Cameron County is an Equal Employment Opportunity Employer.

Review this document in its entirety. Be sure your RFQ is complete, and double check your RFQ for accuracy.

GOVERNING FORMS: 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 document, Cameron County's interpretation shall govern.

GOVERNING LAW: This invitation to RFQ is governed by the competitive RFQ 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 that Cameron County may request and rely on advice, decisions and opinions of the Attorney General of Texas and the County Attorney concerning any portion of these requirements.

OPEN RECORDS ACCESS TO ALL INFORMATION SUBMITTED. County Purchasing Act, Texas Local Government Code, Section 262.030. (c) If provided in the request for proposals, proposals shall be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation. All proposals that have been submitted shall be available and open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such. After award of RFQs all information included will be open to the public, to other respondents, and to media as per the Public Information Act and shall not be considered confidential in nature. If you deem any information as confidential, it should not be made part of your RFQ package.

Questions requiring only clarification of instructions or specifications will be handled verbally. If any questions results in a change or addition to this RFQ, the Change(s) and addition(s) will be forwarded to all vendors involved (as quickly as possible) in the form of a written addendum only. Verbal changes to RFQ's must be backed-up by written addendum or written Q/A clarifications which would be posted on County Purchasing Web site. Without written Addendum or written Q / A clarification, verbal changes to RFQ will not apply.

Sign the Vendor's Affidavit Notice, complete answers to Attachments A, B, C, D, E, F, G, H, I and return all with your RFQ.

CONFLICT OF INTEREST QUESTIONNAIRE:

For all persons and business entities doing business with Cameron County:

This questionnaire must be submitted with the response to this RFQ and filed in accordance with chapter 176 of the Local Government Code by a persons and business entities doing business with Cameron County. By law this questionnaire must be filed with the records administrator of the Cameron County Clerk's office not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person (or entity or both) commits an offense if the person violates Section 176.006, Local Govt. Code.

A vendor commits an offense if the vendor:

- (1) is required to file a conflict of interest questionnaire under Section 176.006; and
- (2) either:
 - (A) knowingly fails to file the required questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of the facts that require the filing of the questionnaire; or

(B) knowingly fails to file the required questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in a questionnaire previously filed by the vendor incomplete or inaccurate.

Under Section 176.013, Local Government Code An offense under this section is (1) a Class C misdemeanor if the contract amount is less than \$1 million or if there is no contract amount for the contract; (2) a Class B misdemeanor if the contract amount is at least \$1 million but less than \$5 million; or (3) a Class A misdemeanor if the contract amount is at least \$5 million.

Please review this entire document,if for any reason there is any information to disclose, relative to any questions in this Conflict of Interest form, you must file with County Clerk's Office subject to above instructions.

The form can be downloaded at the following web site:

https://www.cameroncounty.us/wp-content/uploads/Purchasing/docs/Conflict_of_Interest_Questionnaire_New_2015_.pdf

DISCLOSURE OF INTERESTS:

This questionnaire must be filed with the records administrator (County Clerk's Office) of the local government and no later than the 7th business day after the person becomes aware of facts that require this statement to be filed. Cameron County, Texas requires all persons or firms seeking to do business with the County to **provide the following information if the person becomes aware of facts that require this statement to be filed**. Every question must be answered. If the question is not applicable, answer with "N/A."

Please review this entire document, if for any reason there is any information to disclose, relative to any questions in this disclosure of interest form, you must file with County Clerk's Office subject to above instructions.

The form can be downloaded at the following web site:

<https://www.cameroncounty.us/wp-content/uploads/Purchasing/CIS.pdf>

TEXAS ETHICS COMMISSION FORM 1295

All RFQs prior to award or award of Contract by Commissioner's Court will require that the Texas Ethics Commission (TEC) Form 1295 Electronic (on line) Vendor filing procedure be completed by Vendor.

All Vendors being recommended to Commissioners Court for award or renewal of award on Agenda must register and obtain a TEC Certification for the specific award. This Certification Form 1295 must be electronically submitted, printed and notarized. Notarized form must be emailed or delivered to County Purchasing Department making the request for form. This process must be completed prior to Commissioners Court Agenda for approval consideration of RFQ award. There is no charge for this TEC online process.

Texas Ethics Commission (TEC) Form 1295 must be completed (by firm - on line "New Form 1295 Certificate of Interested Parties Electronic Filing Application" Site at:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

If any Vendors have questions as to TEC Form 1295 visit the County Purchasing Web site left column tab "Vendor – TEC Form 1295" for more information. TEC Web site links can be found at this location including Question / Answers and Video instructions.

tab Link:

<https://www.cameroncounty.us/vendors-tec-form-1295/>

Respondents SHALL SUBMIT RESPONSES TO THIS RFQ ON THE FORM PROVIDED, SIGN THE VENDOR AFFIDAVIT, AND RETURN ENTIRE RFQ PACKET. In the event of inclement weather and County Offices are officially closed on a RFO deadline day, RFQ's will be received until 2:00 p.m. of the next business day. Qualifications will be opened at the Cameron County Courthouse, 1100 East Monroe Street, Brownsville, Texas in the Purchasing Department – 3rd Floor – Room # 345 (as per Purchasing Dept. time clock.

RFQs SUBMITTED AFTER THE SUBMISSION DEADLINE SHALL BE RETURNED UNOPENED AND WILL BE CONSIDERED VOID AND UNACCEPTABLE.

PRESENTATIONS SEQUENCE TO EVALUATION COMMITTEE. Presentations to Evaluation Committee will be sequenced (in order) as determined by the utilization of RANDOM.ORG. Process will be conducted in the Purchasing Dept. with Auditor's designee present.

RESPONDENTS MAY ATTEND PUBLICLY HELD COMM COURT MEETING FOR AWARD OF THIS SOLICITATION. All respondents are welcome to attend the publicly held Commissioners Court meeting relative to the outcome / award of this solicitation. Court Meeting agenda date and times may be obtained at the following web site: http://www.co.cameron.tx.us/commissioner_s_court_agenda/index.php

SUCCESSFUL VENDOR WILL BE NOTIFIED BY MAIL. All responding vendors will receive written notification regarding the outcome of the award.

BIDDERS / PROPOSERS MAY ATTEND PUBLICLY HELD COMM COURT MEETING FOR AWARD OF THIS SOLICITATION. All responding bidders/ proposers are welcome to attend the publicly held Commissioners Court meeting relative to the outcome / award of this solicitation. Court Meeting agenda date and times may be obtained at the following web site: http://www.co.cameron.tx.us/commissioner_s_court_agenda/index.php

PLEASE NOTE CAREFULLY

THIS IS THE ONLY APPROVED INSTRUCTION FOR USE ON YOUR RFQ. ITEMS BELOW APPLY TO AND BECOME A PART OF TERMS AND CONDITIONS OF RFQ. ANY EXCEPTIONS THERETO MUST BE IN WRITING.

1. **ORIGINAL AND SEVEN (7) COPIES OF RFQ's MUST BE SUBMITTED.** Each RFQ shall be placed in a separate envelope completely and properly identified with the name and number of the RFQ. RFQ's must be in the Purchasing Department BEFORE the hour and date specified.
2. RFQ's MUST give full firm name and address of the Proposer. Failure to manually sign RFQ will disqualify it. Person signing RFQ should show TITLE or AUTHORITY TO BIND THE FIRM IN A CONTRACT.
3. RFQ's CANNOT be altered or amended after deadline time. Any alterations made before deadline time must be initiated by Proposer or his authorized agent. No RFQ can be withdrawn after opening time without approval by the Commissioners Court based on a written acceptable reason.
4. The County is exempt from State Sales Tax and Federal Excise Tax. DO NOT INCLUDE TAX IN RFQ. Cameron County claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates will be furnished upon written request to the Cameron County Purchasing Agent.
5. Any Catalog, brand name or manufacturer's reference used in a RFQ invitation is descriptive-NOT restrictive-it is to indicate type and quality desired. RFQ's on brand of like nature and quality will be considered. If RFQ is based on other than reference specifications, proposal must show manufacturer, brand or trade name, lot number, etc., of article offered. If other than brand(s) specified is offered, illustrations and complete descriptions should be made part of the RFQ. If Proposer takes no exception to specifications or reference data, he will be required to furnish brand names, numbers, etc. as specified.
6. Samples, when requested, must be furnished free of expense to the County. If not destroyed in examination, they will be returned to the Proposer on request, at his expense. Each sample should be marked with Proposer's name, address, and County RFQ number. DO NOT ENCLOSE OR ATTACH SAMPLE TO RFQ.
7. Written and verbal inquires pertaining to RFQ's must give RFQ Number and Company.
8. NO substitutions or cancellations permitted without written approval of Purchasing Agent.
9. The County reserves the right to accept or reject all or any part of any RFQ, waiver minor technicalities. The County of Cameron reserves the right to award by item category or by total RFQ. Prices should be itemized. County also reserves the right to award either with or without trade-in, if applicable.
10. This is a RFQ inquiry only and implies no obligation on the part of Cameron County.
12. Acceptance of and final payment for the item will be contingent upon satisfactory performance of the product received by Cameron County.
13. Partial RFQ's will not be accepted unless awarded by category or line item. **To be awarded by total RFQ.**
14. It is expected that the Proposer will meet all state and federal safety standards and laws in effect on the date of the RFQ for the item(s) being specified, and the particular use for which they are meant.

INVOICES AND PAYMENTS: (a) Seller shall submit separate invoices, in duplicate, on each purchase order after each delivery or service is rendered. Invoices shall indicate the purchase order number, shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight weigh bill when applicable, should be attached to the invoice. Mail to: Cameron County, ATTN: Auditor's Office, 1100 East Monroe Street, Brownsville, Texas 78520. Payment shall not be due until the above instruments are submitted after delivery. Suppliers should keep the Finance Department advised of any changes in your remittance addresses. (b) Buyer's obligation is payable only and solely from funds available for the purpose of the purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered buy unpaid for goods will be returned to Seller by Buyer. (c) Do not include Federal Excise, State or City Sales Tax. County shall furnish tax exemption certificate if required.

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. Prior to any and all payments made for good and/or services provided under this contract, the offeror should provide his Taxpayer Identification Number or social security number as

applicable. This information must be on file with the Cameron County Auditor's office. Failure to provide this information may result in a delay in payment and/or back-up withholding as required by the Internal Revenue Services.

Proposer shall submit two (2) copies of an itemized invoice showing RFQ number and purchase order number to:

**CAMERON COUNTY AUDITOR
ACCOUNTS PAYABLE
1100 EAST MONROE STREET,
BROWNSVILLE, TEXAS 78520**

Please note that any payment due under this RFQ award will be applied towards any debt, including but not limited to delinquent taxes that is owed to Cameron County.

PAYMENT DISCOUNT: Indicate the payment discount (s) available depending on the when invoices are paid. For example, 1/30 means a 1% discount if paid within 30 days, 2/15 means a 2% discount if paid within 15 days, etc.

Payment in full will be made within thirty (30) days of delivery, inspection, and receipt of invoice.

All costs quotations must include all the various features needed to satisfy the requirements. Note: No amounts will be paid for the items in this RFQ in excess of the amounts quoted.

**CAMERON COUNTY REQUEST FOR QUALIFICATIONS (RFQ)
ARCHITECTURAL / ENGINEERING SERVICES
Santa Rosa Community Park Phase II Improvements
RFQ # 220802**

SECTION 1. GENERAL

Cameron County is requesting statement of qualifications for Architecture and/or Engineering services to prepare plans and specifications for the development of the Santa Rosa Community Park Phase II Improvements located in the community of Santa Rosa, Texas.

SECTION 2. SELECTION CRITERIA SUMMARY

WEIGHTED QUANTITATIVE SCORING:

Each Vendor will be assigned a score of 0 - 4 by each evaluator for each criteria

- 4 = Very good / Exceeds expectations
- 3 = Above expectations
- 2 = Meets expectations
- 1 = Does not meet expectations
- 0 = non-responsive

Evaluators score by category will be multiplied by the assigned weight for each criteria by vendor then totaled.

Once RFQ's Qualification Statements are reviewed and scored, a short list may be compiled. Interviews may be conducted with Vendors determined by total score rankings. Additional information may be required at that time. Negotiations will begin with the Vendors selected for the project. Commissioners Court will make the final selection and possible approval of the contract.

The following criteria will be used as a basis for the selection of a firm:

- **EXPERIENCE AND QUALIFIED PERSONNEL – 35 POINTS**
To assess the experience and qualifications of the personnel in working with federal, state, local government entities, and other political subdivisions.
- **TEAM MEMBERS – 25 POINTS**
To identify the personnel the firm proposes to commit on a day-to-day basis and evaluate the specific qualifications of these individuals and their capacity to perform.
- **MANAGEMENT PLAN FOR THE PROJECT – 20 POINTS**
To demonstrate client satisfaction & candidate's familiarity with the required experience and expertise
- **REFERENCES – 20 POINTS**
To demonstrate client satisfaction & candidate's familiarity with the required experience and expertise

SECTION 3. SCOPE OF SERVICES

The scope for the proposed, architectural /engineering services will include the following:

- A) Development of a Conceptual Plan to fit within construction budget and for approval by Cameron County Commissioners' Court.
- B) Development of preliminary construction schematics including Survey, Topographic data, utility location and easements, and support amenities.
- C) Development of final design plans for site improvements including but not limited to existing and future: Community Center/Gym Renovations (exterior painting, A/C work, upgrade lighting, and other needed improvements), Parking lot(s) Expansion & Improvements, Baseball/Athletic Field Renovations (fencing, dugouts, infield improvements, bleachers, irrigation, landscaping, and other needed improvements), Signage, Surveying, and Permits.
- E) Development of Specifications and Contract Documents for Construction RFQ's.
- F) Review of RFQ's, award recommendation to Cameron County or value engineering if RFQs are over budget.
- G) Project coordination and contract administration during construction.
- H) Provision of certification documents to comply with Windstorm, FEMA, Building Code requirements, ADA guidelines, and all applicable Rules or Regulations.

All drawings and specifications will be signed and sealed by a License Texas Engineer and/or Architect.

SECTION 4. STATEMENT OF QUALIFICATIONS

The engineering firm shall provide a description of the history and background of the firm, identification of the services currently being provided to federal, state and local government entities, districts and other political subdivisions in Texas and other information relevant to the provision of the requested services:

- 1) General information about the firm
 - a) Name, address, and telephone number of the firm
 - b) History of the firm
 - c) List names and titles of employees of the firm who are directly responsible for services under the Proposal
 - d) Information pertaining to the firm's compliance with licensing and other requirements
- 2) References: list of three (3) references to those listed in # 1 above.
- 3) Identify personnel to be assigned responsibility for administering the account (provide resume for the individual representative that the firm will assign to the account).

EXECUTIVE SUMMARY

Format and Content: Please included in your RFQ's as part of your cover.

Executive Summary (2 pages max.)

Summary of RFQ as submitted

Introduction (2 pages max.)

Proposals must include confirm that the firm will comply with all of the provisions in this RFQ. If exceptions will be taken it should be so noted. Proposals must be signed by a company officer empowered to bind the company. A proposer's failure to include these items in their proposals may cause their proposal to be determined to be non-responsive and the proposal may be rejected. Include the following: *Firms Name, Address, Phone #, Contact Name, Phone #, Email address.*

Understanding of the Project (1-page max.)

Proposers must provide a comprehensive narrative statement that illustrates their understanding of the requirements of the schedule.

Management Plan for the Project (1-page max.)

Proposers must provide a comprehensive narrative statement that sets out the management plan they intend to follow and illustrates how their plan will serve to accomplish the work and meet Cameron County's project schedule.

Experience and Qualifications (2 pages max.)

Provide list specific to the personnel assigned to accomplish the work called for in this RFQ; illustrate the lines of authority; designate the individual responsible and accountable for the completion of each component and deliverable of the RFQ.

Provide a narrative description of the organization of the project team.

Provide a personnel roster that identifies each person who will actually work on the contract and provide the following information about each person listed and Title;

Evaluation Criteria (2 pages total max. for all criteria)

Explain your firms strengths/advantages as they pertain to each of the Evaluation Scoring criteria. Note each criteria separately with explanation for each.

PROPOSAL ANALYSIS AND EVALUATION

In determining the total system that is in the best interest of Cameron County, the following elements among possible others, will be considered.

1. Respondent's record of past experience.
2. Completeness and thoroughness of proposal. Include any additional information that your company can provide to enhance this service.
3. Respondent's ability to provide the services required by this project.
4. Respondent's completed proposal based on evaluation that are in the best interest of the County, and that provide the best business decision for the County and help the needs of the County.

THE COUNTY RESERVES THE RIGHT TO:

1. Reject any and/or all RFQs.
2. Accept any RFQs or portion thereof most advantageous.
3. Revise the RFQ and/or issue addenda to the RFQ, in event it becomes necessary to revise any or part of the RFQ. Addenda will be provided to all those that receive the RFQ.
4. Cancel or re-issue the RFQ, in whole or in part, prior to execution of a contract.
5. Request reference when deemed necessary by Cameron County.
6. Conduct a post-award meeting with successful respondent when deemed necessary.
7. Negotiate with the respondent.
8. County will award RFQ by total award.

RFQ Title _____

Proposer's Name _____

Attachment A

REFERENCES

Please list three (3) references of current customers who can verify the quality of service your company provides. The County prefers customers of similar size and scope of work to this RFP/RFQ.

THIS FORM MUST BE RETURNED WITH YOUR RFP/RFQ.

REFERENCE ONE

Government/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ e-mail address: _____

Contract Period: _____ Scope of Work _____

REFERENCE TWO

Government/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ e-mail address: _____

Contract Period: _____ Scope of Work _____

REFERENCE THREE

Government/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ e-mail address: _____

Contract Period: _____ Scope of Work _____

THIS FORM MUST BE RETURNED WITH YOUR RFQ

AFFIDAVIT

The undersigned certifies that the RFP/RFQ prices contained in this RFP/RFQ have been carefully checked and are submitted as correct and final and if RFP/RFQ is accepted (within 90 days unless otherwise noted by vendor), agrees to furnish any and/or all items upon which prices are offered, at the price(s) and upon the conditions contained in the Specifications.

STATE OF TEXAS
COUNTY OF CAMERON

BEFORE ME, the undersigned authority, A Notary Public in and for the State of Texas, on this day personally appeared

_____ who, after having first been duly sworn, upon oath did depose and say;

That the foregoing RFP/RFQ submitted by _____ hereinafter called "Proposer" is the duly authorized agent of said company and that the person signing said proposal has been duly authorized to execute the same. Proposer affirms that they are duly authorized to execute this contract, that this company, corporation, firm, partnership or individual has not prepared this RFP/RFQ in collusion with any other Proposer. The Proposer is not a member of any trust, pool, or combination to control the price of products or services RFP/RFQ on, or to influence any person to RFP/RFQ or not to RFP/RFQ thereon. I further affirm that the Proposer has not given, offered to give, nor intends to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discounts, trip, favor, or service to a public servant in connection with the submitted RFP/RFQ. The contents of this RFP/RFQ as to prices, terms or conditions of said RFP/RFQ have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this RFP/RFQ.

Name and Address of Proposer :

Telephone number _____

Fax number _____

Signature

Name: _____

Title: _____

SWORN TO AND SUBSCRIBE BEFORE ME THIS _____ day of _____ 20_____.

Notary Public in and for the State of Texas

THIS FORM MUST BE RETURNED WITH YOUR RFQ

RESIDENCE CERTIFICATION

Pursuant to Texas Government Code §2252.001 *et seq.*, as amended, Cameron County requests Residence Certification. §2252.001 *et seq.* of the Government Code provides some restrictions on the awarding of governmental contracts; pertinent provisions of §2252.001 are stated below:

- (3) “Nonresident Proposer ” refers to a person who is not a resident.
- (4) “Resident Proposer ” refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

I certify that _____ is a Resident
(Company Name)
Proposer of Texas as defined in Government Code §2252.001.

I certify that _____ is a Nonresident
(Company Name)
Proposer as defined in Government Code §2252.001 and our principal place of business is

(City and State)

THIS FORM MUST BE RETURNED WITH YOUR RFQ

CAMERON COUNTY EXPRESSLY REQUESTS THAT BIDDERS / PROPOSERS NOT DISCUSS THIS ENGAGEMENT OR THIS BIDDER'S / PROPOSER'S PLANS, EXPERIENCE OR CREDENTIALS WITH OTHER BIDDERS / PROPOSERS OR ANY MEMBER OF COMMISSIONERS' COURT, ANY COUNTY OFFICIAL, OR ANY EVALUATION COMMITTEE MEMBER APPOINTED BY COMMISSIONERS COURT. EXCLUDED ARE PRE-BID OR PRE-PROPOSAL CONFERENCES, EVALUATION COMMITTEE SCHEDULED VENDOR PRESENTATIONS OR VENDOR INTERVIEWS, OR EVALUATION COMMITTEE SCHEDULED EQUIPMENT OR SERVICES DEMONSTRATIONS. YOU MAY CONTACT THE PURCHASING AGENT /PURCHASING DEPARTMENT AT ANY TIME.

FROM RFQ OPENING DATE THROUGH COMMISSIONERS COURT MEETING FOR SELECTION, VENDORS WILL NOT APPROACH THE COUNTY JUDGE OR COMMISSIONERS TO DISCUSS MATTERS PERTAINING TO THIS RFQ.

- 01. Has any individual with the firm submitting this Proposal/Bid/Response made any contact with any member of Commissioners Court, any County Official, or an Evaluation Committee member concerning this Invitation to Bid/RFP/RFQ, other than questions to the Assistant County Auditor/Purchasing Officer?

- 02. Has any individual with the firm submitting this RFQ response made any contact with any other Bidder or Proposer concerning this Invitation to RFQ?

Signature of person submitting this Bid

Date

THIS FORM MUST BE RETURNED WITH YOUR RFQ

ORDER NO. 2007O2005

THE STATE OF TEXAS §
COUNTY OF CAMERON §

ORDER ADOPTING CONTRACTING RULES FOR PERSONS INDEBTED TO COUNTY

WHEREAS, pursuant to V.T.C.A., Local Government Code, Section 262.0276, a commissioners court is authorized to adopt rules permitting a county to refuse to enter into a contract or other transaction with a person indebted to the county;

WHEREAS, the Commissioners Court of Cameron County finds it is in the best interest of Cameron County to adopt such rules;

NOW THEREFORE, BE IT ORDERED by the Commissioners Court of Cameron County, that the following rules be adopted regarding Cameron County and persons interested in doing business with Cameron County:

- 1. Cameron County may refuse to enter into a contract or other transaction with a person with a past due debt to Cameron County, including delinquent ad valorem taxes, even if the person is the lowest bidder or successful proposer; and
2. For purposes of this Order, a debt is past due if it is not received in the County Treasurer's Office by the due date in a written agreement or notice, and ad valorem taxes are past due if not received in the County Tax Assessor/Collector's Office by February 1st following the January 1st on which the ad valorem taxes are due.
3. For purposes of this Order, a person includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with Cameron County requiring approval by the Commissioners Court.

ADOPTED this 13 day of March, 2007.

Taxpayer Identification Number (T.I.N.):

Cameron County Acct #'s : Real Estate Personal Property

01. Is the person or the firm submitting this RFQ current with all local and State taxes?

Signature of person submitting this RFQ

Date

THIS FORM MUST BE RETURNED WITH YOUR RFQ

Certification Regarding Debarment, Suspension Ineligibility

As is required by the Federal Regulations Implementing Executive Order 12549, Debarment and Suspension, 45 CFR Part 76, Government-wide Debarment and Suspension, in 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, theory, 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 a three-year period preceding this bid/proposal and/or application had one or more public transactions terminated of cause or default.

Signature: _____

Print Name: _____

Title: _____

Telephone Number: _____

Date: _____

If the Bidder / Proposer is unable to certify to all of the statements in this Certification, such Bidder / Proposer should attach an explanation to this Bid / Proposal.

THIS FORM MUST BE RETURNED WITH YOUR RFQ

SWORN STATEMENT ON DEBARMENT

This SWORN statement is submitted with project number _____

By: _____
(PRINT INDIVIDUALS NAME AND TITLE)

For: _____
(PRINT NAME OF ENTITY SUBMITTING SWORN STATEMENT)

whose business address is:

CITY STATE ZIP VOICE PHONE

and if applicable its Federal Employee Identification Number (FEIN) is: _____

(INDICATE WHICH STATEMENTS APPLY)

_____ Neither the entity submitting this SWORN statement, nor any of its officers, directors, executives, partners, shareholders, employees, members or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime.

_____ The entity submitting this SWORN statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity **HAS BEEN CHARGED WITH AND CONVICTED OF A PUBLIC ENTITY CRIME.**

_____ The entity submitting this SWORN statement is not present on any Federal list of debarred contractors, nor been debarred from any other type of contracting.

AUTHORIZED SIGNATURE

(Printed Name) (Title)

Sworn to and subscribed before me this _____ day of _____, _____.

Personally known _____ OR Produced identification _____
SHOW TYPE OF IDENTIFICATION

Notary Public State of _____, County of _____ My commission expires _____

(PRINTED/TYPED/ OR STAMPED COMMISSIONED NAME OF NOTARY PUBLIC)

Architects, Engineers, Construction

The applicant certifies, to the best of his or her knowledge and belief, that the information noted below for it and its principals are accurate:

- a. List all previous law suits with Public entities and the results of such suits over the past 7 years.

- b. List all projects that have exceeded Budget, what % over budget and why – over the past 5 years.

- c. List all projects that have exceeded the project completion due date, how many days over and why – over the past 5 years.

Signature: _____

Print Name: _____

Title: _____

Telephone Number: _____

Date: _____

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

THIS FORM MUST BE RETURNED WITH YOUR RFQ

(attach pages if necessary due to space limitations)

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

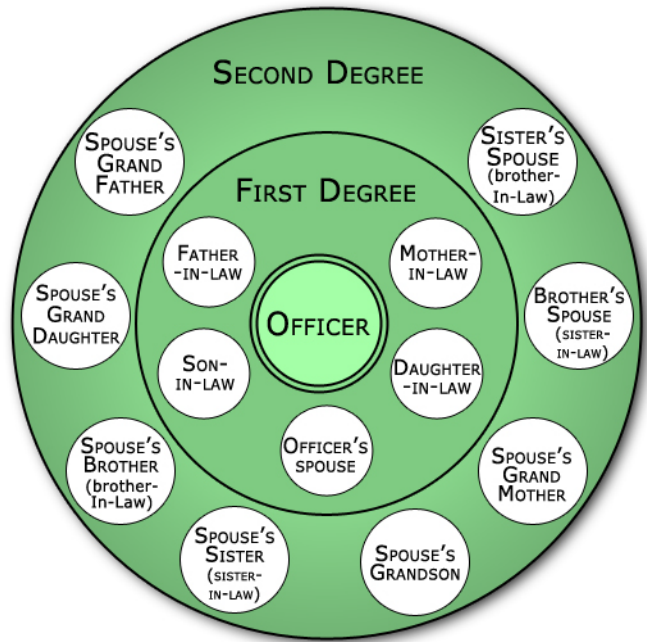
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>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.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<p>OFFICE USE ONLY</p> <p>Dale Received</p>
<p>1 Name of vendor who has a business relationship with local governmental entity.</p>	
<p>2. <input type="checkbox"/> 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 become aware that the originally filed questionnaire was incomplete or inaccurate.)</p>	
<p>3. Name of local government officer about whom the information is being disclosed.</p> <p style="text-align: center; margin-top: 20px;">Name of Officer</p>	
<p>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.</p> <p style="margin-top: 20px;">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?</p> <p style="text-align: center; margin-left: 100px;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p> <p style="margin-top: 20px;">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?</p> <p style="text-align: center; margin-left: 100px;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p>	
<p>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.</p>	
<p>6. <input type="checkbox"/> 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).</p>	
<p>7.</p>	
<p>Signature of vendor doing business with the governmental entity</p>	

NEPOTISM CHART

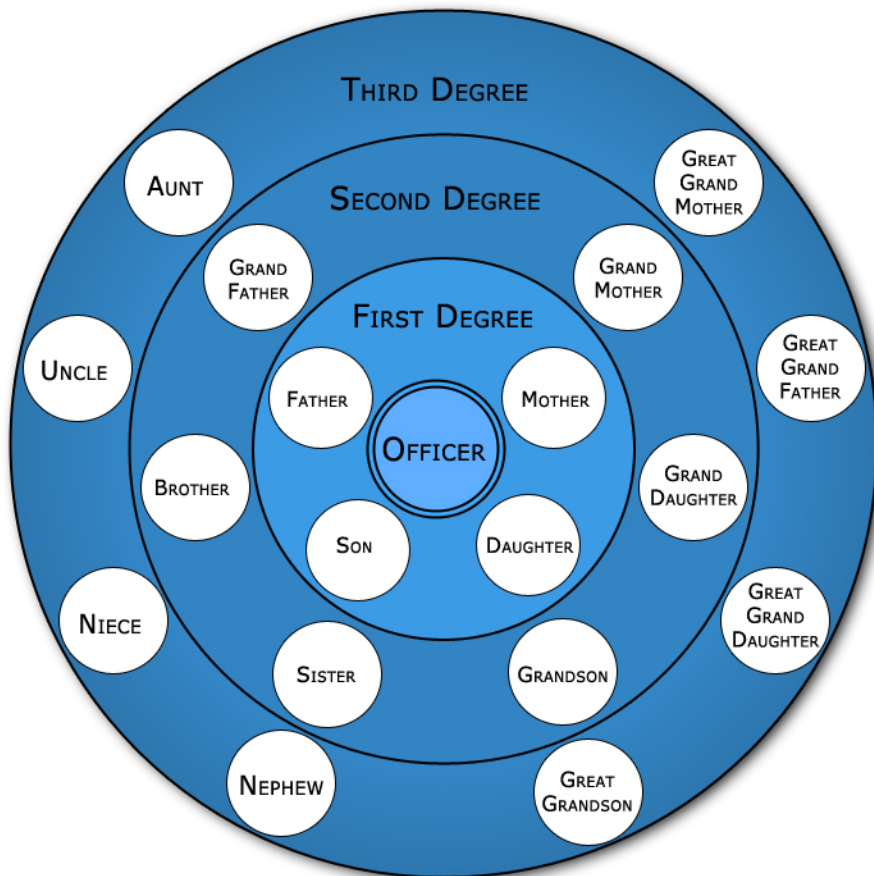
The chart below shows

- **Affinity Kinship** (relationship by marriage)
- **Consanguinity Kinship** (relationship by blood) for purposes of interpreting nepotism as defined in VTCA Government Code, Chapter 573, §§573.021 - .025

AFFINITY KINSHIP Relationship by Marriage



CONSANGUINITY KINSHIP Relationship by Blood



DISCLOSURE OF INTERESTS

MUST BE FILLED OUT AND SUBMITTED WITH THE BID/RFP/RFQ
IF DISCLOSING: BIDDER / PROPOSER MUST ALSO FILE WITH THE COUNTY CLERK'S OFFICE
THE PURCHASING DEPT. WILL NOT BE FILING ON THE BIDDER'S BEHALF

Cameron County, Texas requires all persons or firms seeking to do business with the County to provide the following information. Every question must be answered. If the question is not applicable, answer with "N/A." By law this questionnaire must be filed with the records administrator (County Clerk's Office) of the local government.

Date _____

FIRM NAME: _____

ADDRESS: _____

FIRM is: 1. Corporation () 2. Partnership () 3. Sole Owner ()
4. Association () 5. Other () _____

DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee, elected official, or member of Commissioners Court" of Cameron County having Substantial Interest in Business Entity **Local Govt. Code 171.002**

DISCLOSURE OF INTERESTS (CONTINUED)

- a) For purpose of this chapter, a person has a substantial interest in a business entity if :
- (1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or
 - (2) funds received by the person from the business entity exceeds 10 percent of the person's gross income for the previous year.
- b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.
- c) A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest under this section.

Name	Title	Department

CERTIFICATE

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the Cameron County as changes occur.

Certifying Person: _____ Title: _____
(Type or Print)

Signature of Certifying Person: _____ Date: _____



HOUSE BILL 89 VERIFICATION (REVISED)

I, _____,
[Person Name]

the undersigned representative of _____
[Company or Business Name]

(hereafter referred to as Company) being an adult over the age of eighteen (18) years of age, does hereby depose and verify that the Company named above, under the provisions of Subtitle F, Title 10, Texas Government Code Chapter 2270:

1. Does not currently boycott the country of Israel; and
2. Will not boycott the country of Israel during the term of the contract with Cameron County, Texas.

Signature: _____

Date: _____

Pursuant to Section 2270.001, Texas Government Code:

1. *“Boycott Israel” means 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 specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and*
2. *“Company” means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*
3. *Pursuant to Section 2270.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response. (HB 793 – exemptions).*

EXEMPTIONS APPLY TO THE FOLLOWING:

- between a governmental entity and a company with less than 10 full-time employees*
- has a value of less than \$100,000 paid wholly or partly from public funds of the governmental entity*

THIS FORM MUST BE RETURNED WITH YOUR RFQ

GENERAL TERMS & CONDITIONS (RFQ)

ADDENDA: If RFQ specifications, terms or conditions are revised, the Cameron County Purchasing Department will issue an addendum addressing the nature of the changes and notify interested potential respondents. Respondents must acknowledge receipt and consideration of any such changes by signing the addendum and including it in the RFQ package containing the Respondent's submittal.

ADVERTISING: Unless otherwise required by law, respondents to County RFQs shall not publish and shall keep confidential their intentions and actions respecting any response to the RFQ.

AWARD: Cameron County may hold RFQ responses for a period of sixty (60) days.. Cameron County reserves the right to reject any or all responses to RFQs. Cameron County reserves the right to award a contract, if any, based on the Respondent's response when compared to the EVALUATION CRITERIA (AS STATED IN RFQ) and, in accordance with the laws of the State of Texas, reserves the right to waive any formality or irregularity, to make awards to more than one Respondent. Commissioners Court reserves the right to determine the method and procedures for the final award of all RFQs at any time they so choose, regardless of the Point System used by the Evaluation Committee.

BONDS: If the contract that may be entered into between an RFQ respondent and the County will likely require a performance guarantee or bond, the Purchasing Department will attach a separate page to the RFQ explaining those requirements.

CANCELLATION AND TERMINATION: In any contract resulting from the RFQ, the County shall have the right to cancel all or any part of the undelivered portion of the contract if Respondent breaches any of the terms hereof, including, but not limited to warranties, and/or Respondent becomes insolvent or files for bankruptcy. Such right of cancellation is in addition to, and not in lieu of, any other remedies which the County may have in law or equity. Cancellation of work hereunder shall be effected by the delivery to the Respondent of a "Notice of Cancellation of Undelivered Work" specifying the extent to which performance of work under the contract is or cancelled and the date upon which such cancellation becomes effective.

The performance of work under any resulting contract may be terminated in whole, or in part, by the County in accordance with this provision. The County shall have the right to cancel all or any part of the contract if Respondent breaches any of the terms hereof, including, but not limited to warranties, and/or Respondent becomes insolvent or files for 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. Termination of work hereunder shall be effected by the delivery to the Respondent of a "Notice of Termination" specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

CHANGE ORDERS: No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders to the contract will be made in writing by mutual consent of the Respondent and the County.

CONTRACT RENEWALS: Contract Renewals must receive Commissioners Court approval. For contract renewal status and information, please contact Elisa Cisneros at 956-982-5405 e-mail: Elisa.Cisneros2@co.cameron.tx.us Cameron County Purchasing Dept. or Dylbia Jeffries 956-550-1340 djefferies@co.cameron.tx.us at the Cameron County Civil Legal Division. Any price escalations are limited to those stated by the original contract terms. All contracts with a one (1) year renewal option requires that the Respondent must notify Cameron County of any anticipated price increases in writing at least three months (90 calendar days) prior to the annual renewal award date unless otherwise specified within the specific provisions of the contract up for renewal. This allows the County sufficient time to find an alternative vendor if possible. Respondent fails to notify the County within time noted it shall be assumed that there will be no price increase for the following year's award period if renewed. This procedure does not apply to any contract which allows for Open Market Price increases or Cost allowance increases.

DISCRIMINATION: In order to encourage fair employment practices, the Respondent agrees as follows: 1.) Respondent will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; 2) in all solicitations or advertisements for employees, the Respondent will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap or national origin; 3) the Respondent will furnish such relevant information and reports as requested by the County for the purpose of determining compliance with these regulations; and

4) failure of the Respondent to comply with these laws will be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part.

DISQUALIFICATION OF RESPONDENT: Upon submitting a response to this RFQ, Respondent certifies that the Respondent 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, and has not communicated directly or indirectly its RFQ considerations, plan or response to any competitor or any other person engaged in such line of business. Any and all responses may be rejected if the County believes that collusion exists among the respondents. If multiples are submitted by a respondent and, after all responses to the RFQs are opened, one or more of the responses are withdrawn, the result will be that all of the responses submitted by that respondent will be withdrawn; however, nothing herein prohibits a respondent from submitting multiples for different products or services.

EVALUATION: All responses will be evaluated in accordance with law and reviewed to assure they are in the best interest of Cameron County. Evaluations shall be based on criteria bearing on performance in the user environment. Any specific criteria section or sections identified elsewhere in this RFQ may be evaluated by one or more evaluators once the basis and details of this process have been approved by the Purchasing Officer and acknowledged by the Evaluation Committee. Detailed information pertaining to this selective evaluation process is available to respondents and the Commissioners Court upon request. Evaluation sheets and summary of all responses are subject to review by the Cameron County Purchasing Department and Evaluation Committee's recommendation to Cameron County Commissioners Court. Compliance with all RFQ requirements, delivery and needs of the using department are considerations in evaluating responses. The Cameron County Purchasing Department reserves the right to contact any Respondent, at any time, to clarify, verify or request information with regard to that Respondent's response. The Cameron County Purchasing Department further reserves the right to hold negotiation discussions with any responsible Respondent's response determined to be reasonably susceptible of being selected for award in accordance with law.

PROTEST PROCEDURES: Procedure - This protest procedure is available to Respondents responding to this RFQ and requesting a debriefing conference.

Debriefing Conference – A debriefing conference must be requested in writing to the Purchasing Department within five (5) business days from the date of the RFQ award by the Cameron County Commissioners Court. Debriefing questions must be submitted (in writing - to the Purchasing Department) no later than two (2) business days before the scheduled date for the Debriefing Conference. These questions will be answered at the debriefing conference. Follow-up questions must be submitted (in writing) no later than one (1) business day after the date of the Debriefing Conference and answered no later than two (2) business days after the date of the Debriefing Conference. Follow-up answers will be sent via e-mail or fax (if e-mail not available). For RFQs, Respondents are given the opportunity to ask questions of the Evaluation Committee relative to their responses and scores received by the Respondent.

Protests are made:

1. To the Purchasing Department after the debriefing conference. Respondent protests shall be received, in writing, by the Purchasing Department within five (5) business days after the debriefing conference.
2. To the Protest Committee, only after the protest to the Purchasing Department was not satisfactorily resolved. Protests to the Protest Committee shall be made within five (5) business days after the Respondent has received notification from the County Purchasing Department of the decision.

Grounds for protest:

1. Errors were made in computing the score.
2. The County failed to follow procedures established in the RFQ, the Purchasing policy on acquisitions or applicable state or federal laws or regulations.
3. Bias, discrimination or conflict of interest on the part of an evaluator. Protests not based on these criteria shall not be considered.

Format and Content - Protesting Respondents shall include, in their written protest to the Cameron County Purchasing Department, all facts and arguments upon which they rely. Respondents shall, at a minimum, provide:

1. Information about the protesting vendor; name of firm, mailing address, phone number and name of individual responsible for submission of the protest.
2. Information about the acquisition and the acquisition method.
3. Specific and complete statement of the County's action(s) protested.
4. Specific reference to the grounds for the protest.
5. Description of the relief or corrective action requested.
6. For protests to the Protest Committee, a copy of the Purchasing Department's written decision on the protest.

Review Process:

1. Upon receipt of a Respondent protest, the Purchasing Department shall postpone further steps in the acquisition process until the Respondent protest has been resolved.
2. The Department's internal protest review procedures consist of the following: a) The Purchasing Department shall perform an objective review of the protest by individuals not involved in the acquisition protested. The review shall be based on the written protest material submitted by the Respondent. b) A written decision will be delivered to the Respondent within five business days after receipt of the protest, unless more time is needed. The protesting Respondent shall be notified if additional time is necessary.

Final Determination - The final determination shall:

1. Find the protest lacking in merit and uphold the agency's action; or
2. Find only technical or harmless errors in the agency's acquisition process conduct, determine the agency to be in substantial compliance, and reject the protest; or
3. Find merit in the protest and provide the agency options which may include a) Correct its errors and reevaluate all proposals, and/or b) Reissue the Respondent solicitation document; or c) Make other findings and determine other courses of action as appropriate.

Protest Committee Review Process: Protests to the Protest Committee may be made only for Protest Committee approved acquisitions and only after review by County Purchasing Department. Protests of the decisions of County Purchasing Department shall be made by letter to the Protest Committee, who may establish procedures to resolve the protest. Protests shall be received by the Protest Committee within five business days after the decision of Purchasing Department in order to be considered. The resulting decision is final with no further administrative appeal available.

FISCAL FUNDING: A multi-year lease or lease/purchase arrangement (if requested by the Special Requirements/Instructions), or any contract continuing as a result of an extension option, must include a fiscal funding "out" clause. If, for any reason, funds are not appropriated to continue the lease or contract, said lease or contract shall become null and void on the last day of the current appropriation of funds. After expiration of the lease, leased equipment shall be removed by the Respondent from the using department without penalty of any kind or form to Cameron County. All charges and physical activity related to delivery, installation, removal and redelivery shall be the responsibility of the Respondent.

GRATUITIES AND PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: Any elected or appointed official who has any substantial interest, either direct or indirect, in any business entity seeking to contract with the County, shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body is also required to file, and do file similar affidavits, then the member is not required to abstain from further participation. Attached and included is a disclosure of all of this Company's business or pecuniary financial relationships with officers or employees of Cameron County or County entities (if any such relationships exists) must be attached and included with RFQ submitted. The County may, by written notice to the Respondent, cancel this contract without liability to Respondent if it is determined by County that gratuities, in the form of entertainment, gifts, or

otherwise, were offered or given by the Respondent, or any agent, or representative of the Respondent, to any officer or employee of Cameron County with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making or any determinations with respect to the performance of such a contract. In the event this contract is cancelled by County pursuant to this provision, County shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Respondent in providing such gratuities. Consistent and continued tie RFQ responses could cause rejection of an RFQ response by the County and/or investigation for Anti-Trust violations. Respondent guarantees that he has not retained a person to solicit or secure any contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Respondent for the purpose of securing business.

HISTORICALLY UNDERUTILIZED BUSINESS (HUB) CERTIFICATION: If Respondent is a Certified Historically Underutilized Business (HUB), please include a copy of your HUB Certificate with your response. This information will assist Cameron County in the percentage tracking of HUB utilization.

INSURANCE : The Respondent shall secure and maintain, throughout the duration of the Contract, insurance of such types and in such amounts as may be necessary to protect the Respondent and the interests of the County against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the insurer, must be acceptable to the County. It shall be the responsibility of the Respondent to maintain adequate insurance coverage at all times. Failure of the Respondent to maintain adequate coverage shall not relieve the Respondent of any contractual responsibility or obligation.

SCANNED RE-TYPED RESPONSE - FLOPPY DISK: If in its RFQ response, Respondent either electronically scans, re-types, or in some way reproduces the County's published RFQ package, then, in event of any conflict between the terms and provisions of the County's published RFQ specifications or any portion thereof, and the terms and provisions of the RFQ response made by Respondent, the County's RFQ specifications as published shall control. Furthermore, if an alteration of any kind to the County's published RFQ specifications is only discovered after the contract is executed and is or is not being performed, the contract is subject to immediate cancellation.

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 practices are to be used.

SUPPLEMENTAL MATERIALS: Respondents are responsible for including all pertinent data in the returned RFQ package. Literature, brochures, data sheets, specification information, completed forms requested as part of the RFQ package 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 respondent wishes to include as a condition of the RFQ, must also be in the returned RFQ package. Failure to include all necessary and proper supplemental materials may be cause to reject the entire RFQ.

USAGE REPORTS: Cameron County reserves the right to request, and receive at no additional cost up to two (2) times during the contract period, a usage report detailing services furnished to date under a contract resulting from this RFQ. The reports must be furnished no later than five (5) working days after written request and itemize all purchases to date by the Cameron County department using the services with a description of services rendered, the unit and total price.

WARRANTY: Respondents may not limit or exclude any implied warranties. **Respondent warrants that services provided to the County shall conform to the highest commercial and/or professional standards in the industry.**

APPLICABLE LAW

ASSIGNMENT DELEGATION: No right or interest in this contract shall be assigned or delegation of any obligation made by Respondent without the written permission of the County. Any attempted assignment or delegation by Respondent shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph. Any contract entered into pursuant to this request is not assignable, nor the duties thereunder, by either party, without the written consent of the other party, the Commissioners Court, and County Auditor.

CONTRACT OBLIGATION: Cameron County Commissioners Court must award any resulting contract and the County Judge or other person authorized by the Cameron County Commissioners Court must sign the contract before it becomes binding on Cameron County or the Respondent. Department heads are NOT authorized to sign agreements for Cameron

County. Binding agreements shall remain in effect until the contract requirements have been satisfied.

ERRORS AND OMISSIONS: Errors and Omissions in the RFQ of any provision herein described will not be construed as to relieve the Respondent of any responsibility or obligation requisite to the complete and satisfactory implementation, operation, and support of all obligations under any resulting contract.

FORCE MAJEURE: If, by reason of Force Majeure, either party hereto shall be rendered unable wholly, or in part, to carry out its obligations under this RFQ and any resulting contract, then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely with the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

HOLD HARMLESS AGREEMENT: The successful Respondent, shall indemnify and hold Cameron County harmless from all claims for personal injury, death and/or property damage resulting directly or indirectly from Respondent's performance. Respondent shall procure and maintain, with respect to the subject matter of this RFQ, appropriate insurance coverage including, as a minimum, public liability and property damage with adequate limits to cover Respondent's liability as may arise directly or indirectly from work performed under terms of this RFQ. Certification of such coverage must be provided to the County upon request.

INTERPRETATION PAROLE EVIDENCE: Unless a separate contract or addendum hereof is prepared and entered into following the award of this RFQ to a successful respondent, this writing is intended by the parties as a final expression of the terms of this RFQ and the general terms of any resulting contract with the selected Respondent. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term. Acceptance or acquiescence in a course of performance rendered under this RFQ and any resulting contract shall not be relevant to determine meaning even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.

LATE RESPONSES: RFQ responses must be received by the County before the hour and date specified. Responses received after the time and date specified will be disqualified and may be returned to sender. The County is not responsible for lateness or non-delivery of mail, delivered to wrong office, carrier, etc.

REMEDIES: The successful Respondent and County agree that both parties have all rights, duties, defenses and remedies available under law.

RIGHT TO ASSURANCE: During the RFQ process and any resulting contract, whenever a respondent or the County in good faith has reason to question the other's intent to perform, demand may be made that the other party give written assurance of intent. In the event that a demand is made, and no assurance is given within five (5) days, such failure may be treated as an anticipatory repudiation of the RFQ and any resulting contract.

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.

VENUE: Both parties agree that venue for any litigation arising from this contract shall lie in Cameron County, Texas. These General Terms and Conditions shall be incorporated in the response to the RFQ and any resulting contract. The Respondent shall specifically state acceptance of these terms and conditions as a basis for providing the County with a response. The Respondent shall state any exceptions desired to these terms and conditions and may suggest alternate wording that addresses the intent of the term or condition. The County may accept or reject any suggestions in accordance with law.

THE STATE OF TEXAS §
 §
COUNTY OF CAMERON §

OWNER/ARCHITECT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2021, is made between Cameron County (hereinafter "OWNER"), a political subdivision of the State of Texas, having its principal administrative offices at 1100 E. Monroe Street, Brownsville, Cameron County, Texas 78520 and _____ (hereinafter "ARCHITECT"), having its principal administrative offices at _____. The Project, which this Agreement refers to is the design and project coordination of the

ARTICLE 1
ARCHITECT'S RESPONSIBILITIES

1.1 ARCHITECT'S SERVICES

1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants as enumerated in Articles 2 and 3 of this Agreement.

1.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

ARTICLE 2
SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 as part of Basic Services and which is more specifically described in Exhibit "A" Scope of Services, which is attached hereto and incorporated by reference as if fully set forth herein. The Architect shall, when necessary, coordinate with the County's civil engineering contractor.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

2.2.2 The Architect shall provide preliminary program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

2.2.5 The Architect shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or other unit costs.

2.2.6 The Architect shall provide site evaluations within the designated area.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical, civil, plumbing and electrical systems, materials and such other elements as may be appropriate.

2.3.2 The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

2.4.2 The Architect shall prepare the necessary bidding information, bidding forms and documents (including twenty-five sets of blueprints), the Conditions of the Contract, and the form of Agreement between the Owner and the Contractor. The actual reproduction and shipping cost will be reimbursed to the Architect, as provided in Article 9.2, when the Architect submits the proper invoices. Any additional sets of documents shall be preapproved by the Owner. Owner shall pay reproduction costs for blueprints in excess of the twenty-five sets provided above.

2.4.3 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

2.4.4 The Architect shall assist the Owner in preparing and submitting for filing, all documents required for the approval of governmental authorities having jurisdiction over the Project.

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

2.6 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment or sixty (60) days after the date of Substantial Completion of the Work, whichever occurs later.

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth in this contract.

2.6.3 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect.

2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner (1) during construction until final payment to the Contractor is due, and (2) at the Owner's direction from time to time during the correction period described in the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

2.6.5 The Architect shall visit the site weekly (See Exhibit "A") to check the progress, quality, and quantity of the Work, and to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections. On the basis of the on-site observations as an architect, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work. Prompt written notice shall be given by the Architect to the Owner, if the Architect becomes aware of any defects or deficiencies in the Work, or any nonconformance with the Contract Documents.

2.6.6 The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction. The Architect shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

2.6.7 The Owner and Contractor shall communicate through the Architect when either is seeking (1) a modification or change order of the contract or (2) interpretation of the project documents. Communications by and with the Architect's consultants shall be through the Architect.

2.6.8 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.9 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor.

2.6.10 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, quality of the Work is in accordance with the

Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) ascertained how or for what purpose the Contractor has used the money previously paid on account of the Contract Sum.

2.6.11 The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portion of the Work.

2.6.12 The Architect shall review and note exceptions or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's review of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of Electronic performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

2.6.13 The Architect shall prepare Change Orders, with supporting documentation and data if deemed necessary by the Architect as provided in Subparagraphs 3.1.1 and 2.6.18, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

2.6.15 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such

interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either.

2.6.16 The Architect shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the Work as provided in the Contract Documents.

2.6.17 The Architect shall supply contractor with reproducible drawings so that the contractor may prepare a set of reproducible record drawings (“as-builts”) showing changes in the Work made during construction. Reproduction costs to be paid by the contractor.

2.6.18 The Architect shall prepare Drawings, Specifications and other documentation and supporting data, evaluating Contractor’s proposal, and providing other services in connection with Change Orders, unless the Change Orders were at the “convenience” of the Owner. “Convenience” does not include inability of the contractor to construct what is designed for the project.

2.6.19 The Architect shall prepare documents for line item bids and provide services in connection with line item bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

ARTICLE 3 ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the site than is described in Subparagraph 2.6.5 is required, the Owner can request the Architect to provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

3.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as agreed to by the parties.

3.2.3 Through the observations by such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making substantial revisions in Drawings, Specifications or other documents when such revisions are:

1. Inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget.

3.3.2 Providing services required because of significant changes in the Project including, but not limited to size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.4.

3.3.3 Providing services in connection with preparing documents for alternate line item bids proposed by the Owner, if substantial revisions to Drawings result therefrom.

3.3.4 Providing services in connection with legal proceedings, except where the Architect is a party thereto.

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.1 Providing financial feasibility or other special studies.

3.4.2 Providing special surveys and environmental studies.

3.4.3 Providing services relative to future facilities, systems and equipment.

3.4.4 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

3.4.5 Providing services in connection with the work of a construction manager.

3.4.6 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

3.4.7 Making investigations, inventories of material or equipment, or valuation and detailed appraisals of existing facilities.

3.4.8 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

3.4.9 Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than sixty (60) days after the date of Substantial Completion of the Work.

3.4.10 Providing services of consultants for other than architectural, structural, mechanical, civil, plumbing and electrical engineering portions of the Project provided as part of Basic Services.

3.4.11 If required by the Owner, the Architect shall prepare a set of reproducible record drawings ("as built") showing changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

ARTICLE 4
OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide full information regarding requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expendability, special equipment, systems and site requirements.

4.2 The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

4.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative, through approval by proper authorities, shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

4.4 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

4.5 The Owner shall furnish site survey, all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

4.6 The services, information, surveys and reports required by Paragraphs 4.5 and 4.6 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

4.7 Providing the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

4.8 Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

4.9 The proposed language of certificates or certifications requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least 14 days prior to execution.

ARTICLE 5
CONSTRUCTION COST

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for

contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction.

5.1.3 Construction Cost does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.

5.2.2 If the Bidding or Negotiation Phase has not commenced within one hundred and eighty (180) days after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

5.2.3 If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.2) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

1. Give written approval of an increase in such fixed limit;
2. Authorize rebidding or renegotiating of the Project within a reasonable time;
3. If the Project is abandoned, terminate in accordance with Paragraph 7.3; or
4. Cooperate in revising plans and construction documents for the Project scope and quality as required to reduce the Construction Cost.

5.2.4 If the Owner chooses to proceed under Clause 5.2.3.4, the Architect, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of Contract Documents shall be the limit of the Architect's responsibility arising out of the establishment of a fixed limit. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

ARTICLE 6 USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

6.1 Project materials developed by the Architect under this agreement shall become the property of the Owner and Architect and a copy of the project materials shall be delivered to the Owner no later than the termination date of this agreement. Nothing produced in whole or in part by the Architect under this agreement shall be the subject of an application for copyright by or on behalf of the Architect or Owner unless agreed by both parties in writing.

ARTICLE 7
TERMINATION, SUSPENSION OR ABANDONMENT

7.1 This Agreement may be terminated by either party upon not less than seven days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

7.2 If the Project is suspended by the Owner for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension.

7.3 This Agreement may be terminated by the Owner upon not less than seven (7) days written notice to the Architect in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than ninety (90) consecutive days, the Architect may terminate this Agreement by giving seven (7) days written notice.

7.4 Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

7.5 If the Owner fails to make payment when due the Architect for services and expenses, the Architect may, upon seven (7) days written notice to the Owner, suspend performance of services under this Agreement.

7.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination.

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The obligations and undertakings of each of the parties to this Agreement shall be performed in Cameron County, Texas. Both parties will act, at all times, in compliance with pertinent City and County ordinances, orders, regulations and policies, as well as all applicable State and Federal laws.

8.2 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.

8.3 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign this Agreement without the written consent of the other.

8.4 This Agreement represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

8.5 The parties agree that the Architect shall be an independent contractor with respect to its relationship to the Owner under this Agreement. By virtue of its entering into this Agreement or performing any services under this Agreement, Architect shall not be deemed to be a partner, agent, or attorney in fact of Owner.

8.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

8.7 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect's materials shall not include the Owner's confidential or proprietary information.

8.8 In connection with the obligations of the Architect, Architect shall hold Owner and its employees harmless for any and all claims, lawsuits, legal expenses, and any other costs related to the performance or non-performance of this Agreement.

8.9 Architect agrees that during the Project operation, no discrimination of any kind against any individual or group of individuals, in any manner, on the grounds of race, color, sex, religion, creed, ancestry or national origin will be allowed.

8.10 Architect will submit plans to the State of Texas for review to ensure compliance with the Americans with Disability Act of 1990 and all rules, regulations, and guidelines promulgated thereunder, as the same may be amended from time to time.

8.11 Architect will submit plans to all entities required by law.

8.12 Architect shall maintain in full force and effect, throughout the term of the Agreement and for an additional two (2) years after final completion of the Project, Errors and Omissions Insurance in an amount not less than One Million Dollars (\$1,000,000.00). Architect shall furnish County a duplicate policy of their Errors and Omissions Insurance. Architect shall give County a minimum of thirty (30) days written notice in the event of cancellation or material change in the terms of their Errors and Omissions Insurance.

8.13 It is specifically understood and agreed, that in the event funds or insufficient funds are appropriated and/or budgeted concerning the obligations under this Agreement on behalf of Cameron County then Cameron County shall notify the Architect and this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Cameron County.

ARTICLE 9 PAYMENTS TO THE ARCHITECT

9.1 DIRECT PERSONNEL EXPENSE

9.1.1 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

9.2 REIMBURSABLE EXPENSES

9.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project, as identified in the following Clauses.

9.2.2 Fees for securing approval of authorities having jurisdiction over the project.

9.2.3 Expenses of postage and/or shipping, reproduction of Drawings, Specifications and other documents.

9.2.4 Travel expenses directly related to this project are considered reimbursable expenses but must be preapproved by the Owner's Auditor's Office.

9.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

9.3.1 Payments for Basic Services shall be made in accordance with the phase schedule of services set forth in Subparagraph 10.1.3.

9.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

9.4.1 Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

9.5 PAYMENT WITHHELD

9.5.1 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been found to be liable.

9.6 ARCHITECT'S ACCOUNTING RECORDS

9.6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 10
BASIS OF COMPENSATION

10.1 BASIC COMPENSATION

10.1.1 FOR BASIC SERVICES, as described in Article 2, Basic Compensation shall be computed as a fixed fee of _____.

10.1.3 Compensation for the Architect shall be paid in progress payments for each phase following the percentages of the total Basic Compensation payable as stated below:

Schematic Design Phase:	Ten Percent	(10%)
Design Development Phase:	Twenty Percent	(20%)
Construction Documents Phase:	Forty Percent	(40%)
Bidding or Negotiation Phase:	Five Percent	(5%)
<u>Construction Phase to be paid as follows:</u>		
Construction One Third Completed	Ten Percent	(10%)
Construction Two Thirds Completed	Five Percent	(5%)
Construction Complete	Five Percent	(5%)
<u>Sixty (60) days after completion</u>	<u>Five Percent</u>	<u>(5%)</u>
Total Basic Compensation	One Hundred Percent	(100%)

10.2 COMPENSATION FOR ADDITIONAL SERVICES

10.2.1 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES shall be on a lump sum basis as agreed to by the parties.

10.2.2 FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Article 3, other than Additional Project Representation, as described in Paragraph 3.2 but excluding services of consultants, compensation shall be computed as follows: FOR THE ARCHITECT AT ONE HUNDRED DOLLARS AND NO CENTS (\$100.00) PER HOUR AND FOR THE ARCHITECT'S PRINCIPALS AND EMPLOYEES TIME AT A MULTIPLE OF 1.5 TIMES THEIR DIRECT PERSONNEL EXPENSE.

10.2.3 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical, civil, plumbing and electrical engineering services and those provided under Subparagraph 3.4.10 as part of Additional Services, a multiple of 1.1 times the amounts billed to the Architect for such services.

10.3 REIMBURSABLE EXPENSES

10.3.1 FOR REIMBURSABLE EXPENSES, as described in Paragraph 9.2, a multiple of 1.05 time the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project.

10.4 ADDITIONAL PROVISIONS

10.4.1 Payments are due to the Auditor's Office and payable thirty (30) days from the date of the receipt of the Architect's invoice.

10.4.2 No fee has been included for the following Consultants which may be required on the project:

All documents of professional service performed under this Agreement and all materials released for publication and public relations shall be identified with the following legend:

The Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas 78758, telephone (210)458-1363, has jurisdiction over individuals licensed under the Architects Registration Law, Article 249a, Vernon's Civil Statutes.

EXECUTED in triplicate on this ___ day of _____, 2022 in Brownsville, Cameron County, Texas.

Eddie Trevino Jr.
County Judge
OWNER-Cameron County

ARCHITECT

ATTESTED BY:

Sylvia Garza Perez, County Clerk

XII PROCUREMENTS SUBJECT TO FEDERAL FUNDING

12.01 Additional Standards. *In addition to the procedures specified elsewhere in this Purchasing Manual, which are incorporated herein by reference, the County shall abide by the following purchasing procedures applicable to procurements that are subject to federal funding as referenced in 2 CFR 200: Uniform Administrative Requirements, Costs Principles and Audit Requirements for Federal Awards (Uniform Guidance), which is hereby incorporated by reference. These procedures are in addition to all other relevant procedures in this Purchasing Manual, except that in the event of a conflict these procedures will control if a purchase is made using federal funds.*

12.02 Background. *The United States Office of Management and Budget (OMB) Issued the Uniform Guidance, which reforms rules applicable to entities receiving federal grant funding by streamlining and superseding eight OMB circulars (A-21, A-87, A-122, A-110, A-102, A-133, A-50 and A-89). The new procurement standards are found in Subpart D: Post Federal Award Requirements: 2 CFR §200.317 through §200.327*

12.03 Compliance Requirements -Procurement. *The following is an overview of the procurement standards and procedures applicable when procuring property and services under a Federal award in accordance with 1 CFR §200.317 through §200.327, which are hereby incorporated by reference.*

12.03.1 *The County, as a non-Federal entity other than a State, will follow §§ 200.318 General procurement standards through 200.327 Contract provisions. [See §200.317].*

12.03.2 Procurement Procedures: *The County will use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurement conform to applicable Federal statutes and the procurement requirements identified in 2 CFR part 200. [See §200.3/8(a)] When preparing a federally funded contract, the County Purchasing Dept, Planning Dept., and County Attorney will review the required federal clauses in Appendix II and make sure that all clauses required for the contract is included.*

12.03.3 Conflicts of Interest/Standards of Conduct: *The County will maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, awarded and administration of contracts. In addition to the following the County incorporates standards referenced above and Standards of Conduct in applicable County Personnel Manuals. [See §200.318(c)].*

*a No employee, officer, or agent may participate in the selection, award, or administration of contracts supported by Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. Addressed in County's Bids, RFP's, RFQ's (Attachment B-No*Collusion Affidavit), (Attachment G-Conflict of Interest Questionnaire) Purchasing Manual (Ethics Policy) [See §200.318(c)(J)].*

b. Officers, employees, and agents of the County may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, the County may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. If this is done these standards will be promulgated like other County policies and procedures. Addressed in County's Bids, RFP's, RFQ's (Attachment B-Non-Collusion Affidavit), (Attachment G-Conflict of Interest Questionnaire, Attachment H-Disclosure of Interest Questionnaire) Purchasing Manual (Ethics Policy) {See §200.318(c)(I)}.

c. If the County has an affiliate or subsidiary organization that is not a government entity, the County will also maintain written standards of conduct concerning organizational conflicts of interest arising from its relationship with the affiliate or subsidiary.

d The County will disclose any potential conflicts of interest in writing to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy. [See 2 CFR §200.112]. Additionally, the County will disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Further, if applicable, the County will make post-award reports as provided by Appendix XII to Part 200.

e. *Violations of this policy may result in disciplinary action consistent with County disciplinary policy, including but not limited to dismissal. Further, violations may be referred to the appropriate law enforcement agency for investigation and possible prosecution.*

12.03.4 Oversight: Once the Contract is awarded, oversight must be maintained to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. County Contract monitor will be utilized to track and perform quantity and quality control responsibilities in monitoring role towards compliance verification. [See §200.318(b)].

12.03.5 All proposed procurement actions shall be reviewed to avoid the purchase of unnecessary or duplicative items as stated in Independent Procedure IP "Prevention of Unnecessary and Duplicative Purchases".

Where applicable, consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Review of all potentially related consolidation in sourcing of items towards economy of scale.

Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach County will consider leasing of items whenever determined to be more cost effective versus purchase of items which are not necessarily required beyond the immediate or project related intended use. [See §200.318M]

12.03.06 The County may enter into state and local intergovernmental agreement. or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. County will explore interlocal agreement option with other entities towards sharing of goods and services in an effort to reduce overall cost. The County also approved Resolution 20/9R2007 on Feb 11, 2019. [See §200.318(e)]

12.03.07 Federal excess and surplus property may be used in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. State and Federal Surplus sites will be reviewed for potential adaptations to meet project needs. [See §200.318(f)]

12.03.08 Deliberately omitted.

12.03.09 Contracts should be awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources, as well as whether the contractor is suspended or debarred receiving federal funds. (See Bids, RFP's, RFQ's Attachment F- Certificate Regarding Debarment, Suspension Ineligibility, Attachment F-2-Sworn Statement of Debarment, Attachment F-3-Architects, Engineers, Construction Performance, Attachment I-House Bill 89 Verification, Texas Ethics Commission Form 1295) [See §200.318(h)].

12.03.10 The County will maintain records sufficient to detail the history of procurement. The County's Records Retention Policy as adopted by Commissioners Court and presented by the County Clerks Dept. (Official Records Manager for the County) - Purchasing Bids, RFP's, RFQ's, and contracts is five (5) years (in accordance with §200.318(i)).

12.03.11 The County may not enter a contract with time and materials based pricing unless there is a not-to-exceed clause and the Purchaser determines that other fee structures are not suitable.

12.03.12 The County alone shall be responsible for all contractual and administrative issues arising out of procurements in accordance with good administrative practice and sound business judgment. County Civil legal Division will coordinate these matters as they arise. County protest procedures apply to Bid, RFP's, RFQ's and written quotations. Once a contract has been executed, any disputes are dealt with at the time they arise. County Civil legal Department addresses contract disputes on behalf of the County.

12.3.13 Discounts, transportation costs, or life cycle costs will only be considered when they are specified in the bidding documents. These will only be considered when specified in the bidding documents. These are not considered if not specified in the Bid /RFP documents.

12.04 Competition. *All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 2 CFR §200.319. Note 12.06 below identifies sources towards maximizing competitive solicitations. Purchasers will review all Bid specifications and requirements towards eliminating unduly restrictive requirements.*

12.04.01.01 In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals will be excluded from competing for such procurements.

12.04.01.02 The County will avoid the following actions in procurement of goods and services:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;*
- (2) Requiring unnecessary experience and excessive bonding;*
- (3) Noncompetitive pricing practices between firms or between affiliated companies;*
- (4) Noncompetitive contracts to consultants that are on retainer contracts;*

- (5) Organizational conflicts of interest;
- (6) Except where required and justified as a sole source purchase, Specifying only a "brandname" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process . §200.319(a)

12.04.02 Geographical Limitation: Unless specifically excepted as provided in 2 CFR §200.319(b). the County will not impose state or local geographical preferences in the evaluation of bids or proposals for federally funded contracts.

12.04.03.01 Contract solicitations: Purchaser shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured Detailed specifications and materials /product description must be clearly identified.

12.04.03.02 Contract solicitations shall specify all requirements which the potential vendors must fulfill to submit bids or proposals, and identify all other factors to be used in evaluating bids or proposals. Scoring criteria shall be utilized in evaluation and analysis of Proposals.

12.04.04 All prequalified lists of persons, firms, or products which are used in acquiring goods and services shall be kept current and include enough qualified sources to ensure minimum open and free competition. and potential bidders will not be precluded from qualifying during the solicitation period [See §200.319(d)}. County Purchasing Department aorel// and updated Bidders /list See 12.06 below.

12.05 Methods of Procurement with Federal Funds. The County will use one of the following five procurement methods as discussed in 2 CFR §200.320 when making purchases with federal funds. Should State or local procurement requirements applicable to a purchase being made with federal funds be more restrictive than Federal requirements, the more restrictive requirements or methods will be followed. The type of procurement process to use will depend on the cost and type of services or item(s) being purchased.

Micro-purchase = County under \$500 - No quotations / competitive process required – Vendors for purchases under \$500 shall be rotated – requisition and Purchase Order required. (Travel regulations and Gas purchases included..

Small purchase procedures - informal Bids = County \$500 to \$14,999 and Commissioners Court approval \$15,000 to \$24,999- Three written quotations required, requisition, Purchase Order. Sealed Formal

Bids = \$25,000 and more unless exception applies

Competitive proposals = County proposal process for Professional Services, IT & High Tech and Commissioners Court approved instances of projects not suitable for detailed specifications.

Request for Qualifications = Qualifications based no price proposals (Engineering & Architecture, Land Surveying, Professional services. Cameron County follows the Professional Services Procurement Act Govt. Code ch 2254 Subch A

Non-competitive proposals Sole Source- under \$15,000 Sole Source letter Department Head, Vendor, Purchasing Agent. Commissioners Court approval required \$15,000 to include Sole Source feller Department Head, Vendor, Purchasing Agent.

Emergency Purchases over \$15,000 requires Commissioners Court approval/ratification whenever time is crucial in preventing an escalating health and safety concern or preventing a crucial incident as per Texas State Statute 262.024

Special & Discretionary Purchases as per Texas State Statute 262.024. For procurement of Federally funded land surveying Cameron County will contact the federal awarding agency or pass-through entity (TCEQ), for RESTORE projects to request authorization for noncompetitive procurement under 2 CFR 200.320(c)(4).

Personal service -asper

Under the Micro-Purchase dollar threshold rotation of available vendors will be utilized

Over the Micro-Purchase dollar threshold will comply with State of Texas, Local Government Code Ch 262.024 (a) (4).

12.06 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms. The County takes all necessary affirmative steps (and will include in all related contracts language towards Contractor Certification of Small, Minority, or Women Business ownership - when possible) as described in §200.321 to assure minority businesses, Women's Business Enterprises, and labor surplus are used when possible. The County utilizes the following sites towards outreach for County Bidding opportunities for Small, Minority, Women Businesses: U.S. Small Business Administration, ESBD State of Texas Bid Posting Site, Associated General Contractors, Dodge Reports, Reed Construction Data, Texas Smart Buy Electronic State Business Daily Search (ESBD). Bk/Net, MWBE@texas.agriculture.gov, Coop Vendors list, County Current Bidders list. (County will require Prime Contractors to follow all of the affirmative steps when Prime Contractor will be letting subcontracts. The requirements for Prime Contractors as laid out by the County will be targeted towards creating maximum participation for small, minority, and women's business enterprises as follows: will be on the solicitation list and will be notified when they are potential sources, will divide total requirements when economically feasible into smaller tasks or quantities, establish delivery schedules as requirements permit, contact the agencies as listed above as an outreach network towards attracting these types of businesses. This information will also be included in all contracts.) County utilization of Section 3/ HUD (see Purchasing Website) addresses Davis-Bacon, Equal Employment, Vicinity Hiring Preference, Economic Opportunities, HUB, SBA, Local Vendor, and MWBE requirements.

12.07 Procurement of Recovered Materials. The County and (where applicable) its contractors will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. {See §200.322}.

County will (as per EPA 40CFR part 247) procure only items containing highest percentage of recovered materials practicable and allow for satisfactory competition based on the \$10,000 year threshold. County will establish affirmative procurement program for recovered materials.

12.08 Contract Cost and Price. The County will abide by the provisions of §200.324 (as required under County Resolution #20/90R2009), including, but not limited to performing a cost or price analysis and negotiating profit as discussed therein

12.8.1 Negotiation Based on Cost Estimates; Negotiation of Profit. In negotiating a contract price based on a cost analysis, the County will require that all estimated costs used to develop the negotiated price must be allowable costs under 2 CFR Part 200. Subpart E. A comparison between estimated costs and current customary market pricing will be analyzed in an effort to establish allowable cost and ultimately establish negotiated pricing. The County will also require that the profit element be negotiated separately, whether it is included as a separate price element or whether it is rolled into a lump sum price (or similar fixed price). Profit margin will also be compared relative to comparable current market rates to assess potential variances. This cost analysis will be achieved through verification of previous similar purchases, comparison with other public entities, recommendations from professional consultants or project Engineer, or data research (ie: Smart Procure) similar to the specific type of procurement. In addition and in order to establish a fair and reasonable profit, the County will also consider the contractor's risk and investment, complexity of work to be performed, level of subcontracting, quality and track record of previous performance, and industry profit rates in the approximate SMSA /geographic area/or similar work. At the outset independent estimates will be obtained by the County before receiving Bids or Proposal this also applies to all sole source purchases. All estimates must be allowable subject to analysis as per conditions noted above.

12.8.2 Cost Plus Percentage of Cost Prohibited. The County will not enter into a cost plus percentage of cost contract, or a cost plus percentage of construction cost contract. (as per 200.324 d) Engineer and County will examine all Change order pricing as submitted. Profit margin will not be determined based on a percentage of cost and percentage of construction cost methods of contracting must not be used. Costs based on estimated costs of contracts under Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E Cost Principles of this part. County will reimburse Contractor's Direct and indirect Costs plus a Fixed fee for the project.

12.9 Contract Provisions. Pursuant to §200.327 the County will include in all federally-funded contracts, the applicable provisions described in Appendix 11 to 2 CFR Part 200 - Contract Provisions for non-Federal Entity Contracts under Federal Awards. When preparing a federally funded contract the County Purchasing Dept., Planning Dept., and County Attorney will review the required federal clauses in Appendix ff and make sure that all clauses required/or the contract is included.

12.10 Personnel Cost Calculation Pursuant to 2 Code of Federal Regulations (CFR) Part 200, Subpart E the County adopted Resolution # 2019R02008 on February 5, 2019 - Policy and Procedure to Ensure Accurate Completion of Personnel Cost Calculation.

12.11 Cost Price Analysis Pursuant to 2 Code of Federal Regulations (CFR) Part 200, the County adopted Resolution # 2019R02009 on February 5, 2019 - Policy and Procedure to Ensure Cost Price Analysis requirement.

12.12 Debarment Check Pursuant to 2 Code of Federal Regulations (CFR) Part 200.318, the County adopted Resolution # 2019R02010 on February 5, 2019 - Policy and Procedure to Ensure Debarment Check is adequately performed.

12.13 Single Proposal requirements Proposal is reviewed for compliance. Determination is made by County as to benefit of resolution or RFP towards a more competitive solicitation. Pricing is reviewed relative to current market costs for comparison. If all is determined to be cost effective and advantageous to County, recommendation is made by Evaluation Committee to Commissioners Court for award. Commissioners Court must make a determination that price is fair and reasonable prior to awarding RFP. Prior to Court award of sole Bid, RFP, or RFQ County Purchasing Dept. will contact the federal awarding agency or pass-through entity (TCEQ for RESTORE projects) to request authorization for noncompetitive procurement under 2 CFR 200.320(c)(2) to proceed towards Commissioners Court approval. Informal Bids not exceeding \$14,999 will require at least 3 informal Bids for comparative competitive purposes. If the County is unable to obtain at least 3 competitive Bids or Proposals. If unable to obtain more than one (1) Bid or Proposal the County Purchasing Dept. will review pricing relative to current market costs for comparison purposes (utilizing comparable bid results, engineer recent historic data, Smart Procure comparable data) will contact the federal awarding agency or pass-through entity (TCEQ, for RESTORE projects) to request authorization for noncompetitive procurement under 2 CFR 200.320(c)(2) prior to proceeding with Agenda towards Commissioners Court approval..

12.14 Domestic Preferences for Procurement County will (in awards of iron, aluminum, steel, cement and other goods / manufactured products produced in the United States) utilize and purchase from these suppliers and subawards with a preference towards purchases from these Companies. (see 200.322)

12.15 Bid Bonds Will always be required for construction contracts:

County Purchasing Act: Required

Payment Bond - \$25,000 + (2253.21) Performance

Bond - \$100,000 + (2253.21)

Bid Bond-a) If the contract is for the construction of public works or is under a contract exceeding \$100,000, the bid specifications or request for proposals may require the bidder to furnish a good and sufficient bid bond in **the amount of five percent of the total contract (262.032)**

Federal funded projects: exceeding \$150,000 (on exception sought from the federal awarding agency. For all Federal funded projects \$150,000 and over Bid Bonds will be mandatory equivalent to five percent of the bid price. A performance bond and payment bond will also be required - both at 100 percent of contract price.

REQUIRED CONTRACT CLAUSES FOR CONTRACTS UNDER FEDERAL AWARD

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]. <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200#subject-group-ECFR45ddd4419ad436d> See Appendix “B”

As a non-Federal entity, the County of Cameron’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 Cameron 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 Cameron, 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 Cameron'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 Cameron 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 Cameron 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 County of Cameron, 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 Cameron 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 (Non-procurement 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 non-procurement 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 non-procurement 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 state City 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 City, 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 applies to this contract:

- (1) The contractor agrees to provide the City of Concord, 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 City 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 City 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 will 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 Cameron 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 A
FHWA 1273

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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

- 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. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

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 (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).

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.

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). 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 bid proposal or request for proposal 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).

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.

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. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 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 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, 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 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, 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 230, 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 (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 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 35 and 29 CFR 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.

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, 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 who 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.

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, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure 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. 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, 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, 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 there under. Employers must provide reasonable accommodation in all employment activities 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, 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 and 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. Assurance Required by 49 CFR 26.13(b):

- a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
- b. The contractor 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 contracting agency deems appropriate.

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 \$10,000 or more.

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, 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). The requirements apply to all projects located within the right-of way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

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, Employment Standards

Administration, 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 Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

Appendix B

Super Circular – Procurement Standards 2 CFR Parts 200.317 – 200.327

Procurement Standards <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200#subject-group-ECFR45ddd4419ad436d>

§ 200.317 Procurements by states.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with [§§ 200.321](#), [200.322](#), and [200.323](#) and ensure that every purchase order or other contract includes any clauses required by [§ 200.327](#). All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in [§§ 200.318](#) through [200.327](#).

§ 200.318 General procurement standards.

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or

subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in [§§ 200.317](#) through [200.327](#).

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also [§ 200.214](#).

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)

(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the

contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[[85 FR 49543](#), Aug. 13, 2020, as amended at [86 FR 10440](#), Feb. 22, 2021]

§ 200.319 Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](#).

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with [§ 200.320\(c\)](#).

[§ 200.320 Methods of procurement to be followed.](#)

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and [§§ 200.317](#), [200.318](#), and [200.319](#) for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) **Informal procurement methods.** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in [§ 200.1](#), or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) *Micro-purchases* -

(i) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in [§ 200.1](#)). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with [paragraphs \(a\)\(1\)\(iv\)](#) and [\(v\)](#) of this section.

(iv) **Non-Federal entity increase to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with [§ 200.334](#). The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

- (A) A qualification as a low-risk auditee, in accordance with the criteria in [§ 200.520](#) for the most recent audit;
- (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
- (C) For public institutions, a higher threshold consistent with State law.

(v) **Non-Federal entity increase to the micro-purchase threshold over \$50,000.** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in [paragraph \(a\)\(1\)\(iv\)](#) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) *Small purchases* -

(i) **Small purchase procedures.** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) **Simplified acquisition thresholds.** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) **Formal procurement methods.** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with [§ 200.319](#) or [paragraph \(c\)](#) of this

section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) **Sealed bids.** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see [paragraph \(a\)\(1\)](#) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) 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;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) 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; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in [paragraphs \(b\)\(1\) through \(5\)](#) of this section.

§ 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

§ 200.323 Procurement of recovered materials.

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, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 200.324 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the

facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under [subpart E of this part](#). The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§ 200.325 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
- (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in [paragraph \(b\)](#) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

- (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
- (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 200.326 Bonding requirements.

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

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

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

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

§ 200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

PART 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>

Code of Federal Regulations

Subpart D – Post Federal Award Requirements

<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D>

Subpart D Post Federal Award Requirements 200.300 – 200.346

§ 200.300	<u>Statutory and national policy requirements.</u>
§ 200.301	<u>Performance measurement.</u>
§ 200.302	<u>Financial management.</u>
§ 200.303	<u>Internal controls.</u>
§ 200.304	<u>Bonds.</u>
§ 200.305	<u>Federal payment.</u>
§ 200.306	<u>Cost sharing or matching.</u>
§ 200.307	<u>Program income.</u>
§ 200.308	<u>Revision of budget and program plans.</u>
§ 200.309	<u>Modifications to Period of Performance.</u>

Property Standards

[200.310 – 200.316](#)

§ 200.310	<u>Insurance coverage.</u>
§ 200.311	<u>Real property.</u>
§ 200.312	<u>Federally-owned and exempt property.</u>
§ 200.313	<u>Equipment.</u>
§ 200.314	<u>Supplies.</u>
§ 200.315	<u>Intangible property.</u>
§ 200.316	<u>Property trust relationship.</u>

Procurement Standards

[200.317 – 200.327](#)

§ 200.317	<u>Procurements by states.</u>
§ 200.318	<u>General procurement standards.</u>
§ 200.319	<u>Competition.</u>
§ 200.320	<u>Methods of procurement to be followed.</u>

§ 200.321	Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.	
§ 200.322	Domestic preferences for procurements.	
§ 200.323	Procurement of recovered materials.	
§ 200.324	Contract cost and price.	
§ 200.325	Federal awarding agency or pass-through entity review.	
§ 200.326	Bonding requirements.	
§ 200.327	Contract provisions.	
Performance and Financial Monitoring and Reporting		200.328 – 200.330
§ 200.328	Financial reporting.	
§ 200.329	Monitoring and reporting program performance.	
§ 200.330	Reporting on real property.	
Subrecipient Monitoring and Management		200.331 – 200.333
§ 200.331	Subrecipient and contractor determinations.	
§ 200.332	Requirements for pass-through entities.	
§ 200.333	Fixed amount subawards.	
Record Retention and Access		200.334 – 200.338
§ 200.334	Retention requirements for records.	
§ 200.335	Requests for transfer of records.	
§ 200.336	Methods for collection, transmission, and storage of information.	
§ 200.337	Access to records.	
§ 200.338	Restrictions on public access to records.	
Remedies for Noncompliance		200.339 – 200.343
§ 200.339	Remedies for noncompliance.	
§ 200.340	Termination.	
§ 200.341	Notification of termination requirement.	
§ 200.342	Opportunities to object, hearings, and appeals.	
§ 200.343	Effects of suspension and termination.	
Closeout		200.344
§ 200.344	Closeout.	
Post-Closeout Adjustments and Continuing Responsibilities		200.345
§ 200.345	Post-closeout adjustments and continuing responsibilities.	
Collection of Amounts Due		200.346
§ 200.346	Collection of amounts due.	

Appendix C

Texas Government Code Section §2156 Purchasing Methods
GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE D. STATE PURCHASING AND GENERAL SERVICES

CHAPTER 2156. PURCHASING METHODS

SUBCHAPTER A. CONTRACT PURCHASE PROCEDURE

Sec. 2156.001. CONTRACT PURCHASE PROCEDURE AUTHORIZED. The comptroller may use the contract purchase procedure to purchase goods and services.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 60, eff. September 1, 2019.

Sec. 2156.0011. COMPTROLLER POWERS AND DUTIES. The comptroller has under this chapter the powers and duties described by Section [2151.004](#)(d).

Added by Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. [3560](#)), Sec. 1.18, eff. September 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 60, eff. September 1, 2019.

Sec. 2156.0012. AUTHORITY TO ADOPT RULES. The comptroller may adopt rules to efficiently and effectively administer this chapter. Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section [2001.029](#)(b) are met.

Added by Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. [3560](#)), Sec. 1.18, eff. September 1, 2007.

Sec. 2156.002. SOLICITATION OF BIDS THROUGH PUBLIC NOTICE. (a) A notice inviting bids shall be published at least once in at least one newspaper of general circulation in the state not later than the seventh day before the last day set for the receipt of bids.

(b) The notice must:

- (1) include a general description of the items to be purchased;
- (2) state the location at which bid forms and specifications may be obtained; and
- (3) state the time and place for opening bids.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2156.003. SOLICITATION OF BIDS THROUGH BIDDERS LIST; BID INVITATIONS.

(a) The comptroller shall electronically maintain a bidders list. If the comptroller determines that it is in the state's best interest, the comptroller may also maintain the list on paper. The comptroller may add or delete names from the list according to applicable standards provided by Section [2156.007](#).

(b) An invitation to bid on an item to be purchased may be sent electronically to a vendor on the bidders list who has expressed a desire to bid on that type of item.

(c) The comptroller may use the bidders list in making a purchase by any purchase method.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 7.03, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 393 (H.B. [1705](#)), Sec. 3.03, eff. September 1, 2009.

Sec. 2156.004. BID DEPOSIT. (a) The comptroller, as considered necessary, may require a bid deposit in an amount determined by the comptroller. The amount of the deposit, if any, must be stated in the public notice and the invitation to bid.

(b) On the award of a bid or the rejection of all bids, the comptroller shall refund the bid deposit of an unsuccessful bidder.

(c) The comptroller may accept from a bidder a bid deposit in the form of a blanket bond.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 35, eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 60, eff. September 1, 2019.

Sec. 2156.005. BID SUBMISSION AND OPENING; PUBLIC INSPECTION. (a) A bidder must submit a sealed bid to the comptroller or to the state agency making a purchase. The bid must be identified on the envelope as a bid.

(b) Subsection (a) does not apply to bids submitted through the use of facsimile transmission or on-line electronic transmission. The comptroller may adopt rules to ensure the identification, security, and confidentiality of bids submitted through the use of facsimile transmission or on-line electronic transmission.

(c) The comptroller or other state agency making a purchase shall open bids at the time and place stated in the invitation to bid.

(d) The comptroller shall keep a tabulation of all bids received by the comptroller available for public inspection under rules adopted by the comptroller. State agencies making purchases shall adopt the comptroller's rules related to bid opening and tabulation.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 494, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1206, Sec. 13, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 393 (H.B. [1705](#)), Sec. 3.04, eff. September 1, 2009.

Sec. 2156.006. SUBMISSION OF ADDITIONAL MATERIAL WITH BID. (a) A bidder as an essential element of the materiality of the bid must comply with the specified time limit for the submission of written information, samples, or models at or before the time for bid opening.

(b) The comptroller may waive this requirement if the failure to comply is beyond the bidder's control.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 61, eff. September 1, 2019.

Sec. 2156.007. CONTRACT AWARD. (a) The comptroller or other state agency making a purchase shall award a contract to the bidder offering the best value for the state while conforming to the specifications required.

(b) In determining the bidder offering the best value, the comptroller or other state agency may consider the safety record of the bidder, the entity represented by the bidder, and any person acting for the represented entity only if:

(1) the comptroller or other state agency has adopted a written definition and criteria for accurately determining the safety record of a bidder; and
(2) the comptroller or state agency provided notice in the bid specifications to prospective bidders that a bidder's safety record may be considered in determining the bidder offering the best value for the state.

(c) A determination of a bidder's safety record may not be arbitrary and capricious.

(d) In determining the bidder offering the best value, in addition to price the comptroller or other state agency shall consider:

(1) the quality and availability of the goods or contractual services and their adaptability to the use required;
(2) the scope of conditions attached to the bid;
(3) the bidder's ability, capacity, and skill to perform the contract or provide the service required;
(4) the bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference;
(5) the bidder's character, responsibility, integrity, and experience or demonstrated capability;
(6) the quality of performance of previous contracts or services;
(7) the bidder's previous and existing compliance with laws relating to the contract or service;
(8) the bidder's previous or existing noncompliance with specification requirements relating to the time of submission of specified information, including samples, models, drawings, or certificates;
(9) the sufficiency of the bidder's financial resources and ability to perform the contract or provide the service; and
(10) the bidder's ability to provide future maintenance, repair parts, and service for the use of the contract's subject.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 14, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 62, eff. September 1, 2019.

Sec. 2156.008. REJECTION OF BIDS. (a) The comptroller or other state agency making the purchase shall reject a bid in which there is a material failure to comply with specification requirements.

(b) The comptroller or other state agency may reject all bids or parts of bids if the rejection serves the state's interest.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 14, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 63, eff. September 1, 2019.

Sec. 2156.009. REASONS FOR AWARD. On award of a contract, the division of the comptroller responsible for purchasing or the state agency making the purchase shall prepare and file with other records relating to the transaction a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value for the state.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 14, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 63, eff. September 1, 2019.

Sec. 2156.010. TIE BIDS. In the case of tie bids, the value and cost to the state being equal, a contract shall be awarded under comptroller rules.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 14, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 63, eff. September 1, 2019.

Sec. 2156.011. PERFORMANCE BOND. (a) The comptroller may require a performance bond before executing a contract.

(b) The comptroller may require the bond in an amount that the comptroller finds reasonable and necessary to protect the state's interests.

(c) Any bond required shall be issued on the condition that the bidder faithfully execute the terms of the contract.

(d) Any bond required shall be filed with the comptroller.

(e) Recoveries under the bond may continue until the bond is exhausted.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 64, eff. September 1, 2019.

SUBCHAPTER B. OPEN MARKET PURCHASE PROCEDURE

Sec. 2156.061. USE OF OPEN MARKET PURCHASE PROCEDURE. On a comptroller determination that a purchase of goods or services may be made most effectively in the open market, the comptroller may use the open market purchase procedure and the purchase may be made without newspaper advertising.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 65, eff. September 1, 2019.

Sec. 2156.062. MINIMUM NUMBER AND EVALUATION OF BIDS. An open market purchase shall, to the extent possible, be:

- (1) based on at least three competitive bids; and
- (2) awarded to the bidder offering the best value for the state in accordance with standards set forth in Chapters [2155](#), [2156](#), [2157](#), and [2158](#).

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 15, eff. Sept. 1, 1997.

Sec. 2156.063. SOLICITATION OF BIDS. The comptroller and each state agency making a purchase shall solicit bids under this subchapter by:

- (1) direct mail;
- (2) telephone;
- (3) telegraph;
- (4) facsimile transmission; or
- (5) on-line electronic transmission.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 494, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1206, Sec. 15, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 393 (H.B. [1705](#)), Sec. 3.05, eff. September 1, 2009.

Sec. 2156.064. RECORDING AND INSPECTION OF BIDS. (a) The comptroller shall keep a record of all open market orders and bids submitted on the orders.

(b) A tabulation of the bids shall be open for public inspection, under rules established by the comptroller.

(c) A tabulation of the bids shall always be open for inspection by the state auditor or the auditor's representative.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 66, eff. September 1, 2019.

Sec. 2156.065. AGENCY REVIEW OF BIDS. (a) On the request of a state agency to review the bids on a purchase administered by the comptroller, the comptroller shall send or make available to the requesting agency copies of each bid received and the comptroller's recommended award.

(b) If, after review of the bids and evaluation of the quality of goods or services offered in the bids, the state agency determines that the bid selected by the comptroller does not offer the best value for the state, the agency may file with the comptroller a written recommendation that the award be made to the bidder who, according to the agency's determination, offers the best value for the state. The agency recommendation must include a justification of the agency's determination.

(c) The comptroller shall consider, but is not bound by, the agency recommendation in making the award.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 16, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 67, eff. September 1, 2019.

Sec. 2156.066. STATEMENT OF REASONS FOR AWARD. The division of the comptroller responsible for purchasing or the state agency making a purchase shall prepare and file with other records relating to a transaction under this subchapter a statement of the reasons for placing an order with a successful bidder for the transaction and the factors considered in determining the bid offering the best value for the state.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 16, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 67, eff. September 1, 2019.

SUBCHAPTER C. COMPETITIVE SEALED PROPOSALS FOR ACQUISITION OF GOODS AND SERVICES

Sec. 2156.121. USE OF COMPETITIVE SEALED PROPOSALS. (a) The comptroller or other state agency may follow a procedure using competitive sealed proposals to acquire goods or services if the comptroller determines that competitive sealed bidding and informal competitive bidding for the purchase or type of purchase are not practical or are disadvantageous to the state.

(b) A state agency shall send its proposal specifications and criteria to the comptroller for approval or request the comptroller to develop the proposal specifications and criteria.

(c) The comptroller shall determine whether to delegate sole oversight of the acquisition to a state agency or to retain oversight of the procurement.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 17, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 426, Sec. 8, eff. June 18, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 67, eff. September 1, 2019.

Sec. 2156.122. SOLICITATION OF PROPOSALS. The comptroller or other state agency shall:

- (1) solicit proposals under this subchapter by a request for proposals; and
- (2) give public notice of a request for proposals in the manner provided for requests for bids under Subchapter B.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Renumbered from Sec. 2156.124 and amended by Acts 1997, 75th Leg., ch. 1206, Sec. 17, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 67, eff. September 1, 2019.

Sec. 2156.123. OPENING AND FILING OF PROPOSALS; PUBLIC INSPECTION. (a) The comptroller or other state agency shall avoid disclosing the contents of each proposal on opening the proposal and during negotiations with competing offerors.

(b) The comptroller or other state agency shall file each proposal in a register of proposals, which, after a contract is awarded, is open for public inspection unless the register contains information that is excepted from required disclosure under Subchapter C, Chapter [552](#).

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Renumbered from Sec. 2156.126 and amended by Acts 1997, 75th Leg., ch. 1206, Sec. 17, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 67, eff. September 1, 2019.

Sec. 2156.124. DISCUSSION AND REVISION OF PROPOSALS. (a) As provided in a request for proposals and under rules adopted by the comptroller, the comptroller or other state agency may discuss acceptable or potentially acceptable proposals with offerors to assess an offeror's ability to meet the solicitation requirements. When the comptroller is managing the request for proposals process, it shall invite a requisitioning agency to participate in discussions conducted under this section.

(b) After receiving a proposal but before making an award, the comptroller or other state agency may permit the offeror to revise the proposal to obtain the best final offer.

(c) The comptroller or other state agency may not disclose information derived from proposals submitted from competing offerors in conducting discussions under this section.

(d) The comptroller or other state agency shall provide each offeror an equal opportunity to discuss and revise proposals.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Renumbered from Sec. 2156.127 and amended by Acts 1997, 75th Leg., ch. 1206, Sec. 17, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 67, eff. September 1, 2019.

Sec. 2156.125. CONTRACT AWARD. (a) The comptroller or other state agency shall make a written award of a contract to the offeror whose proposal offers the best value for the state, considering price, past vendor performance, vendor experience or demonstrated capability, and the evaluation factors in the request for proposals.

(b) The comptroller or other state agency shall refuse all offers if none of the offers submitted is acceptable.

(c) The comptroller or other state agency shall determine which proposal offers the best value for the state in accordance with Sections [2155.074](#) and [2155.075](#).

(d) The comptroller or other state agency shall state in writing in the contract file the reasons for making an award.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Renumbered from Sec. 2156.128 and amended by Acts 1997, 75th Leg., ch. 1206, Sec. 17, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 67, eff. September 1, 2019.

Sec. 2156.126. ADOPTION OF RULES; STATE AGENCY ASSISTANCE. The comptroller may adopt rules and request assistance from other state agencies to perform its responsibilities under this subchapter.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Renumbered from Sec. 2156.129 and amended by Acts 1997, 75th Leg., ch. 1206, Sec. 17, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 67, eff. September 1, 2019.

Sec. 2156.127. COMPETITIVE SEALED PROPOSALS FOR TELECOMMUNICATIONS AND AUTOMATED INFORMATION SYSTEMS NOT AFFECTED. This subchapter does not affect Subchapter C, Chapter [2157](#).

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Renumbered from Sec. 2156.130 and amended by Acts 1997, 75th Leg., ch. 1206, Sec. 17, eff. Sept. 1, 1997.

SUBCHAPTER D. INTERSTATE COMPACTS PROCEDURE

Sec. 2156.181. INTERSTATE COMPACTS AND COOPERATIVE AGREEMENTS FOR PROCUREMENTS. (a) The comptroller may enter into one or more compacts, interagency agreements, or cooperative purchasing agreements directly with one or more state governments, agencies of other states, or other governmental entities or may participate in, sponsor, or administer a cooperative purchasing agreement through an entity that facilitates those agreements for the purchase of goods or services if the comptroller determines that the agreement would be in the best interest of the state.

(a-1) A compact or agreement described by this section may not be used to purchase services that are defined as part of the practice of engineering under Section [1001.003](#), Occupations Code, or architecture under Section [1051.001](#), Occupations Code.

(b) The comptroller may adopt rules to implement this section.

Added by Acts 1999, 76th Leg., ch. 426, Sec. 9, eff. June 18, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 326 (S.B. [20](#)), Sec. 14, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 582 (H.B. [3342](#)), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. [1524](#)), Sec. 68, eff. September 1, 2019.

Appendix D

Texas Government Code Section §2269 Purchasing Methods

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

CHAPTER 2269. CONTRACTING AND DELIVERY PROCEDURES FOR CONSTRUCTION PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2269.001. DEFINITIONS. In this chapter:

(1) "Architect" means an individual registered as an architect under Chapter [1051](#), Occupations Code.

(2) "Engineer" means an individual licensed as an engineer under Chapter [1001](#), Occupations Code.

(3) "Facility" means, unless otherwise specifically provided, an improvement to real property.

(4) "General conditions" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

(5) "General contractor" means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of a facility at the contracted price.

(6) "Public work contract" means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS. This chapter applies to a public work contract made by a governmental entity authorized by state law to make a public work contract, including:

(1) a state agency as defined by Section [2151.002](#), including the Texas Facilities Commission;

- (2) a local government, including:
 - (A) a county;
 - (B) a municipality;
 - (C) a school district;
 - (D) any other special district or authority, including a hospital district, a defense base development authority established under Chapter [379B](#), Local Government Code, and a conservation and reclamation district, including a river authority or any other type of water district; and
 - (E) any other political subdivision of this state;
- (3) a public junior college as defined by Section [61.003](#), Education Code; and
- (4) a board of trustees governed by Chapter [54](#), Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW PROCEDURES OF THIS CHAPTER. (a) Except as provided by this section, this chapter prevails over any other law relating to a public work contract.

(b) This chapter does not prevail over a conflicting provision in a law relating to contracting with a historically underutilized business.

(c) This chapter does not prevail over a conflicting provision in an ordinance or resolution passed by the governing body of a municipally owned electric utility in a procedure described by Section [252.022](#) (c), Local Government Code, that:

(1) requires the use of competitive bidding or competitive sealed proposals; or

(2) prescribes a design-build procurement procedure that conflicts with this chapter.

(d) This chapter does not prevail over any law, rule, or regulation relating to competitive bidding or competitive sealed proposals for construction services, or to procurement of construction services pursuant to Section [49.273](#), Water Code, that applies to a river authority or to a conservation and reclamation district created under Section [59](#), Article XVI, Texas Constitution, unless the governing body of the river authority or conservation and reclamation district elects to permit this chapter to supersede the law, rule, or regulation.

(e) This chapter does not prevail over a conflicting provision in a regulation that prescribes procurement procedures for construction services that is adopted by the governing board of a river authority or of a conservation and reclamation district created pursuant to Section [59](#), Article XVI, Texas Constitution, that owns electric generation capacity in excess of 2,500 megawatts, except with respect to Subchapter H.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.004. EXEMPTION: TEXAS DEPARTMENT OF TRANSPORTATION; HIGHWAY PROJECTS. This chapter does not apply to:

- (1) a contract entered into by the Texas Department of Transportation;
- or
- (2) a project that receives money from a state or federal highway fund.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.005. APPLICABILITY: INSTITUTIONS OF HIGHER EDUCATION. (a) In this section, "institution of higher education," "public junior college," and "university system" have the meanings assigned by Section [61.003](#), Education Code.

- (b) This chapter applies to a public junior college but does not apply to:
- (1) any other institution of higher education; or
 - (2) a university system.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.006. EXEMPTION: REGIONAL TOLLWAY AUTHORITIES. This chapter does not apply to a regional tollway authority under Chapter [366](#), Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.007. EXEMPTION: CERTAIN LOCAL GOVERNMENT CORPORATION IMPROVEMENT PROJECTS. This chapter does not apply to an improvement project undertaken by or through a local government corporation exempt from competitive bidding requirements or restrictions under Section [431.110](#), Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.008. EXEMPTION: REGIONAL MOBILITY AUTHORITIES. This chapter does not apply to a regional mobility authority under Chapter [370](#), Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.009. EXEMPTION: COUNTY TOLL AUTHORITIES. This chapter does not apply to a project of a county under Chapter [284](#), Transportation Code, unless the county adopts an order electing to be governed by this chapter for a project to be developed by the county under Chapter 284.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.010. EXEMPTION: COORDINATED COUNTY TRANSPORTATION AUTHORITY. This chapter does not apply to a coordinated county transportation authority under Chapter [460](#), Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 2269.051. RULES. A governmental entity may adopt rules as necessary to implement this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.052. NOTICE REQUIREMENTS. (a) A governmental entity shall advertise or publish notice of requests for bids, proposals, or qualifications in a manner prescribed by law.

(b) For a contract entered into by a governmental entity under a method provided by this chapter, the governmental entity shall publish notice of the time and place the bid or proposal or request for qualifications will be received and opened in a manner prescribed by law.

(c) For a contract entered into by a municipality, river authority, conservation and reclamation district created pursuant to Section [59](#), Article XVI,

Texas Constitution, and located in a county with a population of more than 250,000, or defense base development authority under any of the methods provided by this chapter, the municipality, river authority, conservation and reclamation district created pursuant to Section [59](#), Article XVI, Texas Constitution, and located in a county with a population of more than 250,000, or defense base development authority shall publish notice of the time and place the bids or proposals, or the responses to a request for qualifications, will be received and opened. The notice must be published in a newspaper of general circulation in the county in which the defense base development authority's or municipality's central administrative office is located or the county in which the greatest amount of the river authority's or such conservation and reclamation district's territory is located once each week for at least two weeks before the deadline for receiving bids, proposals, or responses. If there is not a newspaper of general circulation in that county, the notice shall be published in a newspaper of general circulation in the county nearest the county seat of the county in which the defense base development authority's or municipality's central administrative office is located or the county in which the greatest amount of the river authority's or such conservation and reclamation district's territory is located. In a two-step procurement process, the time and place the second step bids, proposals, or responses will be received are not required to be published separately.

(d) For a contract entered into by a county under any of the methods provided by this chapter, the county shall publish notice of the time and place the bids or proposals, or the responses to a request for qualifications, will be received and opened. The notice must be published in a newspaper of general circulation in the county once each week for at least two weeks before the deadline for receiving bids, proposals, or responses. If there is not a newspaper of general circulation in the county, the notice shall be:

- (1) posted at the courthouse door of the county; and
- (2) published in a newspaper of general circulation in the nearest county.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.053. DELEGATION OF AUTHORITY. (a) The governing body of a governmental entity may delegate its authority under this chapter regarding an action authorized or required by this chapter to a designated representative, committee, or other person.

(b) The governmental entity shall provide notice of the delegation, the limits of the delegation, and the name or title of each person designated under Subsection (a) by rule or in the request for bids, proposals, or qualifications or in an addendum to the request.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.054. RIGHT TO WORK. (a) This section applies to a governmental entity when the governmental entity is engaged in:

- (1) procuring goods or services under this chapter;
- (2) awarding a contract under this chapter; or
- (3) overseeing procurement or construction for a public work or public improvement under this chapter.

(b) In engaging in an activity to which this section applies, a governmental entity:

- (1) may not consider whether a person is a member of or has another relationship with any organization; and
- (2) shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to an organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.0541. AGREEMENT WITH COLLECTIVE BARGAINING ORGANIZATION. (a) A governmental entity awarding a public work contract funded with state money, including the issuance of debt guaranteed by this state, may not:

- (1) prohibit, require, discourage, or encourage a person bidding on the public work contract, including a contractor or subcontractor, from entering into or adhering to an agreement with a collective bargaining organization relating to the project; or
- (2) discriminate against a person described by Subdivision (1) based on the person's involvement in the agreement, including the person's:
 - (A) status or lack of status as a party to the agreement; or
 - (B) willingness or refusal to enter into the agreement.

(b) This section may not be construed to:

- (1) prohibit activity protected by the National Labor Relations Act (29 U.S.C. Section 151 et seq.), including entering into an agreement with a collective bargaining organization relating to the project; or
- (2) permit conduct prohibited under the National Labor Relations Act (29 U.S.C. Section 151 et seq.).

Added by Acts 2019, 86th Leg., R.S., Ch. 366 (H.B. [985](#)), Sec. 2, eff. September 1, 2019.

Sec. 2269.055. CRITERIA TO CONSIDER. (a) In determining the award of a contract under this chapter, the governmental entity may consider:

- (1) the price;
- (2) the offeror's experience and reputation;
- (3) the quality of the offeror's goods or services;
- (4) the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;

- (5) the offeror's safety record;
- (6) the offeror's proposed personnel;
- (7) whether the offeror's financial capability is appropriate to the size and scope of the project; and
- (8) any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

(b) In determining the award of a contract under this chapter, the governmental entity shall:

(1) consider and apply any existing laws, including any criteria, related to historically underutilized businesses; and

(2) consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.056. USING METHOD OTHER THAN COMPETITIVE BIDDING FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA. (a) The governing body of a governmental entity that considers a construction contract using a method authorized by this chapter other than competitive bidding must, before advertising, determine which method provides the best value for the governmental entity.

(b) The governmental entity shall base its selection among offerors on applicable criteria listed for the particular method used. The governmental entity shall publish in the request for proposals or qualifications:

- (1) the criteria that will be used to evaluate the offerors;
- (2) the applicable weighted value for each criterion; and
- (3) a detailed methodology for scoring each criterion.

(c) The governmental entity shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#)(23), eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 556 (S.B. [533](#)), Sec. 13, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 702 (H.B. [2581](#)), Sec. 1, eff. September 1, 2021.

Sec. 2269.057. ARCHITECT OR ENGINEER SERVICES. (a) An architect or engineer required to be selected or designated under this chapter has full responsibility for complying with Chapter [1051](#) or [1001](#), Occupations Code, as applicable.

(b) If the selected or designated architect or engineer is not a full-time employee of the governmental entity, the governmental entity shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Section [2254.004](#).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.058. USE OF OTHER PROFESSIONAL SERVICES. (a) Independently of the contractor, construction manager-at-risk, or design-build firm, the governmental entity shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the governmental entity.

(b) The governmental entity shall select the services for which it contracts under this section in accordance with Section [2254.004](#).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS REQUIRED. A person who submits a bid, proposal, or qualification to a governmental entity shall seal it before delivery.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.060. DOCUMENTS RELATED TO EVALUATION AND RANKING. (a) An offeror who submits a bid, proposal, or response to a request for qualifications for a construction contract under this chapter may, after the contract is awarded, make a request in writing to the governmental entity to provide documents related to the evaluation of the offeror's submission.

(b) Not later than the 30th day after the date a request is made under Subsection (a), the governmental entity shall deliver to the offeror the documents relating to the evaluation of the submission including, if applicable, its ranking of the submission.

Added by Acts 2021, 87th Leg., R.S., Ch. 702 (H.B. [2581](#)), Sec. 2, eff. September 1, 2021.

SUBCHAPTER C. COMPETITIVE BIDDING METHOD

Sec. 2269.101. CONTRACTS FOR FACILITIES: COMPETITIVE BIDDING. (a) In this chapter, "competitive bidding" is a procurement method by which a governmental entity contracts with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder.

(b) Except as otherwise provided by this chapter or other law, a governmental entity may contract for the construction, alteration, rehabilitation, or repair of a facility only after the entity advertises for bids for the contract in a manner prescribed by law, receives competitive bids, and awards the contract to the lowest responsible bidder.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.102. USE OF ARCHITECT OR ENGINEER. The governmental entity shall select or designate an architect or engineer in accordance with Chapter [1051](#) or [1001](#), Occupations Code, as applicable, to prepare the construction documents required for a project to be awarded by competitive bidding.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.103. PREPARATION OF REQUEST. The governmental entity shall prepare a request for competitive bids that includes construction documents, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to submit a bid.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.104. EVALUATION OF OFFERORS. The governmental entity shall receive, publicly open, and read aloud the names of the offerors and their bids.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.105. SELECTION OF OFFEROR. Not later than the seventh day after the date the contract is awarded, the governmental entity shall document the basis of its selection and shall make the evaluations public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise specifically provided by this section, Subchapter [B](#), Chapter [271](#), Local Government Code, does not apply to a competitive bidding process conducted under this chapter. Sections [271.026](#), [271.027](#)(a), and [271.0275](#), Local Government Code, apply to a competitive bidding process conducted under this chapter by a governmental entity as defined by Section [271.021](#), Local Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

Sec. 2269.151. CONTRACTS FOR FACILITIES: COMPETITIVE SEALED PROPOSALS. (a) In this chapter, "competitive sealed proposals" is a procurement method by which a governmental entity requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.

(b) In selecting a contractor through competitive sealed proposals, a governmental entity shall follow the procedures provided by this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.152. USE OF ARCHITECT OR ENGINEER. The governmental entity shall select or designate an architect or engineer to prepare construction documents for the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.153. PREPARATION OF REQUEST. (a) In this section, "civil works project" has the meaning assigned by Section [2269.351](#).

(b) The governmental entity shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request.

(c) Except as provided by Subsection (d), for civil works projects, the weighted value assigned to price must be at least 50 percent of the total weighted value of all selection criteria.

(d) If the governing body of a governmental entity determines that assigning a lower weighted value to price is in the public interest, the governmental entity may assign to price a weighted value of not less than 36.9 percent of the total weighted value of all selection criteria.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#) (23), eff. September 1, 2013.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 702 (H.B. [2581](#)), Sec. 3, eff. September 1, 2021.

Sec. 2269.154. EVALUATION OF OFFERORS. (a) The governmental entity shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals made by the offerors.

(b) Not later than the 45th day after the date on which the proposals are opened, the governmental entity shall evaluate and rank each proposal submitted in relation to the published selection criteria.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.155. SELECTION OF OFFEROR. (a) The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on:

- (1) the selection criteria in the request for proposal and the weighted value for those criteria in the request for proposal; and
- (2) its ranking evaluation.

(b) The governmental entity shall first attempt to negotiate a contract with the selected offeror. The governmental entity and its architect or engineer may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification.

(c) If the governmental entity is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

(d) Not later than the seventh business day after the date the contract is awarded, the governmental entity shall make the evaluations, including any scores, public and provide them to all offerors.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#) (23), eff. September 1, 2013.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 702 (H.B. [2581](#)), Sec. 4, eff. September 1, 2021.

SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

Sec. 2269.201. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT. (a) In this chapter, the "construction manager-agent method" is a delivery method by which a governmental entity contracts with a construction manager-agent to provide consultation or administrative services during the design and construction phase and to manage multiple contracts with various construction prime contractors.

(b) A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that serves as the agent for the governmental entity by providing construction administration and management services described by Subsection (a) for the construction, rehabilitation, alteration, or repair of a facility.

(c) A governmental entity may retain a construction manager-agent for assistance in the construction, rehabilitation, alteration, or repair of a facility only as provided by this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#) (23), eff. September 1, 2013.

Sec. 2269.202. CONTRACT PROVISIONS OF CONSTRUCTION MANAGER-AGENT. The contract between the governmental entity and the construction manager-agent may require the construction manager-agent to provide:

- (1) administrative personnel;
- (2) equipment necessary to perform duties under this subchapter;
- (3) on-site management; and
- (4) other services specified in the contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A construction manager-agent may not:

- (1) self-perform any aspect of the construction, rehabilitation, alteration, or repair of the facility;
- (2) be a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility; or
- (3) provide or be required to provide performance and payment bonds for the construction, rehabilitation, alteration, or repair of the facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.204. FIDUCIARY CAPACITY OF CONSTRUCTION MANAGER-AGENT. A construction manager-agent represents the governmental entity in a fiduciary capacity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.205. USE OF ARCHITECT OR ENGINEER. (a) On or before the selection of a construction manager-agent, the governmental entity shall select or designate an architect or engineer in accordance with Chapter [1051](#) or [1001](#), Occupations Code, as applicable, to prepare the construction documents for the project.

(b) The governmental entity's architect or engineer may not serve, alone or in combination with another person, as the construction manager-agent unless the architect or engineer is hired to serve as the construction manager-agent under a separate or concurrent selection process conducted in accordance with this subchapter. This subsection does not prohibit the governmental entity's architect or engineer from providing customary construction phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.

(c) To the extent that the construction manager-agent's services are defined as part of the practice of architecture or engineering under Chapter [1051](#) or [1001](#), Occupations Code, those services must be conducted by a person licensed under the applicable chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.206. SELECTION OF CONTRACTORS. A governmental entity using the construction manager-agent method shall procure, in accordance with applicable law and in any manner authorized by this chapter, a general contractor or trade contractors who will serve as the prime contractor for their specific portion of the work and provide performance and payment bonds to the governmental entity in accordance with applicable laws.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A governmental entity shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner that an architect or engineer is selected under Section [2254.004](#).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.208. INSURANCE. A construction manager-agent selected under this subchapter shall maintain professional liability or errors and omissions insurance in the amount of at least \$1 million for each occurrence.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

Sec. 2269.251. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK. (a) In this chapter, the "construction manager-at-risk method" is a delivery method by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility.

(b) A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the governmental entity regarding

construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

(c) A governmental entity may use the construction manager-at-risk method in selecting a general contractor for the construction, rehabilitation, alteration, or repair of a facility only as provided by this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.252. USE OF ARCHITECT OR ENGINEER. (a) On or before the selection of a construction manager-at-risk, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.

(b) The governmental entity's architect or engineer for a project, or an entity related to the governmental entity's architect or engineer, may not serve, alone or in combination with another person, as the construction manager-at-risk. This subsection does not prohibit the governmental entity's architect or engineer from providing customary construction phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.

(c) For purposes of Subsection (b), an entity is related to the governmental entity's architect or engineer if the entity is a sole proprietorship, corporation, partnership, limited liability company, or other entity that is a subsidiary, parent corporation, or partner or has any other relationship in which the governmental entity's architect or engineer has an ownership interest, or is subject to common ownership or control, or is party to an agreement by which it will receive any proceeds of the construction manager-at-risk's payments from the governmental entity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#)(23), eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 788 (H.B. [2634](#)), Sec. 1, eff. September 1, 2015.

Sec. 2269.253. SELECTION PROCESS. (a) The governmental entity shall select the construction manager-at-risk in a one-step or two-step process.

(b) The governmental entity shall prepare a single request for proposals, in the case of a one-step process, and an initial request for qualifications, in the case of a two-step process, that includes:

(1) a statement as to whether the selection process is a one-step or two-step process;

(2) general information on the project site, project scope, schedule, selection criteria and the weighted value for each criterion, and estimated budget and the time and place for receipt of the proposals or qualifications; and

(3) other information that may assist the governmental entity in its selection of a construction manager-at-risk.

(c) The governmental entity shall state the selection criteria in the request for proposals or qualifications.

(d) If a one-step process is used, the governmental entity may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions.

(e) If a two-step process is used, the governmental entity may not request fees or prices in step one. In step two, the governmental entity may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and prices for fulfilling the general conditions.

(f) At each step, the governmental entity shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the governmental entity shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened.

(g) Not later than the 45th day after the date on which the final proposals are opened, the governmental entity shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.254. SELECTION OF OFFEROR. (a) The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation.

(b) The governmental entity shall first attempt to negotiate a contract with the selected offeror.

(c) If the governmental entity is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(d) Not later than the seventh day after the date the contract is awarded, the governmental entity shall make the rankings determined under Section [2269.253](#) (g) public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#) (23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(11), eff. September 1, 2013.

Sec. 2269.255. PERFORMANCE OF WORK. (a) A construction manager-at-risk shall publicly advertise for bids or proposals and receive bids or proposals from trade

contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions.

(b) A construction manager-at-risk may seek to perform portions of the work itself if:

(1) the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and

(2) the governmental entity determines that the construction manager-at-risk's bid or proposal provides the best value for the governmental entity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.256. REVIEW OF BIDS OR PROPOSALS. (a) The construction manager-at-risk shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, architect, engineer, or governmental entity. All bids or proposals shall be made available to the governmental entity on request and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals.

(b) If the construction manager-at-risk reviews, evaluates, and recommends to the governmental entity a bid or proposal from a trade contractor or subcontractor but the governmental entity requires another bid or proposal to be accepted, the governmental entity shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk incurs because of the governmental entity's requirement that another bid or proposal be accepted.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.257. DEFAULT; PERFORMANCE OF WORK. If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this subchapter, the construction manager-at-risk may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.258. PERFORMANCE OR PAYMENT BOND. (a) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, as specified in the request for proposals or qualifications.

(b) The construction manager-at-risk shall deliver the bonds not later than the 10th day after the date the construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

SUBCHAPTER G. BUILDING USING DESIGN-BUILD METHOD

Sec. 2269.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In this chapter, "design-build" is a project delivery method by which a governmental entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS. This subchapter applies only to a facility that is a building or an associated structure, including an electric utility structure. This subchapter does not apply to:

(1) a highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or

(2) a building or structure that is incidental to a project that is primarily a civil engineering construction project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A governmental entity may use the design-build method for the construction, rehabilitation, alteration, or repair of a building or associated structure only as provided by this subchapter. In

using that method, the governmental entity shall enter into a single contract with a design-build firm for the design and construction of the building or associated structure.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.304. DESIGN-BUILD FIRMS. A design-build firm under this subchapter must be a sole proprietorship, partnership, corporation, or other legal entity or team that includes an architect or engineer and a construction contractor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT REPRESENTATIVE. The governmental entity shall select or designate an architect or engineer independent of the design-build firm to act as the governmental entity's representative for the duration of the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.306. PREPARATION OF REQUEST. (a) The governmental entity shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria and the weighted value for each criterion, and other information that may assist potential design-build firms in submitting proposals for the project.

(b) The governmental entity shall also prepare the design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires architectural or engineering services that constitute the practice of architecture within the meaning of Chapter [1051](#), Occupations Code, or the practice of engineering within the meaning of Chapter [1001](#), Occupations Code, those services shall be provided in accordance with the applicable law.

(c) The design criteria package must include a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to the governmental entity's request for qualifications and to provide any additional information requested. The design criteria package must specify criteria the governmental entity considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality

control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement.

(d) The governmental entity may not require offerors to submit architectural or engineering designs as part of a proposal or a response to a request for qualifications.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For each design-build firm that responded to the request for qualifications, the governmental entity shall evaluate the firm's experience, technical competence, and capability to perform, the past performance of the firm and members of the firm, and other appropriate factors submitted by the firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted.

(b) Each firm must certify to the governmental entity that each architect or engineer that is a member of the firm was selected based on demonstrated competence and qualifications, in the manner provided by Section [2254.004](#).

(c) The governmental entity shall qualify a maximum of five responders to submit proposals that contain additional information and, if the governmental entity chooses, to interview for final selection.

(d) The governmental entity shall evaluate the additional information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview.

(e) The governmental entity may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, or costing methodology. As used in this subsection, "costing methodology" means an offeror's policies on subcontractor markup, definition of general conditions, range of cost for general conditions, policies on retainage, policies on contingencies, discount for prompt payment, and expected staffing for administrative duties. The term does not include a guaranteed maximum price or bid for overall design or construction.

(f) The governmental entity shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.308. SELECTION OF DESIGN-BUILD FIRM. (a) The governmental entity shall select the design-build firm that submits the proposal offering the best value for the governmental entity on the basis of the published selection criteria and on its ranking evaluations.

(b) The governmental entity shall first attempt to negotiate a contract with the selected firm.

(c) If the governmental entity is unable to negotiate a satisfactory contract with the selected firm, the governmental entity shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

(d) Not later than the seventh day after the date the contract is awarded, the governmental entity shall make the rankings determined under Section [2269.307](#)(f) public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#)(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(12), eff. September 1, 2013.

Sec. 2269.309. SUBMISSION OF DESIGN AFTER SELECTION. After selection of the design-build firm, that firm's architects or engineers shall submit all design elements for review and determination of scope compliance to the governmental entity or the governmental entity's architect or engineer before or concurrently with construction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.310. FINAL CONSTRUCTION DOCUMENTS. The design-build firm shall supply a set of construction documents for the completed project to the governmental entity at the conclusion of construction. The documents must note any changes made during construction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.311. PERFORMANCE OR PAYMENT BOND. (a) A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm under this subchapter.

(b) If a fixed contract amount or guaranteed maximum price has not been determined at the time the design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, as specified in the design criteria package.

(c) The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build

firm furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the design-build firm will furnish the required performance and payment bonds before construction begins.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

SUBCHAPTER H. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS PROJECTS

Sec. 2269.351. DEFINITIONS. In this subchapter:

(1) "Civil works project" means:

(A) roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, airport runways and taxiways, storm drainage and flood control projects, or transit projects;

(B) types of projects or facilities related to those described by Paragraph (A) and associated with civil engineering construction; and

(C) buildings or structures that are incidental to projects or facilities that are described by Paragraphs (A) and (B) and that are primarily civil engineering construction projects.

(2) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer and a construction contractor qualified to engage in civil works construction in Texas.

(3) "Design criteria package" means a set of documents that:

(A) provides sufficient information to convey the intent, goals, criteria, and objectives of the civil works project; and

(B) permits a design-build firm to:

(i) assess the scope of work and the risk involved; and

(ii) submit a proposal on the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.352. APPLICABILITY. This subchapter applies to a governmental entity that:

(1) has a population of more than 100,000 within the entity's geographic boundary or service area; or

(2) is a board of trustees governed by Chapter [54](#), Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.353. CONTRACTS FOR CIVIL WORKS PROJECTS: DESIGN-BUILD. (a) A governmental entity may use the design-build method for the construction, rehabilitation, alteration, or repair of a civil works project. In using this method and in entering into a contract for the services of a design-build firm, the contracting governmental entity and the design-build firm shall follow the procedures provided by this subchapter.

(b) A contract for a project under this subchapter may cover only a single integrated project. A governmental entity may not enter into a contract for aggregated projects at multiple locations. For purposes of this subsection:

(1) if a metropolitan transit authority created under Chapter [451](#), Transportation Code, enters into a contract for a project involving a linear transit project with multiple stops along the project route for boarding passengers, created under Chapter [451](#), Transportation Code, the linear transit project is a single integrated project; and

(2) a water treatment plant, including a desalination plant, that includes treatment facilities, well fields, and pipelines is a single integrated project.

(c) A governmental entity shall use the following criteria as a minimum basis for determining the circumstances under which the design-build method is appropriate for a project:

(1) the extent to which the entity can adequately define the project requirements;

(2) the time constraints for the delivery of the project;

(3) the ability to ensure that a competitive procurement can be held; and

(4) the capability of the entity to manage and oversee the project, including the availability of experienced personnel or outside consultants who are familiar with the design-build method of project delivery.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. [1050](#)), Sec. 11, eff. September 1, 2013.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#)(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(13), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. [1050](#)), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. [1050](#)), Sec. 11, eff. September 1, 2013.

Sec. 2269.354. LIMITATION ON NUMBER OF PROJECTS. (a) After August 31, 2013:

(1) a governmental entity with a population of 500,000 or more within the entity's geographic boundary or service area may, under this subchapter, enter into contracts for not more than six projects in any fiscal year;

(2) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:

(A) independently enter into contracts for not more than two civil works projects in any fiscal year; and

(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:

(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and

(ii) the governing body of the municipality must approve the contracts; and

(3) a governmental entity that has a population of 100,000 or more but less than 500,000 or is a board of trustees governed by Chapter [54](#), Transportation Code, may enter into contracts under this subchapter for not more than four projects in any fiscal year.

(b) For purposes of determining the number of eligible projects under this section, a municipally owned water utility with a separate governing board appointed by the governing body of the municipality is considered part of the municipality.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#)(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. [1050](#)), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1356 (S.B. [1430](#)), Sec. 1, eff. June 14, 2013.

Sec. 2269.355. USE OF ENGINEER. (a) The governmental entity shall select or designate an engineer who is independent of the design-build firm to act as its representative for the procurement process and for the duration of the work on the civil works project. The selected or designated engineer has full responsibility for complying with Chapter [1001](#), Occupations Code.

(b) If the engineer is not a full-time employee of the governmental entity, the governmental entity shall select the engineer on the basis of demonstrated competence and qualifications as provided by Section [2254.004](#).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#)(23), eff. September 1, 2013.

Sec. 2269.356. USE OF OTHER PROFESSIONAL SERVICES. (a) The governmental entity shall provide or contract for, independently of the design-build firm, the following services as necessary for the acceptance of the civil works project by the entity:

- (1) inspection services;
- (2) construction materials engineering and testing; and
- (3) verification testing services.

(b) The governmental entity shall select the services for which it contracts under this section in accordance with Section [2254.004](#).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.357. REQUEST FOR QUALIFICATIONS. (a) The governmental entity shall prepare a request for qualifications that includes:

- (1) information on the civil works project site;
- (2) project scope;
- (3) project budget;
- (4) project schedule;
- (5) criteria for selection under Section [2269.359](#) and the weighting of the criteria; and
- (6) other information that may assist potential design-build firms in submitting proposals for the project.

(b) The governmental entity shall also prepare a design criteria package as described by Section [2269.358](#).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#)(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(14), eff. September 1, 2013.

Sec. 2269.358. CONTENTS OF DESIGN CRITERIA PACKAGE. A design criteria package may include, as appropriate:

- (1) budget or cost estimates;
- (2) information on the site;
- (3) performance criteria;
- (4) special material requirements;
- (5) initial design calculations;
- (6) known utilities;

- (7) capacity requirements;
- (8) quality assurance and quality control requirements;
- (9) the type, size, and location of structures; and
- (10) notice of any ordinances, rules, or goals adopted by the governmental entity relating to awarding contracts to historically underutilized businesses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.359. EVALUATION OF DESIGN-BUILD FIRMS. (a) The governmental entity shall receive proposals and shall evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted at this stage.

(b) Each offeror must:

(1) select or designate each engineer that is a member of its team based on demonstrated competence and qualifications, in the manner provided by Section [2254.004](#); and

(2) certify to the governmental entity that each selection or designation was based on demonstrated competence and qualifications, in the manner provided by Section [2254.004](#).

(c) The governmental entity shall qualify offerors to submit additional information and, if the entity chooses, to interview for final selection.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.360. SELECTION OF DESIGN-BUILD FIRM. The governmental entity shall select a design-build firm using a combination of technical and cost proposals as provided by Section [2269.361](#).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#)(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(15), eff. September 1, 2013.

Sec. 2269.361. PROCEDURES FOR COMBINATION OF TECHNICAL AND COST PROPOSALS.

(a) A governmental entity shall request proposals from design-build firms identified under Section [2269.359](#)(c). A response to a request for detailed proposals must be submitted on or before the earlier of the time for submission requested by the governmental entity or the 180th day after the date the governmental entity makes a public request for the proposals from the selected firms. The request for proposals must include:

- (1) a design criteria package;
- (2) if the project site is identified, a geotechnical baseline report or other information that provides the design-build firm minimum geotechnical design parameters to submit a proposal;
- (3) detailed instructions for preparing the technical proposal and the items to be included, including a description of the form and level of completeness of drawings expected; and
- (4) the relative weighting of the technical and price proposals and the formula by which the proposals will be evaluated and ranked.

(b) The technical proposal is a component of the proposal under this section.

(c) Each proposal must include a sealed technical proposal and a separate sealed cost proposal.

(d) The technical proposal must address:

- (1) project approach;
- (2) anticipated problems;
- (3) proposed solutions to anticipated problems;
- (4) ability to meet schedules;
- (5) conceptual engineering design; and
- (6) other information requested by the governmental entity.

(e) The governmental entity shall first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the request for proposals and assign points on the basis of the weighting specified in the request for proposals. The governmental entity may reject as nonresponsive any firm that makes a significant change to the composition of its firm as initially submitted. The governmental entity shall subsequently open, evaluate, and score the cost proposals from firms that submitted a responsive technical proposal and assign points on the basis of the weighting specified in the request for proposals. The governmental entity shall select the design-build firm in accordance with the formula provided in the request for proposals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#)(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(16), eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 556 (S.B. [533](#)), Sec. 14, eff. September 1, 2017.

Sec. 2269.3615. IDENTIFICATION OF PROJECT TEAM. (a) A governmental entity may require a design-build firm responding to a request for detailed proposals to identify companies that will:

(1) fill key project roles, including project management, lead design firm, quality control management, and quality assurance management; and

(2) serve as key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utility, and right-of-way issues.

(b) If a design-build firm required to identify companies under Subsection (a) is selected for a design-build agreement, the firm may not make changes to the identified companies unless an identified company:

(1) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the design-build firm;

(2) voluntarily removes itself from the team;

(3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or

(4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the project.

(c) If the design-build firm makes team changes in violation of Subsection (b), any cost savings resulting from the change accrue to the governmental entity and not to the design-build firm.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. [1050](#)), Sec. 5(b), eff. September 1, 2013.

Sec. 2269.362. NEGOTIATION. After selecting the highest-ranked design-build firm under Section [2269.361](#), the governmental entity shall first attempt to negotiate a contract with the selected firm. If the governmental entity is unable to negotiate a satisfactory contract with the selected firm, the entity shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#)(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(17), eff. September 1, 2013.

Sec. 2269.363. ASSUMPTION OF RISKS. The governmental entity shall assume:

(1) all risks and costs associated with:

(A) scope changes and modifications, as requested by the governmental entity;

(B) unknown or differing site conditions unless otherwise provided by the governmental entity in the request for proposals and final contract;

(C) regulatory permitting, if the governmental entity is responsible for those risks and costs by law or contract; and

(D) natural disasters and other force majeure events unless otherwise provided by the governmental entity in the request for proposals and final contract; and

(2) all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.364. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS. (a) Unless a stipend is paid under Subsection (c), the design-build firm retains all rights to the work product submitted in a proposal. The governmental entity may not release or disclose to any person, including the successful offeror, the work product contained in an unsuccessful proposal. The governmental entity shall return all copies of the proposal and other information submitted to an unsuccessful offeror. The governmental entity or its agents may not make use of any unique or nonordinary design element, technique, method, or process contained in the unsuccessful proposal that was not also contained in the successful proposal at the time of the original submittal, unless the entity acquires a license from the unsuccessful offeror.

(b) A violation of this section voids the contract for the project entered into by the governmental entity. The governmental entity is liable to any unsuccessful offeror, or any member of the design-build team or its assignee, for one-half of the cost savings associated with the unauthorized use of the work product of the unsuccessful offeror. Any interested party may bring an action for an injunction, declaratory relief, or damages for a violation of this section. A party who prevails in an action under this subsection is entitled to reasonable attorney's fees as approved by the court.

(c) The governmental entity may offer an unsuccessful design-build firm that submits a response to the entity's request for additional information under Section [2269.361](#) a stipend for preliminary engineering costs associated with the development of the proposal. The stipend must be one-half of one percent of the contract amount and must be specified in the initial request for proposals. If the offer is accepted and paid, the governmental entity may make use of any work product contained in the proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the governmental entity of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the entity and does not confer liability on the recipient of the stipend under this subsection.

(d) Notwithstanding other law, including Chapter [552](#), work product contained in an unsuccessful proposal submitted and rejected under this subchapter is confidential and may not be released unless a stipend offer has been accepted and paid as provided by Subsection (c).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#)(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(18), eff. September 1, 2013.

Sec. 2269.365. COMPLETION OF DESIGN. (a) Following selection of a design-build firm under this subchapter, the firm's engineers shall submit all design elements for review and determination of scope compliance to the governmental entity before or concurrently with construction.

(b) An appropriately licensed design professional shall sign and seal construction documents before the documents are released for construction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.366. FINAL CONSTRUCTION DOCUMENTS. At the conclusion of construction, the design-build firm shall supply to the governmental entity a record set of construction documents for the project prepared as provided by Chapter [1001](#), Occupations Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.367. PERFORMANCE OR PAYMENT BOND. (a) A performance or payment bond is not required for the portion of a design-build contract under this section that includes design services only.

(b) If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, if commercially available and practical, as specified in the design criteria package.

(c) If the governmental entity awards a design-build contract under Section [2269.362](#), the design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the design-build firm will furnish the required performance and payment bonds before the commencement of construction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#)(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(19), eff. September 1, 2013.

SUBCHAPTER I. JOB ORDER CONTRACTS METHOD

Sec. 2269.401. JOB ORDER CONTRACTING. In this chapter, "job order contracting" is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.402. APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS. This subchapter applies only to a facility that is a building, the design and construction of which is governed by accepted building codes, or a structure or land, whether improved or unimproved, that is associated with a building. This subchapter does not apply to:

(1) a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or

(2) a building or structure that is incidental to a project that is primarily a civil engineering construction project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.403. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR FACILITIES. (a) A governmental entity may award job order contracts for the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility if:

(1) the work is of a recurring nature but the delivery times are indefinite; and

(2) indefinite quantities and orders are awarded substantially on the basis of predescribed and prepriced tasks.

(b) The governmental entity shall establish the maximum aggregate contract price when it advertises the proposal.

(c) The governing body of a governmental entity shall approve each job, task, or purchase order that exceeds \$500,000.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.404. CONTRACTUAL UNIT PRICES. The governmental entity may establish contractual unit prices for a job order contract by:

(1) specifying one or more published construction unit price books and the applicable divisions or line items; or

(2) providing a list of work items and requiring the offerors to propose one or more coefficients or multipliers to be applied to the price book or prepriced work items as the price proposal.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.405. COMPETITIVE SEALED PROPOSAL METHOD. (a) A governmental entity may use the competitive sealed proposal method under Subchapter D for job order contracts.

(b) The governmental entity shall advertise for, receive, and publicly open sealed proposals for job order contracts.

(c) The governmental entity may require offerors to submit information in addition to rates, including experience, past performance, and proposed personnel and methodology.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.406. AWARDED OF JOB ORDER CONTRACTS. The governmental entity may award job order contracts to one or more job order contractors in connection with each solicitation of proposals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.407. USE OF JOB ORDER CONTRACT. A job order contract may be used to accomplish work only for the governmental entity that awards the contract unless:

(1) the solicitation for the job order contract and the contract specifically provide for use by other persons; or

(2) the governmental entity enters into an interlocal agreement that provides otherwise.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.408. USE OF ARCHITECT OR ENGINEER. (a) If a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture within the meaning of Chapter [1051](#), Occupations Code, or the practice of engineering within the meaning of Chapter [1001](#), Occupations Code, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.

(b) Subsection (a) does not apply to a job order contract or an order issued under the contract for industrialized housing, industrialized buildings, or relocatable educational facilities subject to and approved under Chapter [1202](#), Occupations Code, if the contractor employs the services of an architect or engineer who approves the documents for the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.409. JOB ORDER CONTRACT TERM. The base term for a job order contract may not exceed two years. The governmental entity may renew the contract annually for not more than three additional years.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.410. JOB ORDERS. (a) An order for a job or project under a job order contract must be signed by the governmental entity's representative and the contractor.

(b) The order may be:

(1) a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities; or

(2) a unit price order based on the quantities and line items delivered.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.411. PAYMENT AND PERFORMANCE BONDS. The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

SUBCHAPTER J. ENFORCEMENT

Sec. 2269.451. VOID CONTRACT. A contract, including a job order, entered into in violation of this chapter is voidable as against public policy.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.452. DECLARATORY OR INJUNCTIVE RELIEF. (a) This chapter may be enforced through an action for declaratory or injunctive relief filed not later than the 15th calendar day after the date on which the contract is awarded.

(b) This section does not apply to enforcement of a contract entered into by a state agency. In this subsection, "state agency" has the meaning assigned by Section [2151.002](#). The term includes the Texas Facilities Commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter [2267](#) by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. [22.001](#)(23), eff. September 1, 2013.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 702 (H.B. [2581](#)), Sec. 5, eff. September 1, 2021.