

THE STATE OF TEXAS §  
§  
COUNTY OF HIDALGO §

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES  
PROJECT-SPECIFIC  
C-24-0065-09-03

THIS AGREEMENT is made and entered into this 03 day of September 2024, by and between **HIDALGO COUNTY**, acting herein by and through the **Commissioner’s Court**, (hereinafter called the “**County**”), and **SAMES, Inc.**, Professional Engineers, hereinafter called the “**Engineer**”.

**WITNESSETH:**

**WHEREAS**, County requested responses to Request for Qualifications (RFQ) for: **“Professional Engineering Services for Construction Management, Material Testing, and Inspection for the Liberty Blvd. Project (US 83 to Mile 3 Rd.)”** for the County of Hidalgo (hereinafter referred to as the “**Project**”). County then requested responses to Request for Proposals (RFP) for the Project. A copy of the RFQ and RFP procurement packets, including applicable specifications, is attached hereto as **Exhibit “A”**, and is incorporated herein for all purposes (“**Procurement Packets**”); and

**WHEREAS**, Engineer submitted a Statement of Qualifications to provide services in accordance with the RFQ specifications as provided as well as a response to the RFP. A copy of the Scope of Services to be provided Engineer and Engineer’s Contract Rates are attached hereto as **Exhibit “B”**, (hereinafter referred to as the “**Response**”) and is incorporated herein for all purposes; and;

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

**WHEREAS**, in recognition of and in consideration of Engineer's agreement to perform the Services in accordance with the Procurement Packets, the Commissioners Court of County awarded the bid to Engineer.

**NOW, THEREFORE**, the County and the Engineer in consideration of the mutual covenants and agreements herein contained do mutually agree as follows:

**ARTICLE 1. Employment of Engineer.** The County agrees to employ the Engineer and the Engineer agrees to perform professional engineering services in connection with the Project as stated in the articles to follow and for having rendered such services, the County agrees to pay the Engineer compensation as stated in the articles to follow.

**ARTICLE 2. Character and Extent of Services.** This Agreement will provide for the development of the Project with the following:

**2.1 Scope of Work.** The County will furnish items and provide those services for the development of the Services and fulfillment of this Agreement as provided herein: authorization to the Engineer to begin work as provided herein; payment for work performed by the Engineer and accepted by the County as provided herein; assistance to the Engineer, as necessary, to obtain the required data and information from other local, regional, State and Federal agencies that the Engineer cannot easily obtain; provide any available relevant data the County may have on file concerning the project; provide timely review and decisions in response to the Engineer's request for information and/or required submittals and deliverables, in order for the Engineer to maintain the agreed-upon work schedule prepared in accordance with this Agreement; attend and participate in progress meetings as required and as coordinated and conducted by the Engineer; assist the Engineer required in the coordination with the USACE and the Federal Emergency Management Agency (FEMA) and any other coordinating agency or entity (*when and if applicable*); review and approve the Project design criteria; and review and approve change orders as required and prepared by the Engineer.

**2.2 Classification of Services.** For this Agreement, the professional services to be provided by the Engineer, are more particularly identified in **EXHIBIT "B" *Scope of Services to be provided by the Professional Service Provider***, attached hereto and made a part of this agreement (the "Services"). Engineer's submitted Scope of Services shall include, but not be limited to, the basic services it shall perform, a detailed work schedule, and any special services which may be necessary. The Engineer will diligently pursue the completion of the Services during the associated work schedule. The Engineer will inform the County (in reasonable advance of the delay) should the Engineer encounter delays that would prevent the performance of all work in accordance with the established work schedule. Engineer agrees in performing the Services that it will use proper professional standards, comply with any and all appropriate laws and regulations in providing the Services, and devote such time as is necessary to safely and efficiently provide the Services.

**2.3 Non-Exclusive Services of Engineer.** Hidalgo County reserves the right to request these services from other sources other than the Engineer and shall not be in violation of any terms or conditions of this Agreement.

**ARTICLE 3. Period of Service.** Upon execution of this Agreement, the **Engineer** shall proceed with the work outlined under Article 2 hereof.

**3.1 Term.** This Agreement is for a period of **two (2) year(s)**, commencing, **September 03, 2024**, expiring, **September 03, 2026** (hereinafter referred to as the "**Termination Date**"), or will be in effect until the County determines that the services ordered have been satisfactorily performed, rendered, and completed unless sooner terminated. The Engineer will not begin to work or incur costs until authorized in writing by the County with a Project Specific Work Authorization. The County assumes no liability or obligation for payment to the Engineer for work performed or costs incurred by the Engineer prior to the date authorized by the County for the Engineer to begin work, during periods when work is suspended, or subsequent to the Termination Date.

**3.2 Extension of the Termination Date.** The Engineer shall notify the County in writing as soon as possible if it is determined, or reasonably anticipated, that the work under this Agreement cannot be completed before the Termination Date, and the County may, at the County's sole discretion, extend the Termination Date by written Amendment as provided herein. The Engineer shall allow adequate time for review and approval by the County of the written notice and request by the Engineer to extend the Termination Date.

**3.3 Suspension of Work.** Should the County desire to suspend the work under this Agreement, but not terminate this Agreement, the County shall provide thirty (30) calendar days verbal notification to the Engineer, followed by written confirmation from the County to the Engineer to that effect. The thirty-day notice may be waived as agreed in writing by both the County and the Engineer. The work under this Agreement may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from the County to the Engineer. The sixty-day notice may be waived as agreed in writing by both the County and the Engineer. If the County suspends the work, the Termination Date as identified above is not affected, and this Agreement will terminate on the date specified, unless extended by written amendment, as provided in the Amendment section hereof, duly executed by the Engineer and the County prior to the Termination Date.

**3.4 Termination of Agreement.** This Agreement may be terminated before the stated Termination Date identified above by any of the following conditions:

- (1) **Commitment of Current Revenues.** In the event that, during any term hereof, the County does not appropriate sufficient funds to meet to the obligations of this Agreement, the County may terminate this Agreement upon thirty (30) days written notice to the Engineer. The County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of the County pursuant to the provisions of Tex. Loc. Govt. Code Ann. §271.903 (Vernon Supp. 1995).
- (2) By mutual agreement and consent, in writing, of both the Engineer and the County.
- (3) By the County, upon failure of the Engineer to fulfill the Engineer's obligations set forth herein in a satisfactory manner as determined by the County and in sole opinion of the County, after the County provides written notice to the Engineer of such failure and the Engineer has not corrected such failure within (30) days of such written notice by the County.
- (4) By the Engineer, upon failure of the County to fulfill the County's obligations set forth herein, after the Engineer provides written notice to the County of such failure and the County has not corrected such failure within thirty (30) days of such written notice by the Engineer.

- (5) By the County without cause upon thirty (30) days written notice to the Engineer.
- (6) By satisfactory completion of all services and obligations described herein.

Should the County terminate this Agreement as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the Engineer notwithstanding anything herein to the contrary. In determining the value of the work performed by the Engineer prior to termination, the County shall be the sole judge of the value of such work performed. Compensation for work at termination will be based on a percentage of the work completed at that time. Should the County terminate this Agreement under (5) of the paragraph above, the amount charged during the thirty (30) day notice period shall not exceed the amount charged during the preceding ninety (90) days.

If the termination of this Agreement is due to the failure of the Engineer to fulfill the Engineer's obligations under this Agreement, the County may take over the Project and prosecute the work to completion. In such case, the Engineer shall be liable to the County for any additional cost occasioned by the County.

If the Engineer defaults in the performance of this Agreement or if the County terminates this Agreement for fault on the part of the Engineer, the County will give consideration to payment of an amount in settlement to include: the actual costs incurred by the Engineer in performing the work to the date of default, the amount of work required which was satisfactorily completed to date of default, the value of the work which is usable to the County, the cost to the County of employing another consultant and/or firm to complete the work required and the time required to do so, and other factors which affect the value to the County of the work performed at the time of default. This Agreement shall not be considered as specifying the exclusive remedy for any default by the Engineer, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

The termination of the Agreement and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the County and the Engineer under this Agreement, except the obligations set forth in Articles 11.2, 12, 13, 15, 16, 17, 18.3, 19, 23(a) and 23(e) hereto.

**ARTICLE 4. Progress and Coordination.** The Engineer shall, from time to time during the progress of the work, confer with the County.

- a. The Engineer shall prepare and present such information as may be pertinent and necessary, or as may be requested by the County, in order to evaluate features of the Engineer's services and work.

- b. At the request of the County or the Engineer, conferences shall be provided at the Engineer's office, the office of the County, or at other locations designated by the County. These conferences shall also include evaluation of the Engineer's services and work when requested by the County.
- c. County shall assist Engineer, as necessary, to obtain required data and information from other local, regional, state and federal agencies the Engineer cannot easily obtain, provide any available relevant data the County may have on file concerning the Project.
- d. County shall provide timely review and decisions in response to the Engineer's request for information and/or required submittals and deliverables, in order for Engineer to maintain the agreed-upon work schedule prepared in accordance with a Work Authorization (if applicable).
- e. All applicable study reports shall be submitted in preliminary form for approval by the County before the final report is issued. The County's comments regarding the Engineer's preliminary report will be addressed by the Engineer in the final report.
- f. If funds by other agencies or entities are to be used for the development of the project under this Agreement, the Engineer's services and work will be subject to periodic review and approval by other agencies or entities, including those of the city, county, state and/or federal agencies.
- g. Should it be determined that the progress in the production of the Engineer's services and work does not satisfy the requirements of the approved Work Schedule, the County shall review the approved Work Schedule with the Engineer to determine the corrective action needed by either the County or the Engineer.
- h. **Reporting.** The Engineer shall promptly advise the County in writing of events which have a significant impact upon the progress of the Engineer's services and work and the approved Work Schedule, including:
  - (1) problems, delays, adverse conditions which will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, or preclude the timely completion and submittal of Project deliverables by the Engineer within established time periods; this disclosure will be accompanied by a statement by the Engineer of recommended or immediate action taken, or contemplated, and any County or other agency or entity assistance needed to resolve the situation, including Federal assistance if Federal funds are involved: and

(2) favorable developments or events which enable meeting the Work Schedule goals sooner than anticipated or which are producing more work units than originally projected.

**ARTICLE 5. Compensation and Fees.** For and in consideration of the services to be rendered by the Engineer, the County shall compensate the Engineer as follows:

**5.1 Basic Services.** For and in consideration of the *Services* to be rendered by the Engineer, as identified herein and more particularly identified in **EXHIBITS “A” and “B”**, attached hereto or any Work Authorization, the maximum amount payable by the County to the Engineer for *Services*, subject to adjustment in accordance with Request for Payment provision provided below, will be provided in each work authorization issued. An outline and breakdown of the Services Fee is more particularly identified in the *Fee Schedule/Cost Rates* provided by Engineer as part of its Response in **EXHIBIT “B”** - , attached hereto and made a part of this Agreement. Payments to the Engineer for *Services* shall be made by the County, upon presentation by the Engineer of the monthly Request for Payment, in accordance with the terms and provisions provided below.

**5.2 Special Services (If applicable).** Those services that may be required to be provided by the Engineer as *Special Services* are set forth below and more particularly described in **EXHIBITS “A” and “B”**, attached hereto. For and in consideration of these *Special Services* rendered as required by the Engineer, the County shall pay the Engineer a negotiated lump sum fee (hereafter referred to as “Special Services Fee”) at the hourly labor rates and non-labor rates (hereinafter referred to as “Contract Rates”) specified in **EXHIBIT “B”**, attached hereto and made a part of this Agreement, and as follows:

- A. RESIDENT OR SITE ENGINEER, INSPECTOR** Actual performance of services of project site engineer, resident engineer and/or inspector, if required by County.
- B. DOCUMENT COPIES** Actual performance and/or providing of additional copies (over 10) of report; additional copies (over 10) of plans (contract drawings), specifications and estimates (PS&E); additional copies (over 10) of bidding documents: additional copies (over 10) of as-built drawings.
- C. EXTRA TRAVEL** Extra travel required of Engineer and authorized by County to points outside of Hidalgo County.
- D. EXPERT WITNESS** Assistance to the County as expert witness in any litigation with third parties, arising from the development or construction of the Project.

**E. MISCELLANEOUS.** Investigations involving detailed consideration of operation, maintenance and overhead expenses and (unless otherwise agreed) the preparation of rate schedules, earning and expense statements; preparation of feasibility studies; environmental document preparation; appraisals, valuations, and material audits; or inventories required for certification of force account construction performed by the County; preparation of change orders for extra work done by the Contractor.

**ARTICLE 6. Method of Payment.** For and in consideration of the services to be rendered by the Engineer, the County shall compensate the Engineer as follows:

**6.1 Request for Payment.** Payments to the Engineer for services rendered will be made while work is in progress as executed through a lump sum fee assigned to each work authorization (hereinafter referred to as “Work Authorization”) in accordance the provision of Article 7 below. For each Work Authorization, the Engineer shall prepare and submit to the County monthly progress reports in sufficient detail to support the progress of the work and in support of a request for payment (hereinafter referred to as “Request for Payment”). The progress report shall indicate the percent completion of the work accomplished by the Engineer during the billing period and to the date of the Request for Payment. On or before noon of the first Monday of each month during the performance of the services, the Engineer shall submit to the County for approval a Request for Payment. Payment of the lump sum fee for each Work Authorization identified in the Request for Payment will be in proportion to the percent completion of the work tasks identified in such Work Authorizations together with a detailed breakdown of the amount and the sum of all prior payments. The County shall review each such Request for Payment and may make such exceptions as the County reasonably deems necessary or appropriate under the circumstances then existing. About ten (10) working days after the Commissioners Court of the County meets approving such payment, the County shall make payment to the Engineer in the amount approved as aforesaid subject to Article 6.4 herein and below in accordance with the Texas Prompt Payment Act, Tex. Govt. Code Ch. 2251. If the Project, or any portion(s) thereof, are deleted or otherwise not constructed, compensation to the Engineer by the County for the Project or such portions of the project shall be only the amounts paid the Engineer for actual work performed in accordance with the Work Authorization(s) approved by the County.

**6.2 Final Payment.** After all periodic payments as described above are paid by the County and after final completion of the work and acceptance thereof by the County, the Engineer shall submit a final request for payment (“Final Request for Payment”) which shall set forth all amounts due and remaining unpaid to the Engineer and upon approval thereof by the County, the County shall pay to the Engineer the amount due (“Final Payment”) under such Final Request for Payment in accordance with the provisions of Article 6.1 hereof. The Final Payment shall not be made until the Engineer delivers to the County an affidavit that so far as the Engineer has knowledge or

information any and all amounts due for materials and services over which the Engineer has control have been paid.

**6.3 Qualification on Obligations to Pay.** Any provision hereof to the contrary notwithstanding, the County shall not be obligated to make any payment (whether a payment under Article 6.1 hereof or Final Payment) to the Engineer hereunder if any one or more of the following conditions precedent exist:

- (1) The Engineer is in default of any of its obligations hereunder or otherwise is in default under this Agreement or under any contract documents related to this Agreement;
- (2) Any part of such payment is attributable to the Engineer's services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to the Engineer's services which were performed in accordance with this Agreement.
- (3) The Engineer has failed to make payments promptly to consultants or other third parties used in connection with the Project for which the County has made payment to the Engineer;
- (4) If the County, in good faith judgement, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Engineer's services in accordance with this Agreement, no additional payments will be due the Engineer hereunder unless and until the Engineer, at its sole cost, performs a sufficient portion of the Engineer's services so that such portion of the compensation then remaining unpaid is determined by the County to be sufficient to so complete the Engineer's services.

**6.4** No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the Engineer's services to which such partial payment related or relieves the Engineer of any of its obligations hereunder with respect thereto.

**6.5** The Engineer shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the Engineer's services.

**6.6 Waiver.** The making of the Final Payment shall constitute a waiver of all claims by the County except those arising from (1) faulty or defective services of the Engineer appearing after completion of the Project. (2) failure of the Engineer's services to comply with the requirements of this Agreement or any contracts or Agreements related to the Project, or (3) terms of any special warranties required by this Agreement or provided at law or in equity. The acceptance of Final

Payment shall constitute a waiver of all claims by the Engineer except those previously made in writing and identified by the Engineer as unsettled at the time of the Final Request for Payment.

**ARTICLE 7. Work Authorization.** After execution of this Agreement, the Engineer shall proceed with the work outlined in this Agreement, only as authorized by the County through an agreed **Work Authorization** (prescribed form available through Hidalgo County Purchasing Department).

**7.1** The Engineer will identify, as approved by the County, the needed services for the Project, as required through the course of the development to the Project. The County shall authorize the Engineer to perform one or more of the agreed tasks identified in EXHIBIT “A” and “B”, attached hereto, in the form of individual work authorizations. Upon authorization from the County, the Engineer will prepare a Work Authorization document, which will include a description of the work to be performed, including a description of the tasks and milestones, a work schedule, and an estimated cost proposal agreed upon by the County and the Engineer. The estimated cost proposal shall set forth in detail the computation of the cost of each work task, at the hourly rates established and identified in **EXHIBIT “B”**, attached hereto. The Work Authorizations shall not waive the County’s and the Engineer’s responsibilities and obligations established in this Agreement.

**7.2** The estimated cost proposal for each Work Authorization, developed by the Engineer and approved by the County shall be used by the County to appropriate a purchase order for the Work Authorization. Each executed Work Authorization shall become a part of this Agreement. Upon satisfactory completion of the Work Authorization, the Engineer shall submit the Project’s deliverables as specified in the executed Work Authorization to the County for review and acceptance.

**7.3** Work included in a Work Authorization shall not begin until the County and the Engineer have signed the Work Authorization. All work must be completed on or before the completion date specified in the Work Authorization, unless extended by written agreement by the Engineer and the County. The Engineer shall promptly notify the County of any event that will affect completion of the Work Authorization. All Work Authorizations must be executed and completed by both the Engineer and the County within the period established for this Agreement as specified in Article 3 hereof.

**7.4** The final acceptance by the County of each Work Authorization for the Project shall serve as evidence of completion, on the part of the Engineer, of all services under this Agreement insofar as they pertain to that portion of work on the Project identified in the applicable work authorization.

**ARTICLE 8. Amendments** This Agreement or a specific Project Work Authorization may be amended as follows.

8.1 If it becomes necessary at any time during the term of this Agreement to change the terms of this Agreement then a written amendment shall be executed within the Agreement period indicated in section 7 above.

8.2 If it becomes necessary at any time during a Project Work Authorization period to change a Project's scope of services, a Work Authorization period, the maximum amount payable, the complexity, or the character of a Project Work Authorization then a written amendment shall be executed within the specific Project Work Authorization period.

8.3 The County retains the right to reject any such amendment proposed by the Engineer. Any such amendments shall be made in writing, agreed to by all parties hereto, and duly executed before the end of the Agreement or specific Project period as specified. If the County finds it necessary to require changes in completed work because of errors made by the Engineer, the County shall require the Engineer to correct the work at no cost to the County and without amendment to the Agreement or specific Project period as specified. If the changes are made at the request of the County and are not due to errors of the Engineer, the County will reimburse the Engineer for the additional work at the same rate of pay established in **Exhibit "B"**, i.e., "Contract Rates." If payment for the additional work will cause the maximum amount payable under a specific work authorization to be exhausted, an amendment shall be proposed in accordance with all state procurement laws. It is distinctly understood and agreed that no claim by the Engineer for additional work or changes or revisions in work, as identified below, shall be made by the Engineer until full execution of the Amendment and authorization to proceed is granted by the County. The County reserves the right to withhold payment to the Engineer pending verification of satisfactory work performed by the Engineer.

**ARTICLE 9. Additional Work.** If the Engineer is of the opinion that any work it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the Engineer shall promptly notify the County in writing. In the event the County finds that such work does constitute extra work, the County shall so advise the Engineer and a written Amendment will be executed between the County and the Engineer as provided herein. The Engineer shall not perform any proposed additional work or incur any additional cost prior to the execution by both the Engineer and the County of an Amendment. Additional compensation from the County to the Engineer shall be paid as a negotiated lump sum fee at the Contract Rates specified in **EXHIBIT "B"** attached hereto. The negotiated lump sum fee shall be incorporated into the Amendment as specified in Amendment provision above. The County shall not be liable or under any obligation to compensate the Engineer for work performed or costs incurred by the Engineer relating to additional work not directly associated with the performance of the work authorized in this Agreement or as amended through an Amendment.

**ARTICLE 10. Changes or Revisions in Work.** If the County finds it necessary to request changes to the work, and the changes are within the applications of sound engineering principles, the Engineer shall make such revisions if requested and directed by the County.

**10.1 Preliminary Work.** The Engineer will make, without expense to the County, such revisions of any preliminary reports or drawings as may be required to meet the needs of the County and the applications of sound engineering principles.

**10.2 Previously Approved or Satisfactorily Completed Work.** If the County finds it necessary to request the Engineer to make changes to work previously approved by the County or work satisfactorily completed for which the County approves or, after a definite plan has been approved by the County, if a decision is subsequently made by the County, which for proper execution involves extra services and expenses for changes in or additions to the drawings specifications or other documents, this will be considered as additional work, and compensation from the County to the Engineer will be in accordance with the Additional Work provision hereof.

**10.3 Project Delays.** If the Engineer is required to perform additional work due to delays by the imposition of causes not within the Engineer's control, such as by the re-advertisement of bids or by the delinquency or insolvency of contractors, such work associated with these delays shall be considered additional work, and the Engineer shall be compensated by the County for such extra services and expense in accordance with Additional Work provision hereof.

**10.4 Reduction of Project Cost.** Notwithstanding any provision herein to the contrary, in the event it is necessary for the County to require changes in the final plan of the Project to enable it to reduce the construction cost of the Project to an amount within the sum estimated by the Engineer, the Engineer will be required to make such revisions or changes. These changes will only be considered additional work by the Engineer, if the Engineer previously provided these same changes as options to the County at the stage of preliminary work or prior to the approval of the final plan for the Project, and the option or options were not selected or approved by the County to be incorporated into the final plan of the Project. Payment for this additional work will then be made to the Engineer in accordance with Additional Work provision hereof. If the Engineer failed to provide these changes as an option or options to the County at the stage of preliminary work or prior to the approval of the final plan of the Project, these changes will not be considered additional work and no additional compensation will be made to the Engineer.

**10.5 Inspection of Work.** The County has the right at all reasonable times to inspect or otherwise evaluate the work performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made on the premises of the Engineer, or of a subcontractor, the Engineer shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections

and evaluations shall be performed in such a manner as will not unduly delay their work.

## **ARTICLE 11. Ownership and Release of Documents.**

**11.1 Ownership of Documents.** Original drawings and specifications are the property of the Engineer however the Project is the property of the County, and the Engineer may not use the drawings and specifications thereof for any purpose not relating to the Project with the County's consent. The County shall be furnished with such reproductions of drawings and specifications as the County may reasonably require. Upon completion of the work or any earlier termination of this Agreement under the Termination provision provided herein, the Engineer will revise drawings to reflect changes made during construction and will promptly furnish the County with one complete set of reproducible record prints. Prints shall be furnished by the Engineer, as an additional service, at any other time requested by County. All such reproductions shall be the property of the County who may use them without the Engineer's permission for any proper purpose relating to the Project, including but not limited to additions to or completion of the Project. Any additions or revisions by the County to a drawing signed, sealed, and dated by a registered professional engineer, shall be made in accordance with the Texas Engineering practice Act and the Rules of the State Board of Registration for Professional Engineers and/or other applicable law or standards.

All sketches, photographs, calculations, and other data prepared under this Agreement shall be made available, upon request, to the County without restriction or limitation on their further use. All documents furnished to the Engineer by the County shall be delivered to the County upon completion or termination of this Agreement. The Engineer, at the Engineer's own expense, may retain copies of such documents or any other data under this Agreement.

**11.2 Release of Documents or Information.** Release of information to the public or others regarding the **Project** will be accordance with the Texas Public Information Act.

**ARTICLE 12. Discounts, Rebates, and Refunds.** In connection with procurement services rendered by the Engineer, if procurement services are required of the Engineer hereunder, all discounts, rebates and refunds shall accrue to the County. For some purchases, the Engineer may deem that payment within the discount period is not safe; and/or inspection, guarantees, or other considerations may dictate delay. In such cases, the Engineer shall promptly notify the County so that a course of action may be mutually agreed upon by the County and the Engineer.

**ARTICLE 13. Records, Accounting, Inspection.** The Engineer shall keep full and detailed records and accounts in a manner approved by the County. The Engineer shall afford the County's authorized personnel and independent auditors, if any, full access to the work performed by the Engineer regarding the Project and to all of the Engineer's books, records, correspondence,

instructions, drawings, receipts, vouchers and other documents relating to such work under this Agreement and the Engineer shall preserve all such records for three (3) years after final payment. The Engineer shall deliver to the County upon completion of such work, a statement of the cost of such work detailed according to the accounting procedure and requirements of the County.

**ARTICLE 14. Subcontracting and Assignment.** The Engineer shall not assign, subcontract or transfer the Engineer's interest in this Agreement without the prior written consent of the County. The Engineer shall bind every sub-consultant by written subcontract to observe all the terms of this Agreement to the extent that they may be applicable to each sub-consultant. No subcontract relieves the Engineer of any responsibilities under this Agreement.

The Engineer, and the County, do hereby bind themselves, their successors, executors, administrators and assigns to each other party of this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this contract.

**ARTICLE 15. Patents.** The Engineer shall indemnify and save the County harmless from all liability for alleged or actual infringement of any patent resulting from the use of apparatus or equipment furnished or designed by the Engineer or from the use of any process designed by the Engineer or effected by said apparatus or equipment, and the Engineer shall indemnify and save the County harmless from and against all costs, legal fees, expenses and liabilities incurred in or about any claim of or action for such infringement: provided, however, that the County shall promptly transmit to the Engineer all papers served on the County in any suit involving such claim of infringement, and provided further, that the County permits the Engineer to have entire charge and control of the defense of any such suit. If because of actual infringement the use of such apparatus, equipment, or process is enjoined, the Engineer shall refund the purchase price thereof in proportion to the length of service uncompleted, the life of such apparatus or equipment being assumed as five years. The Engineer hereby grants to the County a non-exclusive, royalty-free license under patents now or hereafter owned by the Engineer covering any machines, apparatus, processes, articles, or products included in the Engineer's work hereunder.

**ARTICLE 16. Confidential Information, Inventions and Other Restrictions.**

**16.1 Confidential Information.** The Engineer shall not use in any way, commercial or otherwise, except to the extent required by the proper performance of this Agreement; and shall hold in confidence and not disclose to any person, for any reason or at any time, any information relating to the secret processes, products, compositions, machinery, apparatus or trade secrets of the County, or any other confidential information given to the Engineer by any of the County's commissioners, elected officials, employees, or representatives or acquired by the Engineer during the term of or as a result of this Agreement. Any information not generally available to the public shall be considered

secret and confidential for the foregoing purposes; provided, however, that any technical information which was lawfully in the Engineer's possession prior to such disclosure to the Engineer by the County or which is or shall lawfully be published or become part of general knowledge from sources other than the Engineer or which otherwise shall lawfully become available to the Engineer from a source other than the County, shall not be subject to these provisions. All the foregoing stipulations shall apply to such information and work hereunder as well as to any information and ideas originated or developed by the Engineer in performing such work. Such information may, of course, be disclosed to the proper officials or employees of the County if necessary to perform the work hereunder. The Engineer shall, however, inform each of its employees who receive such information of these restrictions and the Engineer shall take all reasonable precautions and exert all reasonable efforts to assure conformance with such restrictions by all of its officers, employees, and agents, obtaining from them if necessary, agreements satisfactory to the County, effectuating the purposes of this Article.

**16.2 Inventions.** The Engineer shall communicate to the County at once, and require the Engineer's employees assigned to this Project to communicate to the County all inventions and improvements which any of the Engineer's employees, either alone or in conjunction with any of the County's employees may conceive, make or discover during the course of or as a result of work on this Project under this or any ensuing agreement with the County that relates to the processes, products, compositions, machinery or plants of the County, or relating in any way to any of the operations in which the County may be obligated to pay to the Engineer as compensation for services rendered by the Engineer under contract with the County. The Engineer shall require its employees to execute patent applications and assignments thereof to the County or its nominees, and powers of attorney relating thereto for any country the County may designate, and shall take all other actions as the County may request to maintain and protect such inventions and improvements. The County shall pay all costs or charges incurred in protecting such inventions and improvements if the County desires to protect them. Before assigning any of the Engineer's employees to work under any contract with the County concerning this Project, the Engineer shall obtain from them agreements satisfactory to County complying in all respects with the terms and provisions of this Article.

**16.3** The rights and obligations set forth in Article 16 shall survive the performance of this Agreement, or any termination, discharge or cancellation thereof.

## **ARTICLE 17. Engineer's Seal, Responsibility and Warranties.**

**17.1 Engineer's Seal.** The Engineer shall assign a responsible engineer or engineers licensed to practice in the State of Texas, who shall sign, seal and date all appropriate engineering submissions to the County in accordance with the Texas Engineering Practice Act and the Rules of the State Board of Registration for Professional Engineers and/or other applicable law and standards.

**17.2 Engineer's Responsibility.** The Engineer shall be responsible for the accuracy of the work for the Project and shall promptly make necessary revisions or corrections resulting from errors, omissions, or negligent acts by the Engineer. No additional compensation will be made to the Engineer for any necessary revisions or corrections resulting from errors, omissions, or negligent acts by the Engineer.

The Engineer's responsibility for all questions arising from design errors and/or omissions will be determined by the County or a designee appointed by the County. The Engineer will not be relieved of the responsibility for subsequent correction of any such errors or omissions or for clarification of any ambiguities until after the construction phase of the Project has been completed.

### **17.3 Warranties.**

(a) The Engineer warrants that engineering design work performed by the Engineer hereunder shall be in accordance with sound engineering design practices and in conformance with applicable code and standards established for such work.

(b) Notwithstanding anything to the contrary contained in this Agreement, the County and the Engineer agree and acknowledge that the County is entering into this Agreement in reliance on the Engineer's experience and abilities with respect to performing the Engineer's services hereunder. The Engineer accepts the relationship of trust and confidence established between it and the County by this Agreement. The Engineer covenants with the County to use the Engineer's best efforts, skill, judgement and abilities to design the Project and to further the interests of the County in accordance with the County's requirements and procedures, in accordance with all professional standards, and in compliance with all applicable national, federal, state, county and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. If the development of plans, specifications and estimates (hereinafter referred to as "PS&E") is identified as part of the services to be provided by the Engineer for the Project entered into as part of this Agreement, prior to the commencement of construction, the Engineer shall certify in writing to the County that the PS&E for the Project, and the improvements when built in accordance therewith, conform to all applicable governmental regulations, statutes and ordinances then in effect. The Engineer represents covenants and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the Engineer's services.

(c) The Engineer represents, covenants and agrees that all of Engineer's services to be furnished by the Engineer under or pursuant to this Agreement from the inception of the Agreement until the Project has been fully completed, shall be of the standard and quality which prevail among engineers of similar experience, knowledge, skill and ability engaged in engineering practice

throughout Texas under the same or similar circumstances involving the design and construction of Project.

(d) The Engineer represents, covenants and agrees that the Engineer's special talent, training and experience cause the Engineer to be the prime professional on the Project (designation to be determined at project development phase); that because of such talent and training, the Engineer envisions the construction of the Project in its entirety and possesses the special skills which enable the Engineer to recognize dangerous conditions that a reasonable, prudent engineer having such special skills could anticipate may arise from the proper use of the Project after acceptance by County; and that the Engineer recognizes that any commissioners, elected officials, employees and agents of the County, plus residents and County of property within the area affected by the Project are within a class of foreseeable persons who will be relying on the project being designed in a professional and safe manner.

(e) If the development of PS&E is identified as part of the services to be provided by the Engineer for the Project entered into as part of this Agreement, the Engineer represents, covenants and agrees that the PS&E of the Project will be accurate and free from any material errors. The Engineer additionally represents, covenants and agrees to the following: that the design of the Project will conform to its foreseeable use as a Project with all the amenities as set forth in any PS&E developed by the Engineer for the Project; that the result of such PS&E, if built in accordance therewith, will be suitable for purposes for which the Project is designed; and the Project will be inspected in a workmanlike, professional manner and will be suitable for the Project's intended purpose. The Engineer's responsibilities as set forth herein shall at no time be in any way diminished by reason of any approval by the County of any PS&E developed by the Engineer for the Project, nor shall the Engineer be released from any liability by reason of such approval by the County, it being understood that the County at all times is ultimately relying upon the Engineer's skill and knowledge in preparing such PS&E.

(f) In connection with the Engineer's performance of procurement services hereunder, if any, the Engineer use its best efforts to obtain from all vendors of equipment and materials, fullest possible warranties against defective materials and workmanship for the benefit of the County.

**ARTICLE 18. Engineer's Resources.** The Engineer shall furnish and maintain, at the Engineer's own expense, office space for the performance of all services, skilled and sufficient personnel, as well as adequate and sufficient equipment to perform the services as required under this Agreement.

**18.1 Project Manager.** The Engineer shall provide a manager (Project Manager) for the Project that is a registered professional engineer in the State of Texas. The Project manager

shall have such knowledge and experience as will enable that Project Manager during the course of the Project without prior consent of the County. If, due to situations beyond the control of the Engineer, the Engineer must change the Project Manager prior to the completion and acceptance of the Project, the Engineer will submit a request to change the Project Manager to the County for approval.

**18.2 Employees of the Engineer.** All employees of the Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them and required for the services under this Agreement. Any employee of the Engineer who, in the opinion of the County, is incompetent, or whose conduct becomes detrimental to the work required under this Agreement, shall immediately be removed from association with the Project when so instructed by the County. The Engineer certifies that the Engineer presently has employed sufficient and qualified personnel, and will maintain sufficient and qualified personnel for performance of the services under this Agreement.

**18.3 Documents/Information Exchange** The purpose of this Article is to define the required automated resources, format for graphics files, and information exchange pertaining to the Project. Taking into consideration that the County has a significant investment in the development of the Project, there is a need for the Engineer to provide consistency in document development for information exchange. Consistency in document development for information exchange and production will help facilitate an economically efficient Project. Therefore, the Engineer shall provide the County with documents and information in accordance with the special requirement outlined in EXHIBIT "A" and "B" attached hereto.

**ARTICLE 19. Indemnification.** To the fullest extent permitted by applicable law, the Engineer and its agents, partners, subcontractors, and consultants (collectively "Indemnitors") shall and do agree to indemnify, and hold harmless the County, the County's respective directors, elected officials, employees and agents (collectively "Indemnitees") from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind or description (collectively "Liabilities") of any person or entity whomsoever arising out of, caused by or resulting from the negligent performance of the Engineer's services through activities of the Engineer, its agents, partners, subcontractors and/or consultants performed under this Agreement, and which are caused by or result from error, omission, or negligent act of the Engineer or of any person employed or contracted by the Engineer provided that any such Liabilities (1) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to the injury to or destruction of tangible personal property including the loss of use and consequential damages resulting there from and (2) are caused in whole or in part by any negligent act or omission of the Engineer, anyone directly or indirectly employed by the Engineer or anyone for whose acts the Engineer may be legally liable.

**The Engineer shall also save harmless the County from any and all expense, including but not limited to, attorney fees which may be incurred by the County in litigation or otherwise resisting said claim or liabilities which may be imposed on the County as a result of such activities by the Engineer, its agents partners, subcontractors and/or consultants. In this connection, it is agreed and understood that the Engineer shall not be responsible for any portion of the liability proximately caused by the County's negligence.**

**ARTICLE 20. Joint and Several Liability.** In the event more than one of the Indemnitors are connected with an accident or occurrence covered by the indemnification in Article 19 hereof, then each of such Indemnitors shall be jointly and severally responsible to the Indemnitees for indemnification and the ultimate responsibility among such Indemnitors for the loss and expense of any such indemnification shall be settled by separate proceedings and without jeopardy to any Indemnitee. The provisions of this Article shall not be construed to eliminate or reduce any other indemnification or right which the County or any of the Indemnitees has by law.

**ARTICLE 21. Insurance.** Consistent with its status as an independent contractor and at its sole expense, Engineer agrees that throughout the duration of the work under this contract and any extension thereof, it shall provide and maintain in full force and effect any and all insurances which may be necessary for providing Services or are otherwise required by law, and shall require of all its sub-consultants connected with providing services under this contract to provide insurance in full force and effect as well. Insurance policies shall cover, but are not limited to, Engineer's activities and all persons, vehicles, equipment, and property connected with providing Services, including but not limited to professional liability insurance covering Engineer's activities in providing the services to the County. Coverage shall be in the amounts specified by the County in the Request for Qualifications ("RFQ") or as prescribed by law, but in no event shall any amount be less than the minimum amounts prescribed by the Texas Tort Claims Act, §100.001, et seq., Texas Civil Practices and Remedies Code. The Engineer shall furnish to the County certificate(s) of insurance and all renewals on an Acord form showing the said policy to be in full force and effect during the period of service, identified in Article 3 hereto, for this Agreement. The completed Hidalgo County Certificate(s) of Insurance shall be attached hereto and identified as **EXHIBIT "C"-Hidalgo County Certificate of Insurance**. For each applicable policy, Engineer shall name the County as an additional insured. Engineer shall notify the County a minimum of thirty (30) days in advance of cancellation of all or part of a policy. Engineer shall make any other insurance documentation available to the County upon request. The Engineer will be considered in breach of contract should the Engineer fail to maintain an insurance policy in the minimum limits of liability and requirements identified above while performing services for and under this Agreement, and will be subject to default and termination of the Agreement as outlined in Article 3.4 hereto. Additionally, the Engineer covenants and agrees to use its best efforts to maintain an insurance policy in the minimum limits of liability and requirements identified above until one year following the date of the acceptance of the Project by County.

**ARTICLE 22. Notices.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests, or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by a registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been specified by written notice delivered in accordance herewith:

If to County: County of Hidalgo  
Attention: County Judge  
100 E. Cano, 2nd Floor  
Edinburg, Texas 78539

If to Engineer: SAMES, Inc.  
Attention: Samuel D. Maldonado, PE, RPLS, CEO  
Address: 200 S. 10<sup>th</sup> St., Ste. 1500  
McAllen, TX 78501

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

**ARTICLE 23. Miscellaneous Provisions.**

- a. Compliance with Laws.** The **Engineer** shall comply with all applicable Federal, State and local laws, statutes, codes, ordinances, rules and regulations and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Agreement including, without limitation, worker’s compensation laws, minimum and maximum salary and wage statutes and regulations and licensing laws and regulations. When required the Engineer shall furnish the County with satisfactory proof of its compliance therewith.
  
- b. Non-collusion.** The Engineer warrants that the Engineer has not employed or retained any company or persons, other than a bona fide employee working solely for the Engineer, to solicit or secure this Agreement, and that the Engineer has not paid or agreed to pay any company, engineer or any other person or entity any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or execution of this Agreement. For breach or violation of this warranty the County shall

have the right to annul this Agreement without liability or, in the County's discretion, to deduct from the *Services Fee*, or otherwise recover, the full amount of each fee, commission, percentage, brokerage fee, gift or contingent fee.

- c. **Gratuities.** The County mandates that employees of the County shall not accept any benefits, gifts or favors from any person doing business or who reasonably speaking may do business with the County under this Agreement; the only exceptions allowed are ordinary business meals. Any person doing business with or who may reasonably seeking to do business with the County under this Agreement may not make any offer of benefits, gifts or favors to County employees, except as mentioned herein above. Failure on the part of the Engineer to adhere to this provision may result in the termination of this Agreement.
- d. **Payment of Franchise Tax.** The Engineer hereby certifies that the Engineer is not delinquent in Texas franchise tax payments, or that the Engineer is exempt from, or not subject to, such as tax. A false statement concerning corporation's franchise tax status shall constitute grounds for termination of the Agreement at the sole option of the County.
- e. **Disputes.** The Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurement made by the Engineer in support of the services under this Agreement.
- f. **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason, be held to be invalid, illegal, or unenforceable in any respect such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- g. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto relating to the work herein described and supersedes any prior understanding or written or oral contracts between the parties respecting the subject matter defined herein. There are no previous or contemporary representations or warranties of the County or the Engineer not set forth herein.
- h. Except as specifically provided herein no modification, waiver, termination, rescission, discharge or cancellation of this Agreement or of any terms thereof shall be binding on the County unless in writing and executed by an officer or employee of the County specifically authorized to do so.
- i. **No. Waiver.** No waiver by County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other

provision hereof. No waiver of any provision of or a default under this Agreement shall affect the right of the County thereafter to enforce said provision or to exercise any right or remedy in the event of any other default whether or not similar.

- j.** No modification, waiver, termination, discharge or cancellation of this Agreement or of any terms thereof shall impair the County's right with respect to any liabilities whether or not liquidated of the Engineer to the County theretofore accrued.
- k.** All rights and remedies of the County specified in this Agreement are in addition to the County's other rights and remedies.
- l. Independent Contractor.** Engineer must comply with all applicable Hidalgo County policies and with any applicable federal, state, or local laws, regulations, orders, or ordinances applicable to the Services provided by Engineer under this Agreement. Notwithstanding the foregoing sentence, Engineer represents and maintains that it is an Independent Contractor and is not an employee of Hidalgo County, Texas or any agency thereof, and represents and warrants that it does not desire or request any fringe benefits provided to employees of Hidalgo County, Texas, and/or any agency thereof, including, but not limited to benefits associated with Hidalgo County's civil service program. Engineer agrees to be responsible for any federal income tax, withholding, or social security tax liability that might arise from payments received hereunder. The Engineer shall remain an independent contractor and shall have no power nor shall the Engineer represent that the Engineer has any power to bind the County or to assume or to create any obligation express or implied on behalf of the County except as specifically authorized in advance by the County.
- m. Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The Engineer hereby consent to personal jurisdiction in Hidalgo County, Texas.
- n.** This Agreement may only be amended by a written document executed by the County and **the Engineer** as provided in the Amendment section herein.
- o. Authority.** The execution and performance of this Agreement by County and Engineer have been duly authorized by all necessary laws, resolutions, or corporate action, and this Agreement constitutes the valid and enforceable obligation of County and Engineer in accordance with its terms. The undersigned signatory or signatories for the Engineer hereby represent and warrant that the signatory is an officer of the organization for which he or she has executed this Agreement and that he or she has full and complete authority to enter

into this Agreement on behalf of the Engineer. The above-stated representations and warranties are made for the purpose of inducing the County to enter into this Agreement.

- p. Immunities.** Nothing in this agreement is intended to and County does not hereby waive, release or relinquish any right to assert any of the defenses County enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action of any person, entity, or individual against County.
- q. Licenses.** As a condition of this Agreement, Engineer shall hold and maintain throughout the term of this Agreement all licenses and permits required, or which may be required by any authority during the term hereof to provide the required Services. If such license or permit is suspended or revoked, this Agreement shall automatically be terminated and the Engineer shall immediately notify the County.
- r. Equipment.** All trucks or vehicles operated by the Engineer to perform the Services shall contain all equipment required by any authority to operate on streets and roads and all persons in the employ of Engineer who operate such trucks or vehicles shall have the required licenses, qualifications, skill and expertise to perform such Services and shall comply with all laws, rules and regulations prescribed by any agency or authority having jurisdiction with regard to the operation of such trucks or vehicles in providing the Services. Engineer shall provide a sufficient number of trucks, vehicles, personnel and equipment available to safely and efficiently provide the Services.
- s. No Assignment.** Except as otherwise provided herein, Engineer may not assign the obligations or rights under this Agreement to any person without the prior written consent of County.
- t. Conflict.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order, or decree, or amendment thereof, contrary to which the parties have no legal right to Agreement, the latter shall prevail, but in such event, the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them to the legal requirements and only during the time such conflict exists. In case anyone, or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- u. **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.
- v. **Gender.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender and the singular shall include the plural whenever and as often as may be appropriate.
- w. **Commitment of Current Revenues Only.** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon thirty (30) days written notice to Engineer. County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of County. *Agreements for the acquisition, including the lease of real or personal property under Tex. Loc. Govt. Code §271.903:* In the event that during any term hereof the Commissioner's Court does not appropriate sufficient funds to meet the obligations of County under this agreement, County may terminate the Agreement upon thirty (30) days written notice to Engineer. County agrees, however, to use a best efforts attempt to obtain and appropriate funds for payment of the Agreement. The parties intend this provision, if applicable, to be a continuing right to terminate this Agreement at the expiration of each budget period of County in accordance with Tex. Loc. Govt. Code §271.903 (Vernon Supp. 1966).
- x. **Nondiscrimination.** Engineer, including subcontractors, assignees and successors in interest, ensures that no person shall on the grounds of race, religion, color, national origin, sex, age, or disability, or any other protected class under law, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation in any federally or non-federally funded program or activity when providing any services described herein under this contract. Applicable nondiscrimination statements and provisions of Title VI of the Civil Rights Act of 1964, as amended, were provided as part of the initial procurement packet and are incorporated herein and made part of this agreement for all purposes.
- y. **Additional Documents.** The **Engineer** and **County** hereto covenant and agree that they will execute each such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Contract.

- z. Required Contract Provision for Contracts Subject to Federal Award (if applicable).** Pursuant to 2 CFR 200.237, a non-federal entity's contracts must contain the applicable provisions described in Appendix II to 2 CFR 200 – Contract Provisions for non-Federal Entity Contracts under Federal Awards. Additionally, County contracts under Federal award which are subject to assistance from the Federal Emergency Management Agency (FEMA) are also required to contain additional contract clauses. The applicable required contract clauses were provided as part of the initial procurement packet and are incorporated herein and made part of this agreement for all purposes.

**[SIGNATURE PAGE TO FOLLOW]**

**EXECUTED** as of the day and year first written above.

**APPROVED BY COMMISSIONERS' COURT ON September 3, 2024.**

**Agenda Item No. 96514**

**Executive Office: \_\_\_\_\_**

**PROFESSIONAL SERVICE PROVIDER:**  
SAMES, Inc.

**COUNTY:**  
COUNTY OF HIDALGO

\_\_\_\_\_  
Samuel D. Maldonado, PE, RPLS, CEO

\_\_\_\_\_  
Hon. Richard F. Cortez, County Judge

**APPROVED AS TO FORM**  
Office of the Hidalgo County  
Criminal District Attorney,  
Toribio "Terry" Palacios

**ATTEST:**

\_\_\_\_\_  
Robert Viña III, Assistant District Attorney

\_\_\_\_\_  
Arturo Guajardo, Jr., County Clerk

**ATTACHMENTS:**

**SUPPLEMENTAL SIGNATURES (if any):**

**EXHIBIT A** - County's Request for Qualifications (RFQ)/ Request for Proposals (RFP) –Project Specifications & Requirements

**EXHIBIT B** - Professional Service Provider's RFP Response - Scope of Services to be provided by the Professional Service Provider, Fee Schedule/Cost Rates, Etc.

**EXHIBIT C** - Certificates of Insurance



## **EXHIBIT A**

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### **COUNTY'S REQUEST FOR QUALIFICATIONS (RFQ)/ REQUEST FOR PROPOSALS (RFP) –PROJECT SPECIFICATIONS & REQUIREMENTS**



**HIDALGO COUNTY  
PROCUREMENT PACKET**

**REQUEST FOR QUALIFICATION**

**RFQ No.: 24-0065-04-05-10**

**PROFESSIONAL ENGINEERING SERVICES FOR  
CONSTRUCTION MANAGEMENT, MATERIAL  
TESTING, AND INSPECTION FOR THE LIBERTY  
BLVD. PROJECT (US 83 TO MILE 3 RD.)**

**Acceptance Due Date: April 10, 2024 at 3:00 pm**

Ignacio Amezcua MBA, CTCM, CTCD  
Hidalgo County Purchasing Director

**Project Contact Information:**

**Victor Borrego, CTCD**, Contract Specialist III  
(956) 318-2629 Ext: 4877  
victor.borrego@co.hidalgo.tx.us

Hidalgo County  
REQUEST FOR QUALIFICATION  
Professional Engineering Services for Construction Management,  
Material Testing, and Inspection for the Liberty Blvd. Project (US 83 to  
Mile 3 Rd.)

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III. PROCUREMENT OVERVIEW .....

IV. LEGAL NOTICE .....

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VI. ELECTRONIC SUBMISSION DOCUMENTS.....

Attachments:

- A - Requirements - Specifications
- C - Insurance Requirements (Professional Services)
- D - COI Questionnaire
- E - HUB Declaration
- F - Certification Regarding Debarment
- G - Title VI Appendices
- H - 2 CFR 200
- I - FHWA 1273
- J - Proposer's Affidavit
- K - Reference Form

# 1. INVITATION LETTER

## 1.1. Summary

RELEASE DATE: Saturday, March 16, 2024

### **RE: HIDALGO COUNTY - REQUEST FOR QUALIFICATIONS**

**RFQ NO.:24-0065-04-05-10** –Professional Engineering Services for Construction Management, Material Testing, and Inspection for the Liberty Blvd. Project (US 83 to Mile 3 Rd.)

Dear Prospect Offeror:

Hidalgo County Purchasing Department welcomes and appreciates your interest and participation. For your review and consideration, enclosed find the procurement packet for the aforementioned project. Modifications and new requirements have been added and implemented. Please ensure to carefully read and review all instructions, requirements and specifications. All times referenced in this procurement packet are Central Standard Time – CST.

If assistance is required, please do not hesitate to call the Purchasing Department at (956) 318-2626.

Sincerely,

Ignacio Amezcua, MBA, CTCM, CTCD

Hidalgo County Purchasing Director

## 1.2. Contact Information

### **Project Contact:**

**Hector Garcia, CTCM**

Division Manager II - Construction

2802 S. Business Highway 281

Edinburg, TX 78539

Email: [hector.garcia1@co.hidalgo.tx.us](mailto:hector.garcia1@co.hidalgo.tx.us)

Phone:  [\(956\) 318-2626](tel:(956)318-2626) Ext: 4857

### **Procurement Contact:**

**Victor Borrego, CTCD**

Contract Specialist III

2812 S. Bus Hwy 281

Edinburg, TX 78539

Email: [victor.borrego@co.hidalgo.tx.us](mailto:victor.borrego@co.hidalgo.tx.us)

Phone:  [\(956\) 318-2629](tel:(956)318-2629) Ext: 4877

### **Department:**

Precinct No.3

## 1.3. Timeline

<b>Release Project Date</b>	March 16, 2024
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<p><b>Question Submission Deadline</b></p>	<p>March 25, 2024, 5:00pm</p>
<p><b>Question Response Deadline</b></p>	<p>March 28, 2024, 5:00pm</p>
<p><b>Proposal Submission Deadline</b></p>	<p>April 10, 2024, 3:00pm (All times referenced in this procurement packet are Central Standard Time –CST)</p> <p>The proposal opening is open to the public. Proposal opening participants may attend the proposal opening in person at the Hidalgo County Purchasing Department (or designated location) or via a live stream (link below) or by calling in on the day of the event. Please be advised, public attendance at any in-person Proposal opening may be limited due to capacity and will be on a first-come-first-serve basis.</p> <p>Live stream: <a href="https://hidalgocounty.zoom.us/j/96464676754?pwd=K1hiY3YxN0xPem5pd2xZazYzWHF4UT09">https://hidalgocounty.zoom.us/j/96464676754?pwd=K1hiY3YxN0xPem5pd2xZazYzWHF4UT09</a></p> <p>Meeting ID: 964 6467 6754</p> <p>Passcode: 545411</p> <p>Dial by your location: +1 346 248 7799 US (Houston)</p> <p>To find your local number: <a href="https://hidalgocounty.zoom.us/u/abObUBYixl">https://hidalgocounty.zoom.us/u/abObUBYixl</a></p> <p>Join by SIP: <a href="mailto:96464676754@zoomcrc.com">96464676754@zoomcrc.com</a></p>

## 2. SUBMISSION DETAILS

### 2.1. SUBMISSION OPTIONS & REQUIREMENTS

Respondents have two (2) options for submitting a response. Respondents shall submit their response using one (1) of the following methods (**DO NOT** duplicate submittals by submitting both an electronic and hard copy response. Respondents shall select one only (1) method to respond):

- A. Submit responses electronically via the PORTAL: <https://procurement.opengov.com/portal/co-hidalgo-tx> on or before Wednesday, April 10, 2024, at 3:00 pm. **OR;**
- B. Submit one (1) hard copy and two (2) USBs in original PDF format via personal hand-delivery or delivery service on or Wednesday, April 10, 2024, at 3:00 pm.

Any Proposal received after this deadline will not be accepted and will be returned unopened to the sender.

### 2.2. HAND DELIVERED SUBMISSION

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

#### **DELIVER TO:**

##### US Postal Mail Address:

- Ignacio Amezcua, MBA, CTCM, CTCD, Purchasing Director
- ATTN: Victor Borrego, CTCD, Contract Specialist III
- Hidalgo County Purchasing Department
- Administration Building
- 2812 S. Business Hwy 281
- Edinburg, Texas 78539

##### Physical Address:

- Ignacio Amezcua, MBA, CTCM, CTCD, Purchasing Director
- ATTN: Victor Borrego, CTCD, Contract Specialist III
- Hidalgo County Purchasing Department
- Administration Building
- 2802 S. Business Hwy. 281
- Edinburg, Texas 78539

#### **FIRM INSTRUCTIONS**

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

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

### **SUBMISSION OUTLINE/CHECKLIST**

To assist in ensuring all submissions received are complete, it is recommended for the Offeror to use this Submission Outline as a Checklist prior to submitting a response. All Responses must be submitted in the following order with the guidelines provided within this solicitation. **For the hand delivery option, the solicitation packet and all required documents can be found under the [#ATTACHMENTS](#) section:**

- A. Table of Contents
- B. Required Confirmations/Documents
  1. Legal Notice Declaration - **(Confirmation)**
  2. Insurance Requirements
    - a. Proof of Insurance - **(Document)**
    - b. Insurance Requirement Acknowledgment - **(Confirmation)**
    - c. Project Requirements Acknowledgment - **(Confirmation)**
  3. Conflict of Interest Questionnaire
    - a. CIQ Form - Copy of County Clerk File with fee receipt (when applicable) **(Document)**
  4. Vendor Acknowledgment and HUB Declaration
    - a. Vendor Acknowledgment - **(Confirmation)**
    - b. HUB Declaration - **(Document)**
  5. Certification Regarding Debarment
    - a. Signed Certification - **(Document)**
    - b. SAM.gov Registration Acknowledgement - **(Document)**
    - c. Form 1295 - **(Document)**

6. Title VI Appendices
  - a. Title VI Appendices [A -E] - **(Confirmation)**
7. Required Contract Clauses For Contracts Under Federal Award
  - a. Byrd Anti-Lobbying Contract Clause - **(Document)**
  - b. 2 CFR 200 Certification - **(Document)**
8. FHWA 1273
  - a. FHWA 1273 **(Confirmation)**
9. Proposer's Affidavit
  - a. Proposer's Affidavit **(Document)**
10. References - **(Document)**
11. Addenda (when applicable; see Addenda under Legal Notice) - **(Confirmation)**
12. Company/Firm Response - **(Document)**
  - a. Cover Sheet
    - i. Company Name, Company Address, Company Phone Number
    - ii. Project Name: Professional Engineering Services for Construction Management, Material Testing, and Inspection for the Liberty Blvd. Project (US 83 to Mile 3 Rd.)
    - iii. Procurement Number: 24-0065-04-05-10
    - iv. Opening Date: Wednesday, April 10, 2024
    - v. Opening Time: 3:00 pm

**(Confirmation)** = A confirmation is required for this section.

**(Document)** = A document submission is required for this section.

### 2.3. ELECTRONIC SUBMISSION

Hidalgo County Purchasing Department will only accept electronic responses that are submitted via the PORTAL: <https://procurement.opengov.com/portal/co-hidalgo-tx>. The COUNTY will NOT accept telegraphic, emailed, nor responses submitted via facsimile.

\*When submitting a response electronically, the firm will be required to complete all the sections found in this solicitation in order for the submission to be valid.

### 3. **PROCUREMENT OVERVIEW**

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

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

#### 3.1. INTRODUCTION

Hidalgo County (hereinafter referred to as "COUNTY") is seeking qualified respondents interested in providing services for the "Professional Engineering Services for Construction Management, Material Testing, and Inspection for the Liberty Blvd. Project (US 83 to Mile 3 Rd.)". Qualifications will be received in accordance with the requirements attached hereto as "**Requirement/Specifications**". The response should address all requirements.

#### 3.2. Pre-Qualification Meeting

If there will be a Pre-Qualification meeting the information will be included in Section 1 – Invitation Letter/Timeline.

#### 3.3. AWARD

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

(a) Before awarding any contract, Hidalgo County Purchasing Department will verify, using the Federal System for Award Management (SAM) and the Texas Comptroller's Debarred Vendor List, that the offeror recommended for contract award has no unsatisfactory performance history that would prohibit awarding them a contract.

(b) The contract will be awarded to that responsible offeror(s) whose offer, conforming to the solicitation, will be most advantageous to the county based on applicable factors such as qualifications, financial capacity, price, etc. A responsible offeror is one who affirmatively demonstrates to the County that the offeror has adequate financial resources and the requisite capacity, capability, and facilities to perform the contract within the delivery period or period of performance, has a satisfactory record of performance on other comparable projects, has a satisfactory record of integrity and business ethics, and is otherwise qualified and eligible to receive award under the solicitation and laws or regulations applicable to this procurement.

(c) The county reserves the right to accept any Requests for Qualification (RFQ), reject any or all offers

in part or in total for any reason, to accept any offer if considered best for its interest, and waive informalities and minor irregularities in offers received.

(d) The County may accept any item or group of items of any offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in Pricing Schedule, offers may not be submitted for any quantities less than those specified, and the County reserves the right to make an award on any item for a unit quantity less than the quantity offered at the unit prices offered unless the offeror specifies otherwise in the offer.

(e) The County's execution of the Contract shall be deemed to result in a binding contract without further action by the offeror.

(f) The County may, within the time specified therein, accept any offer or part thereof, as provided in (c) above, whether or not there are negotiations subsequent to its receipt, unless the offer is withdrawn by written notice received by the County prior to award.

(g) The County may award a contract, based on initial offers received, without discussion of such offers. Accordingly, each initial offer should be submitted on the most favorable terms from a price and technical standpoint, which the offeror can submit to the County.

### 3.4. TERM

It is intended that the initial contract term will be for Four (4) years or will be in effect until the County determines that the services ordered have satisfactorily performed, rendered, and completed unless sooner terminated commencing on the date approved by Commissioners Court;

### 3.5. SUBMISSION OPTIONS & REQUIREMENTS

Respondents have two (2) options for submitting a response and shall select only one (1) method to respond. Please see Section 2 – Submission Details above for submission options, procedures, and requirements. Any Qualification received after the provided deadline will not be accepted and will be returned unopened to the sender.

### 3.6. QUALIFICATION OPENING STREAMING

Please find the qualification opening information included in Section 1 – Invitation Letter

### 3.7. HAND DELIVERED SUBMISSION

If Respondent chooses to hand deliver its submission, whether personally or via delivery service, it must follow the procedures and requirements set for in Section 2 – Submission Details above.

### 3.8. ELECTRONIC SUBMISSION

If Respondent chooses to submit its response electronically, it must follow the procedures and requirements set for in Section 2 – Submission Details above.

### 3.9. SIGNING OF SUBMISSION

In order to be considered, all submittals **must** be signed by an authorized representative of the firm. **For hardcopy submissions, please sign the original in blue ink and ensure the copy is clearly labeled. For electronic submissions, please ensure all appropriate certifications are marked.**

### 3.10. QUESTIONS AND ANSWERS

Questions must be submitted via the PORTAL'S Question and Answer Tab (Q&A) no later than Monday, March 25, 2024, at 5:00 pm. Responses to properly submitted questions will be published in the PORTAL and emailed to all planholders who are listed as a Follower in the PORTAL. Telephone inquiries will not be accepted.

### 3.11. RESTRICTIVE OR AMBIGUOUS REQUIREMENTS

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

### 3.12. COST OF SUBMISSION

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

### 3.13. WAIVING OF INFORMALITIES

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

### 3.14. NOTICE OF COMMUNICATION

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

## 4. LEGAL NOTICE

These General Provisions are considered standard language for an Offeror (hereinafter referred to as “Offeror”, “Vendor”, “Respondent”, or “Contractor”) submitting a response for a Request for Bids, Proposals, Qualifications or other solicitation (hereinafter referred to as “Procurement Packet”) made by the County of Hidalgo (hereinafter referred to as “Hidalgo County” and “County” or any other governing body/agency for which the Hidalgo County Purchasing Department has been authorized to perform procurement services. The Hidalgo County Purchasing Department webpage may be found at <https://www.hidalgocounty.us/143/Purchasing-Department>.

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

The following is a link to all adopted Hidalgo County policies (<https://www.hidalgocounty.us/805/CountyAdministrative-Policies>), which for all purposes, when applicable and whether specified explicitly or not, are incorporated by reference as part of this procurement packet and any resulting agreement.

### 4.1. ACCEPTANCE OF SUBMISSION

Receipt of the submission shall under no circumstance obligate Hidalgo County to accept the response, or make an award. The Offeror is responsible for obtaining any information needed in order to respond and for all costs of submitting its response. An Offeror’s submitted response is to remain firm for a minimum of ninety (90) days after opening. Hidalgo County is not responsible for any missing, lost, or late submissions.

### 4.2. ACCESS TO RECORDS

In special circumstances, Vendor may be required to allow duly authorized representatives of Hidalgo County, or the state and federal government access to contracts, books, documents, and records necessary to verify the nature and extent of the cost of services provided by Vendor. Vendor must keep records within Hidalgo County or note in their submission that records will be available within the boundaries of Hidalgo County to those representatives within one (1) business day of request by the County.

### 4.3. ACCOUNT CREATION FOR PAYMENT

Upon award and prior to execution of a contract, Offeror shall cooperate with and submit any required information to the Hidalgo County Auditor’s Office in order to establish an account with the County for payment, including information requested on Hidalgo County "**Vendor Acknowledgment**" on this procurement packet. This information must be on file with the Hidalgo County Purchasing Department and the Hidalgo 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 Service.

#### 4.4. ADDENDA

When specifications interpretations, amendments, corrections or changes are revised, the Hidalgo County Purchasing Department will issue an Addendum addressing the nature of the change. All released Addenda will be e-mailed to all point of contact(s) who are known to have received or requested a copy of the procurement packet directly from the Hidalgo County Purchasing Department. Offeror must sign in blue ink and include it in the returned submission package.

#### 4.5. ASSIGNMENT

The successful Offeror shall not assign, sell, transfer, convey, or otherwise transfer its rights under any awarded contract, in whole or in part, without the prior written consent of County of Hidalgo County Commissioners Court (hereinafter referred to as "Commissioners Court"), or other applicable governing body.

#### 4.6. AWARD

Hidalgo County reserves the right to award this contract on the basis determined on the Procurement Overview, and when applicable, listed on "**Company/Firm Response**", in accordance with the laws of the State of Texas, to waive any formality or irregularity, to make awards to more than one Offeror, and to reject any or all submissions received. After Hidalgo County Commissioners' Court approves an award, and the awarded Contractor defaults in meeting the general requirements and/or specifications in complying with the contract agreement, Hidalgo County reserves the right to seek the services of the next lowest bidder(s) and/or qualified Offeror(s). In such event, Hidalgo County shall charge the Awarded Vendor the difference for any additional cost of such item. Hidalgo County reserves the right to add or delete items during the term of the contract under the same rates and conditions.

#### 4.7. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

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

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

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

It shall be a breach of ethics to offer, give, or agree to give any elected official, department head or employee, or former elected official, department head or employee, of the County, or for any elected

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

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

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

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

As per Tex. Gov't. Code §809.001(1), "Boycott energy company" means "without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of February 15, 2023 fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A)".

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

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

**4.7.6 Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion.** The Offeror warrants and represents by execution of an award from their response to this procurement packet

that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any Federal programs, or state assistance, as described under Executive Order 12549, "Debarment and Suspension."

The Offeror agrees to include this certification in all contracts between itself and any subcontractors in connection with the services performed under any subsequent Contract or Agreement arising from this award. The Offeror also acknowledges that it is their sole responsibility to immediately notify Hidalgo County, in writing, if they or a subcontractor is not in compliance with Executive Order 12549 during the term of this contract. Further, Offeror agrees to refund Hidalgo County for any payments made to the contractor while ineligible. Pursuant to federal regulation 45 CFR Part 76, the Offeror is required to furnish a certification or acknowledgement stating that they are free from suspension and debarment through registration on System for Award Management at <http://www.sam.gov> with their response.

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

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

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

**4.7.8 Disclosure of Conflict of Interest.**

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

The Offeror shall not use funds to directly or indirectly pay any person for influencing or February 15, 2023 attempting to influence any County employee or official in connection with the awarding of any contract or the extension, continuation, renewal, amendment or modification of any contract.

**4.7.8.2 Certificate of Interested Parties (Form 1295).** Hidalgo County cannot enter into a contract until Form 1295 is submitted, as Texas law, including, but not limited to Tex. Govt. Code Ch. 2252, Title 1 Tex. Ethics Comm. Rules – Title 1, sec. 46 and the Tex. Admin. Code, requires all parties who enter into any contract with the County which must be approved by its governing body, to disclose all interested parties. Form 1295 must be completed in its entirety through the Texas Ethics Commission at the following website: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) prior to awarding the

Contract. Failure to do so may result in delay of award, or deem your response unresponsive, thus disqualified from participation.

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

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

**4.7.8.5 Disclosure of Interested Parties (Form CIQ).** Offeror must fully disclose the existence of any relationships as defined above in its response to this procurement packet. The "**Conflict of Interest Questionnaire (CIQ)**", attached hereto, must be filed with the Hidalgo County Clerk, located inside the Hidalgo County Courthouse no later than the seventh business day after the date the person becomes aware of facts that require the statement to be filed. Hidalgo County Clerk contact information may be found at <https://www.hidalgocounty.us/161/CountyClerks-Office>. **Completion and submission of Form CIQ is the sole responsibility of the Offeror.** Additionally, the Offeror must immediately notify Hidalgo County if the information provided in its response changes at any time.

**4.7.8.6 Disclosure to Report Lobbying.** When applicable, pursuant to 31 U.S.C.A. §1352(2003), if at any time during the contract term funding to Contractor exceeds \$100,000.00, Contractor shall file with the County the Federal Standard Form LLL titled "Disclosure Form to Report Lobbying" as detailed in "**2 C.F.R. § 200**".

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

As per Tex. Gov't. Code §2274.001(3), except as otherwise indicated, to "discriminate against a firearm entity or firearm trade association" means "with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm February 15, 2023 entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association".

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

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

**4.7.11 Ethical Business Practices.** Hidalgo County operates its business ethically and in compliance with the law. We ask that any Offeror, their representative, and/or employee doing business with Hidalgo County, who believes they have witnessed any suspected ethical violation or fraud immediately report the allegations to the Hidalgo County Purchasing Director, 2802 S. BUS HWY 281, Edinburg, TX 78539, (956) 318-2626, ignacio.amezcua@co.hidalgo.tx.us.

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

## 4.8. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS (CONTINUED)

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

When federal funds are expended by the County, the County will take affirmative steps set forth in 2 CFR200.321 to assure that small, minority, women-owned businesses and labor surplus area owned firms are used when possible. Pursuant to 2 CFR 321, the County requires that a prime contractor who uses subcontractors take affirmative steps set forth in 2 CFR 200.321, including:

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

e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

f. Nothing in this section is to be construed to require the County to award a contract other than as required by law and Hidalgo County policies and procedures.

When procurement is related to road construction projects with the Texas Department of Transportation February 15, 20237(TxDOT), all respondents must submit their HUB/DBE plans as part of their submission to be qualified to participate.

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

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

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

to any e-mail address provided in any form for any reason whether related to this procurement packet or otherwise.

**4.8.5 Title VI Notice.** The County of Hidalgo, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat.252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit Bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. Further, "Title VI" has been broadened by related statutes, regulations and executive orders as found in **Appendices "A" through "E"** as attached hereto. Offeror agrees to comply with Title VI as may be required. The Hidalgo County Title VI Nondiscrimination Plan may be found at <https://www.hidalgocounty.us/2071/Title-VINondiscrimination-Plan>.

#### 4.9. CONTRACT OBLIGATION

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

#### 4.10. CONTRACT RENEWALS

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

#### 4.11. CONTRACT TRANSITION (Grace Period)

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

#### 4.12. COST OF GOODS AND SERVICES

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

#### 4.13. COUNTY APPROVED HOLIDAYS

The Offeror is advised that official County business will not be conducted on approved County holidays. The link of approved holidays can be found on: <https://www.hidalgocounty.us/115/County-Holidays>.

#### 4.14. EVALUATION

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

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

#### 4.15. FISCAL FUNDING

Hidalgo County has the discretion to utilize grant funding or general funding, however, should grant funding be utilized "Grant Funding" rules will apply. The award of a contract hereunder will not be construed to create a debt of the County which is payable out of funds beyond the current fiscal year. February 15, 2023<sup>7</sup> Additionally, should funds not be appropriated by the applicable governing body to continue the lease or contract in their sole discretion, said lease or contract shall become null and void on the last day of the current appropriation of funds.

**4.15.1 General Funding.** A multi-year lease or lease/purchase arrangement, or any contract continuing as a result of an extension option, must include a fiscal funding out provision in the lease or contract. Funds for this procurement have been provided through the County budget for this fiscal year only. Hidalgo County, on an annual basis and at their discretion, has the right to reconsider a contract during the budget process for ensuing years if financial resources of Hidalgo County are insufficient to meet the liabilities of said contract. After expiration of the lease, leased equipment shall be removed by the Vendor from the user department without penalty of any kind or form to Hidalgo County. All charges and physical activity related to delivery, installation, removal and re-delivery shall be the responsibility of the Vendor

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

Additionally, County contracts subject to assistance from the Federal Emergency Management Agency (FEMA), require inclusion of the contract terms found in "2 C.F.R. § 200 ". It is the County's intention to comply with FEMA requirements; therefore, any conflict in terms should be resolved as such.

#### 4.16. FORCE MAJEURE

If by reason of Force Majeure either Party shall be rendered unable, wholly or in part, to carry out its responsibility under this contract by any occurrence by reason of Force Majeure, then the Party unable to carry out its responsibility shall give the other Party notice and full particulars of such Force Majeure in writing within a reasonable time after the occurrence of the event, and such notice shall suspend the Party's responsibility for the continuance of the Force Majeure claimed, but for no longer period. Force Majeure means acts of God, floods, hurricanes, tropical storms, tornadoes, earthquakes, or other natural disasters, acts of a public enemy, acts of terrorism, sovereign conduct, riots, civil commotion, strikes or lockouts, and other causes that are not occasioned by either Party's conduct which by the exercise of due diligence the Party is unable to overcome and which substantially interferes with operations.

#### 4.17. GOVERNING LAW

This procurement packet is governed by the competitive bidding requirements of the County Purchasing Act, Texas Local Government Code, §262.021 et seq., as amended. Offerors shall comply with all applicable federal, state and local laws and regulations. **Offeror is further advised that these requirements shall be fully governed by the laws of the State of Texas and venue shall be performable in a federal or state court or competent jurisdiction in Hidalgo County, Texas.** Hidalgo County may request and rely on advice, decisions and opinions of the Attorney General of Texas and the Hidalgo County District Attorney concerning any portion of these requirements. The County does not agree to binding arbitration and does not waive its right to a jury trial.

#### 4.18. HIPAA COMPLIANCE

When applicable, the Offeror agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160and164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended; and TEX. HEALTH & SAFETY CODE ANN. §§81.046, as amended, 181.001 et seq., as amended, 241.151 et seq., as amended, and 611.001 et seq., as amended collectively referred to as "HIPAA", to the extent that the Offeror uses, discloses or has access to protected health information as defined by HIPAA. Offeror may be required to enter a Business Associate Agreement pursuant to HIPAA.

#### 4.19. INDEMNIFICATION

**COMPANY SHALL INDEMNIFY AND HOLD COUNTY, ITS ELECTED OFFICIALS, EMPLOYEES AND AGENTS HARMLESS FROM ANY AND ALL CLAIMS, ACTIONS, LIABILITY, DAMAGES, LOSSES AND EXPENSES (INCLUDING COSTS OF JUDGMENTS, SETTLEMENTS, COURT COSTS, AND ATTORNEYS' FEES, February 15, 2023 REGARDLESS OF THE OUTCOME OF SUCH CLAIM OR ACTION) CAUSED BY, RESULTING FROM, OR ALLEGING NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OR ANY FAILURE TO PERFORM ANY OBLIGATION UNDERTAKEN OR ANY COVENANT IN THIS CONTRACT, WHETHER SUCH ACT, OMISSION, OR FAILURE WAS**

**THE COMPANY'S OR THAT OF ANY PERSON PROVIDING SERVICES HEREUNDER THROUGH OR FOR THE COMPANY. UPON WRITTEN NOTICE FROM THE COUNTY, THE COMPANY WILL RESIST AND DEFEND AT ITS OWN EXPENSE, AND BY COUNSEL REASONABLY SATISFACTORY TO COUNTY, ANY SUCH CLAIM OR ACTION. THE COMPANY WILL CARRY PROPER INSURANCE WITH THE COUNTY AS AN ADDITIONAL NAMED INSURED. THIS INDEMNIFICATION CLAUSE SHALL SURVIVE THIS AGREEMENT AND BE ENFORCEABLE AS A SEPARATE AGREEMENT IN THE EVENT ITS SURVIVAL AND ENFORCEMENT BECOME NECESSARY.**

#### 4.20. INSPECTIONS & TESTING

Hidalgo County reserves the right to inspect any item(s) or service location for compliance with specifications and requirements and needs of the user department. If an Offeror cannot furnish a sample of a proposed item, where applicable, for review, or fails to satisfactorily show an ability to perform, the County can reject the response as inadequate. The successful respondent shall warrant that all items/services shall conform to the specifications and/or all warranties provided under the Uniform Commercial Code and be free from all defects in material, workmanship and the like. Items supplied under a contract pursuant to this procurement packet shall be subject to the County's approval. Items found to be defective or not meeting specifications shall be replaced by the successful Offeror within two (2) business days at no expense to the County. Items that are not picked up within one (1) week after notification shall be deemed a donation to the County and may be used or disposed of at the County's discretion, without waiver of any other rights of the County as to the items' nonconformity.

#### 4.21. INSURANCE

Contractor shall procure and maintain, with respect to the subject matter of this procurement packet, appropriate insurance coverage including, as a minimum, public liability and property damage with adequate limits to cover contractor's liability as may arise directly or indirectly from work performed under terms of this procurement packet. Certification of such coverage must be provided to the County as part of this response. (See "**Insurance Requirements**"). Prior to award, Hidalgo County must be listed as a Certificate Holder to the policies.

#### 4.22. LEGAL DOCUMENTS

Offeror should submit any agreement for products and/or services which may be required by their organization to enter into a contract with Hidalgo County. The awarded vendor will be required to execute an agreement with Hidalgo County which finalizes the terms and conditions set forth in their response, best and final offer, and any negotiations between the Offeror and Hidalgo County. The agreement is subject to review and amendment by the Hidalgo County District Attorney's Office.

#### 4.23. MAINTENANCE

Maintenance required for equipment proposed should be available in Hidalgo County by a manufacturer-authorized maintenance facility. Costs for this service shall be shown on "**Company/Firm Response**". If Hidalgo County opts to include maintenance, it shall be so stated in the purchase order and said cost will be included. Service will commence only upon expiration of applicable warranties and should be priced accordingly.

#### 4.24. MARKET VOLATILITY AND UNIT PRICE ADJUSTMENTS

When applicable, Hidalgo County recognizes that during periods of national crisis and unstable economic conditions, unforeseen price increase might affect costs for goods and services contracted on an annual basis. As such, upon written request of the Vendor to the County Purchasing Agent, the County may review evidence of prevailing industry-wide market conditions that may warrant an adjustment in bid prices contained in the contract. When applicable, the following procedure and conditions may be employed to mediate price volatility:

- A Vendor shall:
  - make its Market Volatility and Unit Price Adjustment request in writing to the County Purchasing Agent.
  - tie any price change clause to an industry-wide or otherwise nationally recognized index, or some other form of verifiable document. Such written request must be accompanied by a certified copy of the supplier's advisory or notification to the Vendor of the price changes.
  - put the Purchasing Agent on the mailing lists for such publications so that the Purchasing Agent can monitor said changes. Such membership shall be at no cost to the County.
  - notify the County at the time when the Vendor's costs for items, supplies, and or services reduce due to stabilization in the market at which time prices for items on this contract shall be reduced accordingly. Failure by the Vendor to notify the County of a decrease in costs for items and/or supplies for which the Vendor was granted a price adjustment, may result in immediate termination of this contract and the County shall not be obligated to pay the Vendor the difference between the contract price and the price adjustment.
- Price adjustment reviews may only be requested by the Vendor on a quarterly basis; however, the County may at its own discretion, conduct temporary price adjustment reviews at any time.
- The County Purchasing Agent retains the right to determine whether or not such proposed price changes are in the best interest of the County.
- The County may only grant a price increase if the evidence presented is deemed reliable.
- No price escalation will be authorized in excess of the amount of the increase referred to in the supplier's notice.
- The total increase in contract price shall not exceed twenty-five percent (25%) of the original contract price during the contract term.
- Should the County allow a price increase, the approved price change shall be honored for all orders received by the vendor or contractor after the effective date of such price change. Approved price changes are not applicable to orders already issued and in process at time of price change.
- Price increases are only valid for the quarter in which they are requested and approved.

- Prices shall return to the original contract price at the beginning of the following quarter unless a Vendor notifies the County in writing within ten (10) days of expiration of the quarter in which the price increase is in effect, that it desires to have the price increase continue or that the Vendor is requesting a different price increase for the following quarter. Such request must be supplemented with sufficient justification to demonstrate that the price increase remains necessary. The County Purchasing Department shall have sole discretion whether to grant the price increase extension.
- The County Purchasing Agent and/or the County Auditor reserve the right to audit and/or examine any pertinent books, documents, papers, records or invoices relating directly to the contract transaction in question after reasonable notice and during normal business hours.
- The County too, shall have discretion to unilaterally reduce, eliminate or extend a price adjustment to the Vendor at any time upon written notice from the County to the Vendor demonstrating justification for such reduction, elimination or extension of the price adjustment.

#### 4.25. MATERIAL SAFETY DATA SHEETS

Under the "Hazardous Communication Act", commonly known as the "Texas Right to Know Act", an Offeror must provide to the County with each delivery, safety data sheets which are applicable to hazardous substances defined in the Act. Failure of the Offeror to furnish the required documentation will be cause to reject any response applying thereto.

#### 4.26. MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE RESPONDENTS

With their submitted response, the Offeror must affirmatively demonstrate their responsibility as listed on "**Requirements/Specifications**". A prospective respondent, by submitting a response, represents to County that it meets the requirements listed.

#### 4.27. NAME BRANDS

Specifications may reference name brands and model numbers. It is not the intent of Hidalgo County to restrict or preclude competition in any way, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Offerors may offer items of equal stature and the burden of proof of such stature rests with Offerors. Hidalgo County shall act as sole judge in determining equality and acceptability of products offered.

#### 4.28. NEW MILLENNIUM COMPLIANCE

All products and/or services furnished as part of this contract must be compliant for the present year and forward. This applies to all computers including hardware and software as well as all other commodities with date sensitive embedded chips.

#### 4.29. PAYMENT UNDER CONTRACT

If the contract is for \$50,000 or less, no money will be paid to the contractor until completion and acceptance of the work or the fulfillment of the purchase obligation to the County, and, if applicable, the receipt by County of satisfactory evidence that all subcontractors and material men have been paid.

#### 4.30. PERFORMANCE ENFORCEMENT

Hidalgo County reserves the right to enforce performance of any contract, agreement, supplemental agreement, as amended, or participation in the professional services pool, in any manner prescribed by law or deemed to be in the best interest of the County. Hidalgo County reserves the right to terminate the contract awarded hereunder in any manner prescribed by law or deemed to be in the best interest of the County immediately in the event of breach or default by a successful respondent, including, but not limited to failure to maintain qualifications, meet schedules, pay any required fees or taxes, or otherwise failing to perform in accordance with the requirements of this procurement packet.

#### 4.31. POST-AWARD DELIVERY INSTRUCTIONS

Title and Risk of Loss of goods shall not pass to Hidalgo County until Hidalgo County actually receives and takes possession of the goods at the point or points of delivery. Receiving times may vary with the user department. Generally, deliveries may be made between 8:30 a.m. and 4:00 p.m., Monday through Friday, except on County approved holidays. The Offeror is advised to consult the user department for instructions, and be given at least seventy-two (72) hours prior notice of delivery, if applicable, before delivery will be accepted. The place of delivery shall be identified in the "**Requirements/Specifications**" attached hereto this procurement packet and/or on the Purchase Order as a "Deliver To:" address.

#### 4.32. POST-AWARD INVOICES AND PAYMENTS

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

Deliverables or services will be considered complete only upon written acceptance by Hidalgo County. Nocharges may be billed to Hidalgo County unless such costs are explicitly included in the agreement or contract. For billing and payment questions please contact the Hidalgo County Auditor's Office, 2808 S. Business Hwy. 281, Edinburg, Texas 78539, (956) 318-2511.

#### 4.33. PROCEDURES FOR VENDOR PROTEST

Any potential Offeror has the right to protest a solicitation packet or contract award. Details for these procedures can be found on our County website: <https://www.hidalgocounty.us/143/Purchasing-Department>. The Vendor also understands that an awarded contract may immediately become void if the County determines that a lack of compliance with applicable policies and/or statutes has occurred at any time, whether in the procurement process, or after award.

#### 4.34. PROCUREMENT PACKET FORM COMPLETION

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

#### 4.35. PROCUREMENT PACKET SUBMISSION

Offeror must comply with the following procurement packet submission procedures.

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

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

#### 4.36. PROOF OF BUSINESS

Offeror must be in business under its current name and in its current form (e.g., proprietorship, Chapter S Corporation). Information to be included as part of the Vendor Application, "**Vendor Acknowledgment**".

#### 4.37. PURCHASE ORDER AND DELIVERY

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

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

#### 4.38. QUALIFICATIONS OF OFFEROR

Offeror's failure to qualify or maintain qualifications throughout the term of this agreement shall release Hidalgo County from all obligations to the Offeror with regard to the services. In such an event, Hidalgo County may elect to engage another qualified firm or reject all submissions and re-advertise.

#### 4.39. RECYCLED MATERIALS

Hidalgo County encourages the use of products made of recycled materials and shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. Hidalgo County will be the sole judge in determining product preference application.

#### 4.40. REFERENCES

If applicable, Offeror must provide a total of four (4) references in each response to a solicitation requested by Hidalgo County. **One of the four references listed should be of a project that was canceled. If Offeror has not had a project canceled, then please indicate so.** Offeror may provide this in form of Reference Letters from other individual(s)/entities or local government entities for whom the Offeror has provided similar services in the past twenty-four (24) months as demonstration of their prior experience, or if Offeror prefers, may utilize the "**Reference Form**". Letters or reference sheet must include the following information:

- Organization/Client Name/Government Entity (Include population of any local governmental entity – some procurements may require a specific population).
- Name of Contact Person
- Contact Telephone, Address, and Email
- Name of Project
- Scope of Work
- Contract Period
- Budget Project Amount; Actual Project Amount
- Expected project timeframe; actual project timeframe
- Include contact information for one (1) client that services have been canceled, and a description of why the project was canceled. If Offeror has not had a project canceled, then please indicate so.

#### 4.41. SCANNED OR RE-TYPED RESPONSE

If in its response, Offeror either electronically scans, re-types, or in some way reproduces the County's published procurement packet, then in the event of any conflict between the terms and provisions of the County's published procurement packet, or any portion thereof, and the terms and provisions of the response made by the Offeror, the County's procurement packet **as published** shall control. Furthermore, if an alteration of any kind to the County's published procurement packet is only discovered after the contract is executed and is or is not being performed; the contract is subject to immediate cancellation.

Regardless of how an Offeror requested or received a copy of this procurement packet to prepare a response, **the response must be submitted according to the instructions contained within this procurement packet.**

#### 4.42. 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.

#### 4.43. SILENCE OF SPECIFICATIONS

The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item proposed.

#### 4.44. SUBCONTRACTING

Vendor may not subcontract services to another firm without prior written request detailing goods and/or services that are to be subcontracted, and approval of said written request by Hidalgo County Commissioners Court, or applicable governing body.

#### 4.45. TAXES

Hidalgo County is exempt from all federal excise, state, and local taxes unless otherwise stated in this document. Hidalgo County claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Offerors are not to include tax in any cost figures (including in any supplemental project specific contracts applicable to pools). If it is determined that tax was included in the cost figure it will not be included in the tabulation of any supplemental project specific awards. Texas Limited Sales Tax Exemption Certificates will be furnished upon written request to the Hidalgo County Purchasing Department, and signed by the Agent, or authorized Purchasing Department representative.

#### 4.46. TERM OF CONTRACTS

If the contract is intended to cover a specific time period, the term will be specified in the **Procurement Overview**. Awarded contract will be in effect until (a) the term expires, or (b) participation is terminated by County with thirty (30) days written notice prior to cancellation with or without cause. Any supplemental project-specific contract award to a successful respondent will be in effect until (a) the contract expires, (b) delivery and acceptance of products, and/or performance of services ordered, or (c) terminated by the County with thirty (30) days written notice prior to cancellation with or without cause, unless otherwise stated in the executed agreement.

#### 4.47. TERMINATION

Hidalgo County reserves the right to terminate the contract for default if Offeror breaches any of the terms therein, including warranties of Offeror or if the Offeror becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which

Hidalgo County may have in law or equity. Default may be construed as, but not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to Hidalgo County's satisfaction and/or to meet all other obligations and requirements. Hidalgo County may terminate the contract without cause upon thirty (30) days written notice, unless otherwise stated in the executed agreement.

#### 4.48. TERMINATION FOR HEALTH AND SAFETY VIOLATIONS

Hidalgo County has the option to terminate this contract immediately without prior notice if Offeror fails to perform any of its obligations in this contract if the failure (a) created a potential threat to health or safety or (b) violated a law, ordinance, or regulation designed to protect health or safety.

#### 4.49. USAGE REPORTS

Hidalgo County reserves the right to request, and receive at no additional cost during the yearly contract period, a usage report detailing the services furnished to date under an agreement resulting from this procurement packet. The reports must be furnished no later than five (5) business days after written request and itemize all purchases to date by Hidalgo County department, description of each service purchased, quantity of each service purchased, per unit cost and total amount of all services purchased.

#### 4.50. WAIVER OF SUBROGATION

Offeror and Offeror's insurance carrier waive any and all rights whatsoever with regard to subrogation against Hidalgo County as an indirect party to any suit arising out of personal or property damages resulting from Offeror's performance under any award resulting from award from this procurement packet.

#### 4.51. WARRANTIES

Offerors shall furnish all data pertinent to warranties or guarantees which may apply to items in the response to this procurement packet. Offeror may not limit or exclude any implied warranties. Further, Offeror warrants that product sold to the County shall conform to the standards established by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event product does not conform to OSHA Standards, where applicable, Hidalgo County may return the product for correction or replacement at the Offeror's expense. If Offeror fails to make the appropriate correction within a reasonable time, Hidalgo County may correct at the Offeror's expense.

#### 4.52. CIVIL WORKS, CONSTRUCTION & PUBLIC WORKS PROJECTS

Provisions of Tex. Govt. Code Ch. 2269 as amended by HB 2581 of the 87th Texas Legislature applicable to Civil Works and Construction Projects are hereby incorporated. Provisions of Texas Local Govt. Code Ch. 271, subchapter B applicable to competitive bidding on certain public works projects are hereby incorporated.

## 5. EVALUATION CRITERIA

### EVALUATION PROCESS:

The evaluation / grading / scoring committee will be comprised of at least one (1) licensed engineer on staff with Hidalgo County Drainage District No. 1. The licensed engineer will assist the county in preparing a clear, accurate, and detailed scope of work as well as the evaluation criteria. The designated engineer will be named in writing by the HCDD, with approval and acceptance of named engineer by the county, at the onset of the project and will serve as a consultant throughout the life of the project. The designated engineer will also serve as the Evaluation Committee Liaison and will coordinate the grading/evaluating/scoring schedule as well as determine if interviews of firms will be required. The remaining members of the Evaluation Committee will be comprised of two representatives appointed by project precinct Commissioner. Statement of Qualifications (SOQ) will be reviewed and scored based on the established evaluation factors as stated in the request for qualifications and scoring system. The provider will not be awarded a contract based on competitive bids. Qualifications will be ranked based on the scoring system provided in the request for qualifications. The ranking criteria at a minimum should be based on:

- 40 – Points – Project understanding and approach including quality control procedures
- 30 – Points – The project managers’ and project teams’ qualification and experience
- 20 – Points – Staff capabilities and workload capacity
- 10 – Points – DBE Participation

### CONTRACT AWARD

Hidalgo County reserves the right to negotiate with any and all engineering service firms that submit qualifications, per the Texas Professional Services Procurement Act, as amended, and the Office of Management and Budget Circular No. A-102. Responding architectural/engineering service firms will be notified if an oral presentation is necessary. The Texas Department of Transportation, (TxDOT) representative may participate in a review of procedures during the selection and negotiation process to assure that process meets all applicable guidelines for future TxDOT reimbursement. The contract will be awarded to the most highly qualified firm. A written award (or acceptance of qualifications) which is mailed, emailed or otherwise furnished to the successful proposer within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract without further action by either party. The engagement process is summarized as follows:

- a) Requests for qualifications (RFQs) will be published as legal notices on the Hidalgo County’s website, and a newspaper of general circulation for a minimum of two (2) consecutive weeks as referenced in section two (2) of the Procedures.
- b) Hidalgo County will open submissions and an evaluation team comprised of one licensed engineer on staff with Hidalgo County Drainage District No.1 and two (2) representatives with experience in this area appointed by project precinct commissioner will review and score the Statements of Qualifications.
- c) The evaluation committee will score/rank qualifications according to the qualification rating sheet criteria. In the instances where only two (2) qualified firms respond to the solicitation, the County will proceed according to the rules and regulations of 23 CFR 172.7;
- d) If adequate qualified participation is received, the evaluation committee will proceed with selecting the three (3) most highly qualified firms and issue a notification to proceed to Request for Proposals

(RFP). Should the evaluation committee request formal presentations, the Evaluation Committee Liaison will prepare a list of questions and provide a copy to each firm with the appointment schedule for interviews; Each firm will be allotted equal time and each appointed evaluator must be in attendance at each interview;

e) The final score/grade of the RFP by the evaluation committee will be presented by the Purchasing Department to the Commissioners’ Court for ranking and approval.

f) Commissioners’ Court will instruct the Purchasing Director or his designee to begin negotiations with the highest scoring firm and authorize him/her to execute an agreement following successful negotiation. Proposing firms may be required to attend Commissions’ Court. TxDOT will review the professional fees, hours and scope before the contract is executed.

g) Following successful negotiations and concurrence by TxDOT and Commissioners’ Court, the agreement will be executed and documents will be exchanged. If the negotiations with the highest scoring firm are not successful, the Purchasing Director will conclude negotiations with that firm and contact the next highest scoring firm and begin negotiations with the next firm.

h) Hidalgo County will ensure that a qualified consultant is obtained through an equitable selection process and the prescribed work is properly accomplished in a timely manner at a reasonable cost. We are an Affirmative Action/Equal Opportunity Employer and reserve the right to reject any and all qualifications, extend the RFQ/RFP deadline, and/or waive formalities in our selection.

**\* Evaluations/scores/grades/ranking documents will be submitted to TxDOT for concurrence prior to action by the Commissioners’ Court. TxDOT will review the contract and the negotiated fees for concurrence before negotiations are finalized with the highest ranked firm.**

No.	Evaluation Criteria	Scoring Method	Weight (Points)
1.	<p><b>Project understanding and approach including quality control procedures</b></p> <p>Response is clear, concise, well-organized, and followed the instructions listed in the Procurement Overview section of the procurement packet. Completeness of submittal response: SOQ follows the prescribed format and contains all information requested in RFQ. Firm should demonstrate an understanding of the type of services that may be required for this project. Qualifications should reflect the prospective firm’s understanding of the project involved and the approach for implementation and the successful completion of deliverables. Firm addresses their understanding in a clear and concise narrative that outlines their knowledge in appropriate federal, state and local government regulations, codes, guidelines, professional standards, and other policies related to the specified project. Firm should identify their commitment and ability to commence services immediately after successful negotiations and award of contract.</p>	0-100 Points	<p>40 <i>(40% of Total)</i></p>

2.	<p><b>The project managers' and project teams' qualification and experience</b></p> <p>Past experience with public construction management, construction projects, state and/or federally funded public works construction projects, public transportation projects, and administration of Federal Funded projects of similar size and scope. Performance regarding the success and capabilities of the firm's past services will be assessed. Performance may include completing project activities on schedule, completing work within a budget, and quality of work similar to that proposed. The selected firm will be required to show proof of professional liability insurance coverage.</p>	0-100 Points	30 <i>(30% of Total)</i>
3.	<p><b>Staff capabilities and workload capacity</b></p> <p>Capacity will be evaluated in the terms of numbers and type of staff to be assigned tasks, staff experience, and staff time availability. The prospective firm shall supply a list of staff personnel, including subcontractors, to be utilized in carrying out the contract and résumé on each individual expected to be assigned to the project. A Professional Engineer is required to participate as a lead manager on the project.</p>	0-100 Points	20 <i>(20% of Total)</i>
4.	<p><b>DBE Participation</b></p> <p>Contractors/firms are required to comply with the TxDOT Disadvantaged Business Enterprise (DBE) Program. Consultants and Sub-consultants proposal to meet DBE goal.</p>	0-100 Points	10 <i>(10% of Total)</i>

## 6. ELECTRONIC SUBMISSION DOCUMENTS

- Firms must complete the following sections.
- If the submission is electronic, please proceed with completing all sections. Required documentation will need to be downloaded, completed, and uploaded.
- If the submission is a hard copy, please print the entire packet and complete all sections manually. Required documentation will need to be printed, completed, and included as part of the submission.
- **Failure to submit a complete response may result in the rejection of the response as non-conforming.**

### 6.1. I confirm, that I will be submitting my response electronically.\*

Please confirm and proceed with the electronic submission requirements.

Please confirm

\*Response required

### 6.2. LEGAL NOTICE DECLARATION\*

**TO:** Ignacio Amezcua, MBA, CTCM, CTCD, Purchasing Director

**ATTN:** Victor Borrego, CTCD, Contract Specialist III

Hidalgo County Administration Building/Purchasing Department

2802 S. Business Hwy. 281

Edinburg, Texas 78539

**RE:** 24-0065-04-05-10 - Professional Engineering Services for Construction Management, Material Testing, and Inspection for the Liberty Blvd. Project (US 83 to Mile 3 Rd.)

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

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

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

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

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

Please confirm

\*Response required

### 6.3. REQUIREMENTS/SPECIFICATIONS\*

Refer to "**Requirements/Specifications**" in the [#ATTACHMENTS](#) section. Confirm that you have read, understood, and agree with the "**Requirement/Specifications**".

Please confirm

\*Response required

### 6.4. PROOF OF INSURANCE\*

#### **Insurance Requirements**

#### **Professional Services**

#### **(i.e...Engineers, Architects, Appraisers & Surveyors)**

Professional liability insurance policy with limits of at least One Million Dollars (\$1,000,000) per occurrence, or limited to claims made, include at least a five (5) year extended reporting period.

2. A Five Hundred Thousand Dollars (\$500,000.00) Comprehensive General Liability insurance policy providing additional coverage to all underlying liabilities of County.

3. Automobile liability insurance policy with limits of at least Three Hundred Thousand Dollars (\$300,000.00) per person and Five Hundred Thousand Dollars (\$500,000.00) per occurrence. Coverage should include injury to or death of persons and property damage claims with limits up to Five Hundred Thousand Dollars (\$500,000.00) arising out of the services provided to County hereunder.

4. Uninsured/Underinsured motorist coverage in an amount equal to the bodily injury limits set forth immediately above;

5. Workers compensation insurance in amounts established by Texas law, unless the Bidder is specifically exempted from the Texas Workers Compensation Act, Texas Labor Code Chapter 401, et. seq.

*Bidder shall obtain and maintain any and all other insurances which may be necessary in providing the good/service applicable to this procurement or are otherwise required by law. Any and all insurance policies shall be in amounts prescribed by law or otherwise specified by the County, but in no event less than the minimum amounts prescribed by law.*

#### **Additional Insurance Requirements:**

- A. Bidder shall furnish to County certificate(s) of insurance, and all renewals throughout the duration of the Project, issued by the insurer that such insurance is in full force and effect.
- B. Certificates of insurance shall be submitted to County for approval prior to any services being performed by Bidder.
- C. **Hidalgo County will only accept certificates of insurance on an Acord form (below).**
- D. For each policy, except Workers' Compensation, Bidder shall name the County as an additional insured.
- E. Each policy of insurance required hereunder shall extend for a period equivalent to, or longer than the term of the Contract, and any insurer hereunder shall be required to give at least thirty (30) days written notice to the County prior to the cancellation of any such coverage on the termination date, or otherwise.
- F. This Contract shall be automatically suspended upon the cancellation, or other termination, of any required policy of insurance hereunder, and such suspension shall continue until evidence of adequate replacement coverage is provided to County. If replacement coverage is not provided within thirty (30) days following suspension of the Contract, this Contract shall automatically terminate.
- G. All insurance policies will be endorsed to provide a waiver of subrogation in favor of the County.
- H. County reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverage and their limits when deemed necessary and prudent by County based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Bidder.
- I. Insurance policies shall be obtained at Bidder's sole expense. County does not maintain and will not obtain insurance of any type to protect Bidder against loss, damage or injury that may in any way result from Bidders performance of the services.
- J. In no event shall the County be liable for any loss, damage to or destruction of any property belonging to the Bidder.
- K. Bidder is responsible for ensuring all required insurance policies are valid for the duration of the contract.
- L. All insurance policies are to be issued by an insurance company authorized to do business in the State of Texas and acceptable to County.
- M. Bidder shall make any other insurance documentation available to County upon request.

<b>ACORD</b>		<b>CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY)
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.				
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).				
PRODUCER		CONTACT NAME		
		PHONE (A/C No. Ext):		FAX (A/C No.):
		E-MAIL:		
		ADDRESS:		
		INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED		INSURER A:		
		INSURER B:		
		INSURER C:		
		INSURER D:		
		INSURER E:		
		INSURER F:		
COVERAGES		CERTIFICATE NUMBER:		REVISION NUMBER:
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.				
TYPE OF INSURANCE	ADDITIONAL COVERAGES	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)
GENERAL LIABILITY				
<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR				
GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				
AUTOMOBILE LIABILITY				
<input type="checkbox"/> ANY OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRING AUTOS <input type="checkbox"/> NON-OWNED AUTOS				
<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE			
<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$				
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below				
				WC STATUTORY LIMITS OTHER
				E.L. EACH ACCIDENT \$
				E.L. DISEASE - EA EMPLOYEE \$
				E.L. DISEASE - POLICY LIMIT \$
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)				
CERTIFICATE HOLDER			CANCELLATION	
HIDALGO COUNTY ATTN: PURCHASING DEPARTMENT 2812 S. HIGHWAY BUS. 281 EDINBURG, TEXAS 78539			SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.	
			AUTHORIZED REPRESENTATIVE	
ACORD 25 (2010/05)			© 1988-2010 ACORD CORPORATION. All rights reserved.	
The ACORD name and logo are registered marks of ACORD				

Please provide or upload your Certificate of Liability Insurance depending on your method of submission.

\*Response required

### 6.5. INSURANCE REQUIREMENT ACKNOWLEDGMENT\*

I, an authorized representative for of my company, the company submitting this response, hereby acknowledge receipt of the County's required insurance limits. Said requirements:

- will be acquired within 10 working days after notification from Purchasing Department of award of the project by the Hidalgo County Commissioners' Court;
- will acquire additional amount needed to meet the County's requirements within 10 working days after notification from Purchasing Department of award of the project by the Hidalgo County Commissioners' Court; currently carry the following:
  - Professional Liability (Errors & Omissions)
  - Automobile Liability
  - General Liability
- have already been met, see attached copy of certificate of insurance.

#### **Notice to Bidder:**

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

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

Please confirm

\*Response required

### 6.6. PROJECT REQUIREMENTS ACKNOWLEDGMENT\*

This is to certify that I, an authorized representative of my company, possess all of the **APPLICABLE:**

1. Licenses
2. Bonds
3. Certificates
4. Permits
5. Other

necessary to carry out the required project. Furthermore, **I am providing copies of the required documentation** (upload copies here) so that, if my company is awarded this project, I may be eligible to enter into a contract with Hidalgo County and proceed to complete the project in a timely manner.

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

Please confirm

\*Response required

### 6.7. CONFLICT OF INTEREST QUESTIONNAIRE\*

Please download the below documents, complete, and upload.

- [COI Questionnaire.pdf](#)

\*Response required

### 6.8. VENDOR ACKNOWLEDGMENT\*

**Please read and acknowledge the required steps necessary to do business with Hidalgo County:**

#### **Step 1:**

**OpenGov** will now serve as the primary source for all Hidalgo County solicitation postings, electronic bidding, and contract management. Any reliance on other information or sources not directly downloaded from OpenGov may result in a submission that is not in compliance.

#### **Link can be found below:**

-<https://procurement.opengov.com/portal/co-hidalgo-tx>

#### **Step 2:**

**ConsiderMe (Vendor Enrollment Solution)** is an innovative tool that facilitates the needs of Hidalgo County to secure qualified vendors. Local, state, and national vendors can apply using the vendor registration form in the link below.

-<https://www.hidalgocounty.us/2912/Potential-Vendors-ConsiderMe>

\*The Vendor Registration Form does not guarantee a contract or agreement, however, it does guarantee your service or goods will be added to the list of potential vendors available to Hidalgo County.

Please confirm

\*Response required

### 6.9. HUB DECLARATION\*

Please download the below documents, complete, and upload.

- [HUB Declaration.pdf](#)

\*Response required

### 6.10. CERTIFICATION REGARDING DEBARMENT\*

Please download the below documents, complete, and upload.

- [Certification Regarding Deb...](#)

\*Response required

### 6.11. SAM.GOV REGISTRATION\*

Please enter your company's Legal Name and/or dba Name

\*Response required

### 6.12. FORM 1295\*

Please provide a Form 1295.

- <https://www.ethics.state.tx.us/filinginfo/QuickFileAReport.php>
- Reference Professional Engineering Services for Construction Management, Material Testing, and Inspection for the Liberty Blvd. Project (US 83 to Mile 3 Rd.) and 24-0065 on section 3 of the form.
- Be sure to complete section 6 of the form, in order to be valid.

\*Response required

### 6.13. Title VI Appendices - (Please confirm that you have read, understood and agree)\*

#### APPENDIX A

#### THE TITLE VI CONTRACTOR ASSURANCES

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

- 1. Compliance with Regulations:** The contractor will comply with the Regulations relative to nondiscrimination in federally assisted programs of the United States Department of Transportation Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income or Limited English Proficiency in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, or disability.
- 4. Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the federal funding agency (FHWA or FTA) to be pertinent to ascertain compliance with such Acts,

Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Recipient or the Federal Funding Agency, as appropriate, and will set forth what efforts it has made to obtain the information.

**5. Sanctions for Non-compliance:** In the event of the contractor's non-compliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Funding Agency may determine to be appropriate, including, but not limited to:

a. withholding contract payments to the contractor under the contract until the contractor complies; and/or

b. cancelling, terminating, or suspending a contract, in whole or in part.

**6. Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Funding Agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with, litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## APPENDIX B

### CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto **COUNTY OF HIDALGO** and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose

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involving the provision of similar services or benefits and will be binding on the **COUNTY OF HIDALGO**, its successors and assigns.

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

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

### APPENDIX C

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

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

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, **COUNTY OF HIDALGO** will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the **COUNTY OF HIDALGO** will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the **COUNTY OF HIDALGO** and its assigns. \*

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

#### APPENDIX D

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

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

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, **COUNTY OF HIDALGO** will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*

C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, **COUNTY OF HIDALGO** will there upon revert to and vest in and become the absolute property of **COUNTY OF HIDALGO** and its assigns.\*

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

#### APPENDIX E

##### TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

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

##### Pertinent Nondiscrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

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

Please confirm

\*Response required

#### 6.14. REQUIRED CONTRACT CLAUSES FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS\*

Please download the below documents, complete, and upload.

- [2\\_CFR\\_200.pdf](#)

\*Response required

### 6.15. FHWA 1273\*

Refer to "FHWA 1273" in the [#ATTACHMENTS](#) section. Confirm that you have read, understood and agree with "Appendix I - FHWA 1273."

Please confirm

\*Response required

### 6.16. PROPOSER'S AFFIDAVIT OF NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING\*

Please download the below documents, complete, and upload.

- [Proposer's\\_Affidavit.pdf](#)

\*Response required

### 6.17. REFERENCE FORM\*

Please download the below documents, complete, and upload.

- [Reference\\_Form.pdf](#)

\*Response required

### 6.18. COMPANY/FIRM RESPONSE\*

Please upload your response to this RFQ as requested in *Requirements/Specifications*.

\*Response required



## Requirements – Specifications

### Professional Engineering Services for Construction Management, Material Testing, and Inspection for the Liberty Blvd. Project (US 83 to Mile 3 Rd.)

#### **REQUEST FOR QUALIFICATIONS:**

The required contents and limitations for the preparation of the SOQ are described in this section. Failure to provide the requested information or adhere to any County limitations will result in disqualification of the submitted SOQ.

#### **PROJECT UNDERSTANDING, COMPLIANCE AND ABILITY: (Maximum to 3 pages)**

Firm should demonstrate an understanding of the type of services that may be required for this project. Qualifications should reflect the prospective firm's understanding of the project involved and the approach for implementation and the successful completion of deliverables. Firm addresses their understanding in a clear and concise narrative that outlines their knowledge in appropriate federal, state and local government regulations, codes, guidelines, professional standards, and other policies related to the specified project. Firm should identify their commitment and ability to commence services immediately after successful negotiations and award of contract.

#### **FIRM INFORMATION:**

**a. Firm History** - This section should include Firm's history, the firm's background, and identify the principal officers. It should include an organization chart and a description of the project team organization and the names of team members. Additionally, it should state the firm's commitment and ability to commence services immediately after successfully negotiating a contract for services and a statement regarding their Affirmative Action Program.

**b. Personnel and Staffing** - This section should identify all members on the organizational chart, and a summary paragraph of the project work to be performed by each proposed staff member. Biographic summaries that highlight the experience relevant to the specific project responsibilities should be provided for all proposed personnel. A biographic summary provided with a history of engineering licensure from the Texas Board of Professional Engineers and Land Surveyors for each proposed staff member (limited to one (1) page per team member), or any other licenses and certifications required by the State of Texas, and a one (1) page of a general list of projects with brief project summaries that respective proposed staff member was a part of within the last 12 consecutive months, and identify their role in each project.

This section should also outline the firm's contingency plan for servicing the project in the event that one or more key personnel are not available for any reason during the period of performance.

**c. Proof of Licenses and Certifications** - This section will contain copies of any and all current state certifications and licenses with applicable seals, and any other applicable licenses and certifications as required by the State of Texas.



**FIRM'S EXPERIENCE AND QUALIFICATIONS: (Maximum to 3 pages)**

**a. Competency** - This section should demonstrate the firm's competency and experience in, but not limited to the following areas: Construction Management, Material Testing, Inspection, and Federal, State, and County-funded construction projects located within Hidalgo County, or in this general region of the state.

**b. Experience and Recent Projects** - This section should include a description of the firm's most recent and varied projects (other local government projects preferred), and identify the personnel that were key in each project. Identify key challenges, and the firm's solution to overcome such challenges. For each project, a client contact name and phone number should be included for reference purposes. A list of ongoing projects similar in scope under TxDOT procurement basis shall be included.

**c. References** – This section should list four (4) references, other than past or present employees of Hidalgo County, who can verify your performance as a Firm within the past 24 months. Performance includes, but is not limited to, sales and/or services, delivery, invoicing, and other items as may be required for Hidalgo County to determine Firm's ability to provide the intended goods and/or service of this procurement packet. Hidalgo County prefers references to be from Government customers. The name, address and phone number of the person(s) listed should be the one most closely associated with your company's performance on that specific project. References must be able to verify the quality of service Firm's company provide and that the Firm has completed a project of similar size and scope of work in this solicitation. Inaccurate, obsolete or negative responses from the listed references could result in rejection of your response. Failure to supply the required references may deem your response as non-responsive and will not be considered for award.

Firm's involvement with reference checks is not permitted. Only Hidalgo County Purchasing Department or authorized designees will conduct reference checks. Any deviation to this may result in rejection of your response. You may use your own format, or use the Reference Form included as **Attachment "K – Reference Form"**.

**PARTICIPATING FIRMS ARE NOT TO PROVIDE A FEE PROPOSAL WITH THIS SUBMITTAL:** The fee will be negotiated in accordance with the Professional Services Procurement Act, Tex. Govt. Code Ann. 2254.001, et seq.



## **CERTIFICATIONS & FEDERAL CLAUSES**

### **FEDERALLY ASSISTED CONSTRUCTION, ALTERATION OR REPAIR CONTRACT**

**\*\* NOTE: THIS SECTION MUST BE COMPLETED AND RETURNED WITH THE OFFER \*\***

#### **Disadvantaged Business Enterprise (DBE) Goals**

The offeror represents as part of its offer that it (Mark one with an "X"):

is

is not

a disadvantaged business enterprise (DBE). A DBE is defined as "a for-profit small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it." For purposes of this definition, socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Native Americans, women; and any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

It is the policy of the Authority and the Department of Transportation (DOT) to ensure that Disadvantaged Business Enterprises (DBEs), as pursuant to 49 Code of Federal Regulations (CFR) Part 26, are provided a level playing field, thus fostering an equal opportunity for them to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 apply to this solicitation. In this regard, all offerors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have a level playing field and an opportunity to compete for and perform contracts. The County and all offerors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts or subcontracts.

In accordance with TxDOT's DBE Policy, the County has established a goal for DBE participation in this solicitation. The offeror will be expected to meet or exceed, and/or demonstrate its good faith efforts to meet the goal. This goal, expressed as a percentage of the total contract price, including any increases that may occur, is:

8

% DBE Participation

Note: N/A denotes not applicable to this procurement

Offerors should undertake necessary steps to plan and adequately provide for compliance with the stated DBE utilization goal well in advance of the date specified for receipt of qualifications.

Offerors are advised that the issue of whether or not the offeror has met or exceeded the established goal, or demonstrated sufficient good faith efforts, is considered by the County and TxDOT a matter of the offeror's responsibility. County will only award contracts to offerors determined to be responsible.



**\* CHILD SUPPORT FORM \***

**\*\* NOTE: THIS SECTION MUST BE COMPLETED AND RETURNED WITH THE OFFER \*\***  
**State of Texas Child Support Business Ownership Form**

**COUNTY:** \_\_\_\_\_ **PROJECT NUMBER:** \_\_\_\_\_

**Project Name:** “Professional Engineering Services for Construction Management, Material Testing, and Inspection for the Liberty Blvd. Project (US 83 to Mile 3 Rd.) in Hidalgo County Precinct No. 3”

**Business Entity Submitting Qualifications:** \_\_\_\_\_

Section 231.006, Family Code, requires a bid for a contract paid from state funds to include the name and social security number of individuals owning 25% or more of the business entity submitting the bid.

- 1. In the spaces below please provide the name and social security number of individuals owning 25% or more of the business.

Name	Social Security Number
_____	_____
_____	_____
_____	_____

- 2. Please check the box below if not individual owns 25% or more of the business. ( )

No individual own 25% or more of the business.

Except as provided by Section 231.302(d), Family Code, a social security number is confidential and may be disclosed only for the purpose of responding to a request for information from an agency operating under the provisions of Part A and D to Title IV of the Federal Social Security Act (42 USC Section 601-617 and 651-699).

Under Section 231.006, Family Code, the firm or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

The information collected on this form will be maintained by Hidalgo County with few exceptions, you are entitled on request to be informed about the information collected about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under Section 559.004 of the Government Code, you are also entitled to have information about you corrected that you believe is incorrect.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

**APPENDIX C**  
**Insurance Requirements**  
**Professional Services**  
**(i.e...Engineers, Architects, Appraisers & Surveyors)**

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

1. Professional liability insurance policy with limits of at least One Million Dollars (\$1,000,000) per occurrence, or limited to claims made, include at least a five (5) year extended reporting period.
2. A Five Hundred Thousand Dollars (\$500,000.00) Comprehensive General Liability insurance policy providing additional coverage to all underlying liabilities of County.
3. Automobile liability insurance policy with limits of at least Three Hundred Thousand Dollars (\$300,000.00) per person and Five Hundred Thousand Dollars (\$500,000.00) per occurrence. Coverage should include injury to or death of persons and property damage claims with limits up to Five Hundred Thousand Dollars (\$500,000.00) arising out of the services provided to County hereunder.
4. Uninsured/Underinsured motorist coverage in an amount equal to the bodily injury limits set forth immediately above;
5. Workers compensation insurance in amounts established by Texas law, unless the Bidder is specifically exempted from the Texas Workers Compensation Act, Texas Labor Code Chapter 401, et. seq.

*Bidder shall obtain and maintain any and all other insurances which may be necessary in providing the good/service applicable to this procurement or are otherwise required by law. Any and all insurance policies shall be in amounts prescribed by law or otherwise specified by the County, but in no event less than the minimum amounts prescribed by law.*

**Additional Insurance Requirements:**

- a. Bidder shall furnish to County certificate(s) of insurance, and all renewals throughout the duration of the Project, issued by the insurer that such insurance is in full force and effect.
- b. Certificates of insurance shall be submitted to County for approval prior to any services being performed by Bidder.
- c. **Hidalgo County will only accept certificates of insurance on an Acord form (as attached hereto).**
- d. For each policy, except Workers' Compensation, Bidder shall name the County as an additional insured.
- e. Each policy of insurance required hereunder shall extend for a period equivalent to, or longer than the term of the Contract, and any insurer hereunder shall be required to give at least thirty

(30) days written notice to the County prior to the cancellation of any such coverage on the termination date, or otherwise.

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



# CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

**FORM CIQ**

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

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

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

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

**OFFICE USE ONLY**

Date Received

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

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

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

\_\_\_\_\_ Name of Officer

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

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

Yes       No

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

Yes       No

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

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

**7**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

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

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

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

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

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

\*\*\*

(2) the vendor:

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

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

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

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

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

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

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

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

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

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**HISTORICALLY UNDERUTILIZED BUSINESS (HUB) DECLARATION**

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

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

If yes, by whom?:  Texas Building & Procurement Commission  Other \_\_\_\_\_

Indicate Certification No(s): \_\_\_\_\_ or Are Certificate(s) Attached?:  Yes  No

---

**LIST OF CERTIFIED HUB SUBCONTRACTORS**

(Attach additional pages if necessary)

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

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

---

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

---

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

---

**Certification  
Regarding Debarment, Suspension and Ineligibility**

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

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

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Date: \_\_\_\_\_

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

**APPENDIX A**  
**THE TITLE VI CONTRACTOR ASSURANCES**

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

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

**APPENDIX B**  
**CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

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

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

(HABENDUM CLAUSE)

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

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

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

## APPENDIX C

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

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

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

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

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

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

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

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

## APPENDIX E

### TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

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

#### **Pertinent Nondiscrimination Authorities**

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

**APPENDIX “H”**

**(IF APPLICABLE)**

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

**&**

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

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

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

As a non-Federal entity, the County of Hidalgo’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 Hidalgo 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 Hidalgo, 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 effected 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 Hidalgo'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 Hidalgo 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 Hidalgo shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

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

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

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

- b. **Standard.** If the FEMA or Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA or applicable awarding agency. See 2 C.F.R. Part 200, Appendix II, ¶ F.
- c. **Key Definition:** The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

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

- a. **Applicability and Standard:** Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.
- b. **Statement:** Included in contracts as provided in section “7a” above.
  - (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
  - (2) The contractor agrees to report each violation to the Federal awarding agency (e.g. Federal Emergency Management Agency-FEMA) and the Regional Office of the Environmental Protection Agency. Contractor understands and agrees that each violation reported to the County of Hidalgo will, in turn, be reported as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office.
  - (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the applicable Federal awarding agency (e.g. FEMA).

## 8. **Debarment and Suspension.**

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

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

Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530; Chapter IV, ¶ 6.d and Appendix C, ¶ 2.

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

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

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

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

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

This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of entity serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

## 9. Byrd Anti-Lobbying Amendment.

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

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

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

**(IF APPLICABLE, PLEASE FILL IN BLANKS AND SIGN)**

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

**Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”**

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

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

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

**The undersigned Contractor, \_\_\_\_\_ certifies, to the best of his or her knowledge, that:**

**1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.**

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

**3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.**

**This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying**

**Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.**

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

\_\_\_\_\_  
**Signature of Contractor’s Authorized Official**

\_\_\_\_\_  
**Name and Title of Contractor’s Authorized Official**

\_\_\_\_\_  
**Date”**

**10. Procurement of Recovered Materials.**

- a. Applicability: This requirement applies to all Federal grant and cooperative agreement programs.
- b. Standard. A non-Federal entity that is a **state agency or agency of a political subdivision** of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.323; *PDAT Supplement*, Chapter V, ¶ 7.

The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA’s \_\_\_\_\_ Comprehensive \_\_\_\_\_ Procurement \_\_\_\_\_ Guidelines \_\_\_\_\_ web \_\_\_\_\_ site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

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

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

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

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

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
- ii. For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- iii. Telecommunications or video surveillance services provided by such entities or using such equipment; or
- iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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

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

#### PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

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

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
  - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
  - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
  - (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- (c) Exceptions.
- (1) This clause does not prohibit contractors from providing—
    - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
    - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
  - (2) By necessary implication and regulation, the prohibitions also do not apply to:
    - a. Covered telecommunications equipment or services that:
      - i. Are not used as a substantial or essential component of any system; and
      - ii. Are not used as critical technology of any system.
    - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- (d) Reporting requirement.
- (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
  - (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
    - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- (e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

**12. Domestic Preferences for Procurements**

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

**“Domestic Preference for Procurements**

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

For purposes of this clause:

- *Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- *Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”

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

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

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

**1. Changes.**

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

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

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

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

2. **Access to Records.**

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

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

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

(1) The contractor agrees to provide the County of Hidalgo, the FEMA or applicable Federal Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

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

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

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

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

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

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

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

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

“This is an acknowledgement that Federal financial assistance will be used to fund the contract only. The contractor will comply 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 Hidalgo 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: \_\_\_\_\_

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

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

**ATTACHMENTS**

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

**I. GENERAL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **6. Training and Promotion:**

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

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

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

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

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

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

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

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

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

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

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment 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, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

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

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

#### **10. Assurances Required:**

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

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

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

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

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

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

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

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

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

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

### III. NONSEGREGATED FACILITIES

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

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

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

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

#### 1. Minimum wages (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

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

## 2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

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

## 3. Payrolls and basic records (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

#### 4. Apprentices and trainees (29 CFR 5.5)

##### a. Apprentices (programs of the USDOL).

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

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

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

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

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

##### b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **10. Certification of eligibility (29 CFR 5.5)**

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

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

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

#### **V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

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

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

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

### **3. Withholding for unpaid wages and liquidated damages.**

The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

## **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

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

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

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

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

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

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

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

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

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

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

## **VII. SAFETY: ACCIDENT PREVENTION**

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

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

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

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

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

### **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

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

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

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

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

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

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

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

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

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

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

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

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

#### **1. Instructions for Certification – First Tier Participants:**

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

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

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

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

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

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

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

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

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

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

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

\*\*\*\*\*

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

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

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

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

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

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

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

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

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

## **3. Instructions for Certification - Lower Tier Participants:**

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

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

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

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

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

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

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

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

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

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

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

\*\*\*\*\*

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

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

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

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

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

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

\*\*\*\*\*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

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

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

## **XII. USE OF UNITED STATES-FLAG VESSELS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**APPENDIX J  
PROPOSER'S AFFIDAVIT**

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

STATE OF TEXAS  
COUNTY OF HIDALGO

Affiant, \_\_\_\_\_, being first duly sworn, deposes that:

(1) Affiant does hereby state neither the proposer nor any of the proposer's officers, partners, owners, agents, representatives, employees, or parties in interest, has in any way colluded, conspired, agreed, directly or indirectly with any person, firm, corporation, or another proposer, or potential proposer, to provide any money or other valuable consideration for assistance in procuring or attempting to procure a contract or fix the prices in the attached proposed or the proposal of any other proposer, and further states that no such money or another reward will be hereinafter paid.

(2) Affiant further states they have neither recommended nor suggested to Hidalgo County or any of its officials or employees, any of the terms or provisions set forth in their Request for Proposal and subsequent agreement, except at a meeting open to all interested proposers, of which proper notice was given.

(3) Affiant, further states their officers, employees, or agents have not, and will not attempt to lobby, directly or indirectly, the Hidalgo County Commissioner's Court between proposal submission date and award by the Hidalgo County Commissioner's Court.

(4) Affiant further states no officer, or stockholder of the proposer is a member of the staff, or related to any employee of Hidalgo County except as noted herein below:

Signature/Title: \_\_\_\_\_

---

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_, 20\_\_\_\_\_

## REFERENCE FORM

Respondent's involvement with reference checks is not permitted. Only Hidalgo County Purchasing Department or authorized designees will conduct reference checks. Any deviation to this may result in rejection of your response.

### Reference One

Client's Name: \_\_\_\_\_

Type of Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

### Project Information

Name of Project: \_\_\_\_\_

Scope of Work: \_\_\_\_\_

Contract Period: From \_\_\_\_\_ to \_\_\_\_\_

Cost: Projected \$: \_\_\_\_\_ Actual \$: \_\_\_\_\_

Timeframe (Include Unit Measure) Projected \_\_\_\_\_ Actual \_\_\_\_\_

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

### Reference Two

Client's Name: \_\_\_\_\_

Type of Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

### Project Information

Name of Project: \_\_\_\_\_

Scope of Work: \_\_\_\_\_

Contract Period: From \_\_\_\_\_ to \_\_\_\_\_

Cost: Projected \$: \_\_\_\_\_ Actual \$: \_\_\_\_\_

Timeframe (Include Unit Measure) Projected \_\_\_\_\_ Actual \_\_\_\_\_

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

### Reference Three

Client's Name: \_\_\_\_\_

Type of Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

#### Project Information

Name of Project: \_\_\_\_\_

Scope of Work: \_\_\_\_\_

Contract Period: From \_\_\_\_\_ to \_\_\_\_\_

Cost: Projected \$: \_\_\_\_\_ Actual \$: \_\_\_\_\_

Timeframe (Include Unit Measure) Projected \_\_\_\_\_ Actual \_\_\_\_\_

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

### Reference Four

Client's Name: \_\_\_\_\_

Type of Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

#### Project Information

Name of Project: \_\_\_\_\_

Scope of Work: \_\_\_\_\_

Contract Period: From \_\_\_\_\_ to \_\_\_\_\_

Cost: Projected \$: \_\_\_\_\_ Actual \$: \_\_\_\_\_

Timeframe (Include Unit Measure) Projected \_\_\_\_\_ Actual \_\_\_\_\_

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



**HIDALGO COUNTY  
PROCUREMENT PACKET**

**REQUEST FOR PROPOSAL**

**RFP No.: 24-0065-06-05-10**

**PROFESSIONAL ENGINEERING SERVICES FOR  
CONSTRUCTION MANAGEMENT, MATERIAL  
TESTING, AND INSPECTION FOR THE LIBERTY  
BLVD. PROJECT (US 83 TO MILE 3 RD.)**

**Acceptance Due Date: June 26, 2024 at 3:00 pm**

Ignacio Amezcua MBA, CTCM, CTCD  
Hidalgo County Purchasing Director

**Project Contact Information:**

**Victor Borrego, CTCD**, Contract Specialist III  
(956) 318-2629 Ext: 4877  
victor.borrego@co.hidalgo.tx.us

Hidalgo County  
REQUEST FOR PROPOSAL  
Professional Engineering Services for Construction Management,  
Material Testing, and Inspection for the Liberty Blvd. Project (US 83 to  
Mile 3 Rd.)

**TABLE OF CONTENTS**

I. INVITATION LETTER.....

II. SUBMISSION DETAILS .....

III. PROCUREMENT OVERVIEW .....

IV. EVALUATION CRITERIA.....

V. ELECTRONIC SUBMISSION DOCUMENTS.....

Attachments:

- A - Request for Proposals - Scope of Services
- B - Vicinity Map
- C - Contract Agreement - Draft

# 1. INVITATION LETTER

## 1.1. Summary

RELEASE DATE: Monday, June 3, 2024

### **RE: HIDALGO COUNTY - REQUEST FOR PROPOSALS**

**RFP NO.:24-0065-06-05-10** –Professional Engineering Services for Construction Management, Material Testing, and Inspection for the Liberty Blvd. Project (US 83 to Mile 3 Rd.)

Dear Prospect Offeror:

Hidalgo County Purchasing Department welcomes and appreciates your interest and participation. For your review and consideration, enclosed find the procurement packet for the aforementioned project. Modifications and new requirements have been added and implemented. Please ensure to carefully read and review all instructions, requirements and specifications. All times referenced in this procurement packet are Central Standard Time – CST.

If assistance is required, please do not hesitate to call the Purchasing Department at (956) 318-2626.

Sincerely,

Ignacio Amezcua, MBA, CTCM, CTCD

Hidalgo County Purchasing Director

## 1.2. Contact Information

### **Project Contact:**

**Hector Garcia, CTCM**

Division Manager II - Construction

2802 S. Business Highway 281

Edinburg, TX 78539

Email: [hector.garcia1@co.hidalgo.tx.us](mailto:hector.garcia1@co.hidalgo.tx.us)

Phone:  [\(956\) 318-2626 Ext: 4857](tel:(956)318-2626)

### **Procurement Contact:**

**Victor Borrego, CTCD**

Contract Specialist III

2812 S. Bus Hwy 281

Edinburg, TX 78539

Email: [victor.borrego@co.hidalgo.tx.us](mailto:victor.borrego@co.hidalgo.tx.us)

Phone:  [\(956\) 318-2629 Ext: 4877](tel:(956)318-2629)

### **Department:**

Precinct No.3

## 1.3. Timeline

<b>Release Project Date</b>	June 3, 2024
-----------------------------	--------------

Request For Proposal #24-0065-06-05-10

Title: Professional Engineering Services for Construction Management, Material Testing, and Inspection for the Liberty Blvd. Project (US 83 to Mile 3 Rd.)

<b>Question Submission Deadline</b>	June 6, 2024, 5:00pm
<b>Question Response Deadline</b>	June 12, 2024, 5:00pm
<b>Proposal Submission Deadline</b>	June 26, 2024, 3:00pm

## 2. SUBMISSION DETAILS

### 2.1. SUBMISSION OPTIONS & REQUIREMENTS

Respondents have two (2) options for submitting a response. Respondents shall submit their response using one (1) of the following methods (**DO NOT** duplicate submittals by submitting both an electronic and hard copy response. Respondents shall select only one (1) method to respond):

- A. Submit responses electronically via the PORTAL: <https://procurement.opengov.com/portal/co-hidalgo-tx> on or before Wednesday, June 26, 2024, at 3:00 pm. **OR;**
- B. Submit one (1) hard copy and two (2) USBs in original PDF format via personal hand-delivery or delivery service on or Wednesday, June 26, 2024, at 3:00 pm.

Any Proposal received after this deadline will not be accepted and will be returned unopened to the sender. No cost proposals/fees will be accepted.

### 2.2. HAND DELIVERED SUBMISSION

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

#### **DELIVER TO:**

##### US Postal Mail Address:

- Ignacio Amezcua, MBA, CTCM, CTCD, Purchasing Director
- ATTN: Victor Borrego, CTCD, Contract Specialist III
- Hidalgo County Purchasing Department
- Administration Building
- 2812 S. Business Hwy 281
- Edinburg, Texas 78539

##### Physical Address:

- Ignacio Amezcua, MBA, CTCM, CTCD, Purchasing Director
- ATTN: Victor Borrego, CTCD, Contract Specialist III
- Hidalgo County Purchasing Department
- Administration Building
- 2802 S. Business Hwy. 281
- Edinburg, Texas 78539

#### **FIRM INSTRUCTIONS**

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

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

### 2.3. ELECTRONIC SUBMISSION

Hidalgo County Purchasing Department will only accept electronic responses that are submitted via the PORTAL: <https://procurement.opengov.com/portal/co-hidalgo-tx>. The COUNTY will NOT accept telegraphic, emailed, nor responses submitted via facsimile.

\*When submitting a response electronically, the firm will be required to complete all the sections found in this solicitation in order for the submission to be valid.

### **3. PROCUREMENT OVERVIEW**

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

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

#### **3.1. INTRODUCTION**

Hidalgo County (hereinafter referred to as "COUNTY") is seeking qualified respondents interested in providing services for the "Professional Engineering Services for Construction Management, Material Testing, and Inspection for the Liberty Blvd. Project (US 83 to Mile 3 Rd.)". The response should address all requirements.

#### **3.2. Pre-Proposal Meeting**

If there will be a Pre-Proposal meeting the information will be included in Section 1 – Invitation Letter/Timeline.

#### **3.3. AWARD**

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

(a) Before awarding any contract, Hidalgo County Purchasing Department will verify, using the Federal System for Award Management (SAM) and the Texas Comptroller's Debarred Vendor List, that the offeror recommended for contract award has no unsatisfactory performance history that would prohibit awarding them a contract.

(b) The contract will be awarded to that responsible offeror(s) whose offer, conforming to the solicitation, will be most advantageous to the county, price and other factors considered. A responsible offeror is one who affirmatively demonstrates to the County that the offeror has adequate financial resources and the requisite capacity, capability, and facilities to perform the contract within the delivery period or period of performance, has a satisfactory record of performance on other comparable projects, has a satisfactory record of integrity and business ethics, and is otherwise qualified and eligible to receive award under the solicitation and laws or regulations applicable to this procurement.

(c) The County reserves the right to accept other than the lowest offer, reject any or all offers in part or in total for any reason, to accept any offer if considered best for its interest, and to waive informalities and minor irregularities in offers received.

(d) The County may accept any item or group of items of any offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in Pricing Schedule, offers may not be submitted for any quantities less than those specified, and the County reserves the right to make an award on any item for a unit quantity less than the quantity offered at the unit prices offered unless the offeror specifies otherwise in the offer.

(e) The County's execution of the Contract shall be deemed to result in a binding contract without further action by the offeror.

(f) The County may, within the time specified therein, accept any offer or part thereof, as provided in (c) above, whether or not there are negotiations subsequent to its receipt, unless the offer is withdrawn by written notice received by the County prior to award.

(g) The County may award a contract, based on initial offers received, without discussion of such offers. Accordingly, each initial offer should be submitted on the most favorable terms from a price and technical standpoint, which the offeror can submit to the County.

### 3.4. TERM

It is intended that the initial contract term will be for NO VALUE NO VALUE commencing on the date approved by Commissioners Court

### 3.5. SUBMISSION OPTIONS & REQUIREMENTS

Respondents have two (2) options for submitting a response and shall select only one (1) method to respond. Please see Section 2 – Submission Details above for submission options, procedures, and requirements. Any Proposal received after the provided deadline will not be accepted and will be returned unopened to the sender.

### 3.6. PROPOSAL OPENING STREAMING

Please find the proposal opening information included in Section 1 – Invitation Letter

### 3.7. HAND DELIVERED SUBMISSION

If Respondent chooses to hand deliver its submission, whether personally or via delivery service, it must follow the procedures and requirements set for in Section 2 – Submission Details above.

### 3.8. ELECTRONIC SUBMISSION

If Respondent chooses to submit its response electronically, it must follow the procedures and requirements set for in Section 2 – Submission Details above.

### 3.9. SIGNING OF SUBMISSION

In order to be considered, all submittals **must** be signed by an authorized representative of the firm. **For hardcopy submissions, please sign the original in blue ink and ensure the copy is clearly labeled. For electronic submissions, please ensure all appropriate certifications are marked.**

### 3.10. QUESTIONS AND ANSWERS

Questions must be submitted via the PORTAL'S Question and Answer Tab (Q&A) no later than Thursday, June 6, 2024, at 5:00 pm. Responses to properly submitted questions will be published in the PORTAL and emailed to all planholders who are listed as a Follower in the PORTAL. Telephone inquiries will not be accepted.

### 3.11. RESTRICTIVE OR AMBIGUOUS REQUIREMENTS

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

### 3.12. COST OF SUBMISSION

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

### 3.13. WAIVING OF INFORMALITIES

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

### 3.14. NOTICE OF COMMUNICATION

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

## 4. EVALUATION CRITERIA

No.	Evaluation Criteria	Scoring Method	Weight (Points)
1.	<b>Technical Approach</b> Project understanding, project plan, innovative concepts or alternatives, quality control procedures, staffing	0-100 Points	40 <i>(40% of Total)</i>
2.	<b>Project Manager's relevant experience</b> Similar or related projects, project management	0-100 Points	30 <i>(30% of Total)</i>
3.	<b>Key Staff's relevant experience</b> Similar projects	0-100 Points	30 <i>(30% of Total)</i>

## 5. ELECTRONIC SUBMISSION DOCUMENTS

- Firms must complete the following sections.
- If the submission is electronic, please proceed with completing all sections. Required documentation will need to be downloaded, completed, and uploaded.
- If the submission is a hard copy, please print the entire packet and complete all sections manually. Required documentation will need to be printed, completed, and included as part of the submission.
- **Failure to submit a complete response may result in the rejection of the response as non-conforming.**

### 5.1. I confirm, that as part of my submission for this project the following identified documents will remain valid and in effect, as previously submitted in the Request for Qualifications.\*

- Legal Notice Declaration
- Insurance Requirements
  - Proof of Insurance
  - Insurance Requirements Acknowledgment
  - Project Requirements Acknowledgment
- Conflict of Interest Questionnaire
- Vendor Acknowledgment and HUB Declaration
- Certification Regarding Debarment
  - Signed Certification
  - SAM.Gov Registration Acknowledgment
  - Form 1295
- Title VI Appendices [A-E]
- Required Contract Clauses for Contracts Under Federal Award
  - Byrd Anti-Lobbying Contract Clause
  - 2 CFR 200 Certification
- FHWA 1273
- Proposer's Affidavit
- References

- Addendum No.1
- Company/Firm Response

Please confirm

\*Response required

### 5.2. I confirm, that I will be submitting my response electronically.\*

Please confirm and proceed with the electronic submission requirements.

Please confirm

\*Response required

### 5.3. DRAFT AGREEMENT\*

Refer to "Draft Agreement" in the #ATTACHMENTS section. Confirm that you read, understood, and agree with "Draft Agreement."

Please confirm

\*Response required

### 5.4. COMPANY/FIRM RESPONSE\*

To complete your electronic response, you must upload your documentation in this section. The Request for Proposals - Scope of Services and the Vicinity Map can be found in the "Attachments" section under "Request for Proposals - Scope of Services and Vicinity Map". Please download the packet and review it thoroughly before submitting your response.

\*Response required

**Original Posting Date: July 02, 2024**  
**Posting Period: 14 Days**

# **HIDALGO COUNTY**

## **REQUEST FOR PROPOSALS**

**“Professional Engineering Services for Construction Management, Material Testing, and Inspection for the Liberty Blvd. Project (US 83 to Mile 3 Rd.)”**

**RFP NO: 24-0065-07-17-10**

Hidalgo County (“County”), is requesting sealed proposals and intends to enter into a contract with a prime provider for **Professional Engineering Services for Construction Management, Material Testing, and Inspection** for the **Liberty Blvd. Project (US 83 to Mile 3 Rd.)**. Work includes but is not limited to the following: **Construction management, inspection and material testing services on a project involving reconstruction and widening of a non-freeway facility to a four lane roadway consisting of grading, lime treated subgrade, flexible base, culvert structures, asphaltic concrete pavement, curb and gutter, storm sewer, signing, delineation, traffic signals, and pavement markings.**

This request for proposals is your notice that Hidalgo County has selected your firm to submit a proposal. This selection was based on your Statement of Qualifications (“SOQ”) evaluation score assigned by the Evaluation Committee. Each short-listed firm is required to submit a proposal.

In accordance with 23 CFR 172.5 (c), it is the intention of Hidalgo County to comply with and utilize the procurement requirements as referenced in the Hidalgo County Procedures for Selecting and Contracting with Professional Service Providers for Federal Road Projects (“Procedures”) as approved by Hidalgo County Commissioner’s Court and the Texas Department of Transportation (TxDOT). (See Exhibit “A”, incorporated herein for all purposes). Should there be any conflict between the provisions of this Request for Proposals and the Procedures, the Procedures shall control.

**RFP DOCUMENT SUBMITTALS/DELIVERY:**

Respondents have two (2) options for submitting a response. Respondents shall submit their response using one (1) of the following methods (DO NOT duplicate submittals by submitting both an electronic and hard copy response. Respondents shall select one only (1) method to respond):

- A. Submit responses electronically via the PORTAL: <https://procurement.opengov.com/portal/co-hidalgo-tx> on or before Wednesday, July 17, 2024, at 3:00 pm. OR;
- B. Submit one (1) hard copy and two (2) USBs in original PDF format via personal hand-delivery or delivery service on or before Wednesday, July 17 2024, at 3:00 pm.

Respondents must complete and include in their response, all documentation requested in this RFP.

**When hand delivering the Proposal, Hidalgo County is requesting that request for proposal responses be sealed, clearly marked and/or labeled with the Company’s name, RFP Number, Project Title, and Opening Date, be delivered to Ignacio Amezcua, MBA, CTCM, CTCD, Purchasing Director, at:**

**US Postal Mail Address:**

Ignacio Amezcua, MBA, CTCM, CTCD, Purchasing Director  
Attn: Victor Borrego, CTCD, Contract Specialist III  
Hidalgo County Purchasing Department  
Administration Building  
2812 S. Business Hwy 281  
Edinburg, Texas 78539

**Physical Address:**

Ignacio Amezcua, MBA, CTCM, CTCD, Purchasing Director  
Attn: Victor Borrego, CTCD, Contract Specialist III  
Hidalgo County Purchasing Department  
Administration Building  
2802 S. Business Hwy. 281  
Edinburg, Texas 78539

Hidalgo County requires respondents when hand delivering a proposal, to have a Purchasing Department representative time/date stamp and initial the envelope when delivering the proposal for submittal.

All costs and expenses associated with the preparation and submission of SOQ's, bids, proposals, and/or quotes shall be the responsibility of the respondent and no reimbursement for such charges or expenses shall be passed onto Hidalgo County.

### **Contract Information**

Upon approval and acceptance by Hidalgo County Commissioner's Court, the project specific contract resulting from this solicitation will be a negotiated lump sum fee at the hourly labor rates and non-labor rates specified in the contract negotiation.

The contract is expected to commence on August 6, 2024 (subject to TxDOT and Legal Approval) and expected to expire on July 7, 2025 unless extended by written supplemental agreement.

### **Work Authorizations**

Work will be identified and outlined in the form of individual work authorizations which will include a description of the work to be performed, a description of the tasks and milestones, a work schedule, and an estimated cost proposal.

**IF THE MATERIAL IS NOT PRESENTED IN A READABLE OR UNDERSTANDABLE FORMAT, IT WILL NOT BE SCORED.**

**RFP Questions and Answers:** Questions must be submitted via the PORTAL'S Question and Answer Tab (Q&A) no later than Thursday, July 9, 2024, at 5:00 pm. Responses to properly submitted questions will be published in the PORTAL and emailed to all planholders who are listed as a Follower in the PORTAL. **Telephone inquiries will not be accepted.**

### **Request for Proposals:**

The required contents and limitations for the preparation of the Proposal are described in this section. Failure to provide all of the requested information, will result in the Proposal being considered non-responsive. **Any concealed cost proposals submitted with the RFP will not be opened.**

Contents:

The required contents for the Proposal are presented below in the order they should be incorporated into the submittal package.

### **Proposal Topics**

1. Provide the number of staff members available in order to render (but not limited to) all the services need for this project.
2. Describe your approach, as the Project Manager of the Professional Engineering Services for Inspection, Material Testing, and Construction Management Team, in determining your work plan and staffing needs for the Liberty Blvd Road Project.
3. Describe your team's key staff members and their roles and responsibilities for this specific deliverable project.
4. Elaborate on your past project experience, describing any lessons learned that could be applied to the Liberty Blvd Road Project to bring value to the project.
5. Describe a recent similar project that your team has managed. Discuss significant issues that either did, or could have, increased cost, caused delay impacts to the contractor. Elaborate on how you worked through these issues with the client and the contractor or how you will handle these issues if they were to occur on this project.

6. Describe the procedure your team utilizes for handling design and construction issues, answering requests for information (RFI's), and addressing change orders.
7. Provide two examples from similar projects that demonstrate your approach to proactively resolving issues.
8. Provide a detailed testing plan and how you will address deficiencies.
9. The organization of project records, both digital and hard copy, along with at-will access to these files is important to the County in order to perform milestone reviews, audits, project closeout, and inquiries throughout the record retention timeline. Considering this, please describe your proposal for managing construction record keeping and communication with the County's staff.

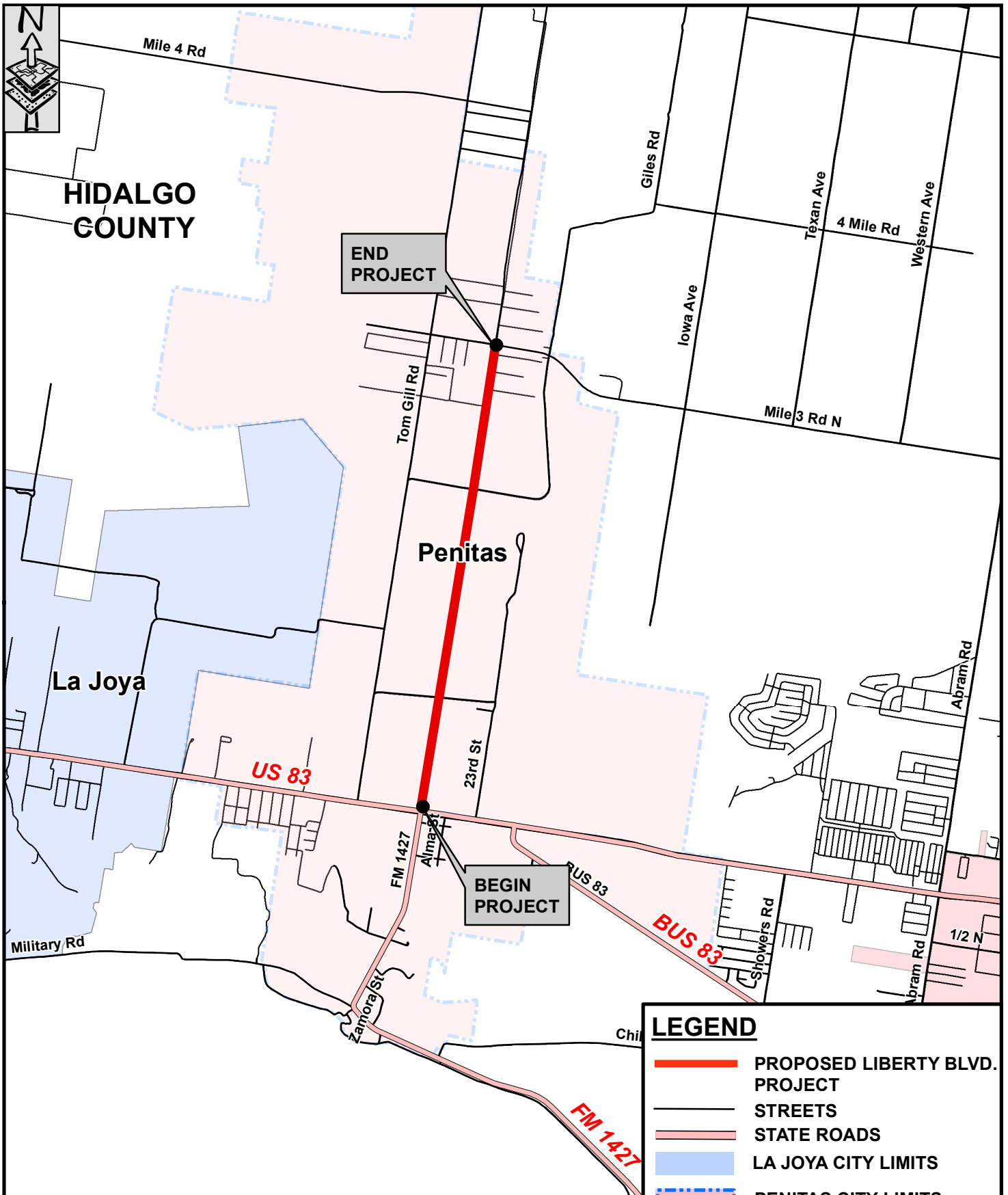
**Proposal Evaluation Criteria:**

The Evaluation Committee will independently score submitted proposals based on the criteria and relative importance factors (weightings) provided below. The proposal scores will be used to determine the highest ranked submittal which is the basis for contract award.

Evaluation Criteria	Proposal should include:	Weighting for Evaluation of Proposal
Technical Approach	Project understanding, <b>project management plan</b> , innovative concepts or alternatives, quality control procedures, staffing	40%
Project Manager's relevant experience	Similar or related projects, project management	30%
Key Staff's relevant experience	Similar projects	30%
Total		100%

**Award:**


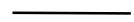



Participation in this process does not assure that a Respondent will be awarded a contract.



# LIBERTY BOULEVARD LOCATION MAP

FROM US 83 TO MILE 3  
APPROX. PROJECT LENGTH 2.4 MILES

## LEGEND

-  PROPOSED LIBERTY BLVD. PROJECT
-  STREETS
-  STATE ROADS
-  LA JOYA CITY LIMITS
-  PENITAS CITY LIMITS

3,500 1,750 0 3,500

Feet

1 inch = 3,500 feet

HIDALGO COUNTY  
PROCEDURES FOR SELECTING AND CONTRACTING WITH PROFESSIONAL SERVICE PROVIDERS  
FOR FEDERAL ROAD PROJECT

Hidalgo County has used 23 CFR 172 (Code of Federal Regulations) in conjunction with the Texas Administrative Code (TAC) in the preparation of these procurement procedures for professional services. 23 CFR 172.5(c) states that the contracting agency (LG) shall prepare and maintain written policies and procedures for the procurement, management, and administration of engineering and design related consultant services. These policies and procedures, including all revisions, must be reviewed and approved by TxDOT for compliance with applicable requirements.

In accordance with 23CFR 172.5(c), the following items must be included in the policies and procedures to ensure compliance with Federal and State laws and regulations:

**1. Preparing a scope of work and evaluation factors for the ranking/selection of a consultant;**

The County, with assistance provided by a licensed engineer on staff with the Hidalgo County Drainage District No. 1, will prepare a clear, accurate, and detailed scope of work and evaluation factors defined in the Request for Qualifications (RFQ) and 23 CFR 172.7.a.1.ii.C for qualification based selection procurement per 23 CFR 172, 172.7.a.1.ii.A. The scope of services will communicate exactly what the county wants to accomplish and the instructions for completing the work in an exact measurable manner by the identified deadlines. The scope will include;

- a. What work will be done;
- b. Who will do the work;
- c. When the work will be done;
- d. Where the work will be done; and
- e. How the work will be done.

The scope of services will be drafted specifically for the project intended and will be tailored to promote timely delivery of services, efficient management of the contract, resourceful use of funds, and a professional rapport with the respondent to foresee and avoid potential disputes.

**The RFQ/RFP, as well as any forms or referenced exhibits, will be submitted to TxDOT for approval prior to advertising. If additional scope of work is added or modified (not in the original RFQ), the County will verify and check for compliance with the procurement procedures under the Brooks Act (qualification based selection). The County will submit changes and/or modifications to TxDOT for approval and concurrence prior to revising the original scope per 23 CFR 172.9.e.**

**2. Soliciting interest, qualifications, or proposals from prospective consultants;**

Hidalgo County will place a notice seeking Statement of Qualifications from professional engineering firms in one newspaper for a minimum of two (2) consecutive weeks. The notice will also be posted on the County's website to allow a fair opportunity for in-state and out-of-state consultants to submit a packet on the project. Procurement procedure will be a multiphase process with the issuance of a request for statements or letters of interest

or qualifications (RFQ) whereby prospective respondents are ranked solely based on qualifications and the ability of the firm to perform the work in a competent and responsible manner. A request for proposal (RFP) is then issued to a minimum of three of the most highly qualified firms. The County shall then rank the firms based on demonstrated competence and qualifications in accordance with the established/advertised criteria in the RFP.

**Prior to distribution, the RFP packet will be submitted to TxDOT for approval and concurrence. If additional scope of work is added or modified (not in the original RFP), the County will verify and check for compliance with the procurement procedures under the Books Act (qualification based selection). The County will submit changes and/or modifications to TxDOT for approval and concurrence prior to revising the original scope.**

The notice period will be a minimum of 21 days and will include;

- a. County website with the location of the source where RFQ packet may be obtained;
- b. RFQ number;
- c. Type of contract;
- d. General description of the project and work to be done;
- e. The due date for providers to send qualifications; and
- f. Name, address, phone and fax numbers, and email address of the contact person.

The assigned buyer for the Purchasing Department will be the single point of contact throughout the procurement process. Once the process is complete, and a contract is secured, approved, executed, and available for reference and viewing, the designated RPIC (Responsible Person in Charge) will be the point of contact through the completion and closeout of the project.

**Approval and concurrence by TxDOT is required prior to the finalization of the contract.**

3. **Preventing, identifying and mitigating conflicts of interest for employees of both the contracting agency and consultants and promptly disclosing in writing any potential conflict to the STA and FHWA, as specified in 2 CFR 200.112 and 23 CFR 1.33, and the provisions of 23 CFR 172.7.b.4;**

As per Texas Local Government Code, consultants will be required to disclose in the "Conflict of Interest Questionnaire (CIQ), attached as an exhibit included in the RFQ, items that might cause a conflict of interest with the County. The County will disclose in writing any potential conflict of interest to TxDOT in accordance with 2 CFR 200.112. All communications by the respondent to the County, its officials, and department heads regarding the procurement shall be done through the Hidalgo County Purchasing Department in coordination with the designated Responsible Person in Charge (RPIC). It is the policy of Hidalgo County to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the County to perform procurement services. Commission and County employees will conduct themselves in such a manner as to foster public confidence in the integrity of the County in order to guard against any misappropriation of assets and to ensure fairness and transparency and to protect against fraud, waste, and abuse of taxpayer resources.

- 23 CFR 1.33 rules specifically prohibit all proposers, developers, consultants, and sub-consultants as well as their affiliates from offering, giving, or agreeing to give a “gift or benefit” to a member of the Commission, elected official, former elected official or to any County employee or former County employee who has any involvement in the procurement or the administration of the project.

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

- County employees who participate in the procurement, management, or administration of Federal Aid Highway Program (FAHP) funded contracts or subcontracts shall not have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract, or any financial or other personal interest in any real property acquired for the project, as specified in 23 CFR 1.33. It shall be a breach of ethics to attempt to realize personal gain through public employment with Hidalgo County by any conduct inconsistent with the proper discharge of the employee’s duties.

- No official or employee of the County who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract as specified in 23 CFR 1.33.

- No engineer, attorney, appraiser, inspector or other person performing services for the County in connection with a project shall have, directly or indirectly, a financial or other personal interest other than his employment or retention by the County in any contract or subcontract in connection with such project as specified in 23 CFR 1.33.

- To mitigate the potential conflict of interest for County employees, employees who participate in the procurement, management, or administration of FAHP funded contracts or subcontracts will execute a purchasing inner-office No Conflict Disclosure Form that will be made a part of the permanent procurement file.

- In accordance with 2 CFR 200.319a, and to mitigate potential conflict of interest, ensure objective contractor performance, and eliminate unfair competitive advantage, engineers, engineering firms, and/or a subsidiary, affiliate, or a consultant of engineer or engineering firm who has received compensation from the County, that assist in the development of, or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals, will be excluded from competing for such procurements (i.e....subsequent construction engineering/management and/or inspection/testing) for all other phases of the project.

•To comply with Texas Government Code Section §2252.908 and the rules issued by the Texas Ethics Commission found in Title 1, Section 46.1, 46.3 and 46.5 of the Texas Administrative Code, the awarded firm(s) must complete and file Form HB1295 – Certificate of Interested Parties with the Texas Ethics Committee. The County cannot enter into a contract until the Form HB1295 has been executed and filed with the Texas Ethics Commission.

*A participant who becomes aware of facts that require the conflict of interest (CIQ) form to be filed must do so with the Hidalgo County Clerk's Office within seven (7) days after becoming aware of the necessity to file the form. Failure to comply may result in the termination of services.*

**No public official shall have an interest in a contract awarded hereunder except in accordance with Texas Local Government Code Chapter 171.**

**All exhibits and forms are part of the complete RFQ/RFP and will be submitted to TxDOT for review, approval, and concurrence prior to issuance of project packets. Any change or modification of exhibits will be submitted to TxDOT for review and concurrence prior to change or modification.**

**4. Verifying suspension and debarment actions and eligibility of consultants, as specified in 2 CFR part 1200 and 2 CRF part 180;**

Contractors and their principals (i.e. sub-contractors, material suppliers, vendors etc..) are not allowed to participate in Federally Funded projects if they are presently suspended or debarred or have been convicted within the past three (3) years of certain types of offenses or had a civil judgement rendered within the past three (3) years for certain types of offenses. In accordance with 2 CFR 1200 and 2 CFR part 180; the County will verify the suspension and debarment actions and eligibility of consultants by;

- a. Including a Certification Regarding Debarment, Suspension, and Ineligibility Form as an exhibit included in the RFQ/RFP acknowledging that contractor or vendor is free from suspension or debarment pursuant to Federal Regulation 45 CFR Part 76.;
- b. Require each respondent submit a copy of their status with SAM.gov, if not a current member, they must register and submit a copy of the registration form with their submittal; and
- c. Designated buyer will verify through a search for contractor status at System for Award Management and attach a printed copy of search results.

As an exhibit in the RFQ/RFP packet, the Certification Regarding Debarment, Suspension, and Ineligibility Form will be submitted to TxDOT for review and approval prior to the release of RFQ/RFP.

The Federal and State programs for Disadvantaged Business Enterprises (DBE), Historically Underutilized Business (HUB), and Small Business Enterprises (SBE) have been developed to encourage participation in the construction industry by a wide variety of contractors and therefore expand diversity in the industry. Hidalgo County adopted TxDOT's DBE Program by signing a Memorandum of Understanding (MOU) on July 24, 2014. The DBE Program as authorized by 49 CFR, Part 26 ensures nondiscrimination in the award and administration of United States Department of Transportation contracts.

Contractors/respondents are required to comply with the TxDOT DBE Program.

**DBE goals submitted by the apparent low bidder will be submitted to TxDOT for review of contractor compliance, approval, and concurrence.**

**5. Preparing an independent agency estimate for use in negotiation with the selected consultant per 23 CFR 172.7.a.1.v;**

Prior to receipt or review of the most highly qualified consultant's cost proposal, the County, with the assistance of the designated licensed engineer, will prepare a detailed independent estimate based on realistic date. The estimate will include;

- a. An appropriate breakdown of the work or labor hours;
- b. Types or classifications of labor required; and
- c. Other direct costs and consultant's fixed fee for the defined scope of work.

The independent estimate will serve as the basis for negotiation of a contract with the highest qualified firm. Hidalgo County will retain documentation of negotiation activities and resources used in the analysis of fair and reasonable costs in accordance with federal cost principles. The documentation shall include the original cost proposal, subsequent submittals, final cost proposal, pre-negotiation audit, audit reports, and responses to the pre-negotiation audit.

**The independent agency estimate will be submitted to TxDOT for approval and concurrence prior to bid opening.**

**6. Evaluating interest, qualifications, or proposals and the ranking/selection of a consultant per 23 CFR 172.7.a.1.iii-iv;**

The evaluation / grading / scoring committee will be comprised of at least one (1) licensed engineer on staff with Hidalgo County Drainage District No 1. The licensed engineer will assist the county in preparing a clear, accurate, and detailed scope of work as well as the evaluation criteria. The designated engineer will be named in writing by the HCDD, with approval and acceptance of named engineer by the county, at the onset of the project and will serve as a consultant throughout the life of the project. The designated engineer will also serve as the Evaluation Committee Liaison and will coordinate the grading/evaluating/scoring schedule as well as determine if interviews of respondents will be required. The remaining members of the Evaluation Committee will be comprised of two representatives appointed by project precinct Commissioner. Request for Qualifications (RFQ) will be reviewed and scored based on the established evaluation factors as stated in the request for qualifications and scoring system. The provider will not be awarded a contract based on competitive bids. Qualifications will be ranked based on the scoring system provided in the request for qualifications. The ranking criteria at a minimum should be based on:

- 40 - Points - Project understanding and approach including quality control procedures
- 30 - Points - The project managers' and project teams' qualification and experience
- 20 - Points - Staff capabilities and workload capacity
- 10 - Points - DBE Participation

•The evaluation committee will select the top five (5) firms based on qualifications and may request submission of supplemental information or may request the top five (5) firms make a formal presentation before the evaluation committee;

•In the instances where only two (2) qualified consultants respond to the solicitation, the

County will proceed according to the rules and regulations of 23 CFR 172.;

- Should the evaluation committee request formal presentations, the Evaluation Committee Liaison will prepare a list of questions and provide a copy to each respondent with the appointment schedule for interviews;
- Each respondent will be allotted equal time and each appointed evaluator must be in attendance at each interview;
- The evaluation committee will then select the top three (3) qualified firms and issue a notification to proceed to Request for Proposals (RFP); and
- The final score/grade of the RFP by the evaluation committee will be presented by the Purchasing Department to the Commissioners' Court for ranking and approval to begin negotiations with the highest ranked respondent.

**Evaluations/scores/grades/ranking documents will be submitted to TxDOT for approval and concurrence prior to action by the Commissioners' Court. TxDOT will review the contract and approve the fees for the contract before negotiations are finalized with the highest ranked firm.**

**7. Determining based on State procedures and the size and complexity of a project, the need for additional discussions following RFQ/RFP submission and evaluation;**

All questions (RFI - Request for Information) from a respondent prior to submittal of packet regarding clarification of the technical approach, qualifications, and capabilities provided in the response to the RFQ/RFP will be addressed by the county in conjunction with the designated evaluation committee. Questions may be submitted via fax or email to the Hidalgo County Purchasing Department, attention Designated Buyer. The designated buyer will vary amongst the Hidalgo County staff of buyers for each individual project. The contact information, as well as the fax number and buyer email address, will be noted in the RFQ/RFP packet.

**RFQ - Inquiries Prior to Submittal of Packet:**

The deadline for questions prior to submittal of the packet, as well as responses, will be provided in the RFQ and the RFP. All RFI's must be submitted in writing on or before the date of the deadline listed in the RFQ. Responses to RFI's for the Request for Qualifications (RFQ) will be distributed to the project participation list by the deadline date indicated in the packet. Prior to distribution of RFI responses, the county will forward the questions and answers to TxDOT for approval and concurrence.

**RFP - Inquiries Prior to Submittal of Packet:**

Participants, who are qualified to move on to the RFP, will adhere to the deadline for RFI's and responses provided in the RFP packet. Responses to RFI's for the Request for Proposals (RFP) will be provided to the group qualified to submit proposals. Prior to distribution of RFI's and responses, the county will forward the questions and answers to TxDOT for approval and concurrence.

**RFP - Inquiries/Concerns Post Submission/Evaluation of Packet by Respondent:**

Respondents will be allowed seven (7) working days from the RFP opening date to submit in writing questions or concerns to the County in regard to the project. The county will respond to inquiries in writing within three (3) working days. A copy of all of the questions received as well as the responses to inquiries will be sent to all parties who have received a

Request for Proposal packet. Prior to distribution of RFI's and responses, the county will forward the inquiries and responses to TxDOT for approval and concurrence.

**RFP - Additional Information or Clarification Post Submission/Evaluation of Packet by County:**

Should the evaluation committee require additional information from submitters, the Evaluation Committee Liaison will prepare a list of items requiring clarification and distribute to all parties who received the RFP packet. The committee liaison will then schedule a conference with all parties for discussion/resolution of clarifications. Prior to distribution of additional information or clarifications, the county will forward the additional information/clarification request as well as the validated responses to TxDOT for approval and concurrence.

**8. Selecting the appropriate contract type, payment method, and terms and incorporating required contract provision, assurances, and certification in accordance with 23 CFR §172.9;**

Unless otherwise specified, the contract will be project specific and will address the following requirements;

- a. Specify a reasonable maximum length of contract period, including the number and period of any allowable contract extensions, which shall not exceed five (5) years; and
- b. Specify a maximum total contract dollar amount that may be awarded under the contract.

The contract award will be in effect until the contract expires, delivery and acceptance of products, or terminated by County with thirty (30) days written notice prior to cancellation.

On contracts exceeding \$400,000.00, the county may retain five percent (5%) of the contract price. The county may continue to retain the amount until the entire project has been completed and accepted or release the retained amount at any time before the project is completed. Retainage for each project will be indicated in the RFQ. The county will insert in the contract a clause that requires the contractor to pay each subcontractor no later than ten (10) days after receipt of payment from the county the amount to which the subcontractor is entitled. The contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in a similar manner. The contractor must submit written evidence that all subcontractors have been paid for work completed within ten (10) days of receipt of payment from the county. All payments must meet prompt payment requirements, as specified in 49 CFR 26.29. The county will ensure compliance with retainage requirements by legal means under Local, State, & Federal laws.

**The county will submit a draft of the contract to TxDOT for approval of the contract and verification of said clause.**

**Payment Method**

Unless otherwise specified, the county shall pay a negotiated lump sum fee at the hourly labor rates and non-labor rates specified in the contract negotiation. An exhibit detailing the contract rates will be attached to the contract document. Payments for services rendered

will be made while work is in progress as executed through a lump sum fee assigned to each work authorization. Work authorizations will be submitted with a monthly progress report in sufficient detail to support the progress of the work and in support of the request for payment. The RPIC will review each request for payment and the invoice will be submitted to the purchasing department for placement on the next available commissioner's court meeting for approval.

The county will ensure that all contracts include required provisions by referencing or physical incorporation as applicable. The following provisions as per 172.9.a.3.c.i are:

- Administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and provide for such sanctions and penalties as may be appropriate;
- Notice of contracting agency requirements and regulations pertaining to reporting;
- Requirements and regulations pertaining to copyrights and rights of data;
- Access by government entities to all documents related to the project for the purpose of making audit, examination, excerpts, and transcriptions;
- Retention of all records requirements;
- Standard DOT Title VI Assurance (DOT Order 1050.2);
- Disadvantage Business Enterprise (DBE) assurance as specified in 49 CFR 26.13
- Prompt pay requirements as specified in 49 CFR 26.29 and in accordance with the MOU DBE program;
- Determination of allowable costs in accordance with federal cost principles;
- Requirements of Consultant's errors and omissions;
- Requirements of pertaining to conflict of interest as specified in the 23 CFR 1.33;
- Termination for cause and termination for convenience by the contracting agency;

All contract/payment/work authorizations, as well as exhibits to the contract, will be sent to TxDOT for review/approval/concurrence prior to execution of the contract.

9. **Negotiating a contract with the selected consultant including instructions for proper disposal of concealed cost proposals of unsuccessful bidders;**

The County will conduct the process of negotiation in compliance with the requirements of 40 U.S.C. 1104 (b) and 23 CFR 172.7.a.1.v for the order of negotiations.

- The evaluation committee will select the top three (3) highest qualified firms (documentation will be submitted to TxDOT for approval and concurrence prior to presentation to Commissioners' Court);
- A grid of the scores/grades will be presented to the Commissioners' Court for approval for the Purchasing Department to enter into negotiations with the number one (1) ranked firm (scoring/grading documents will be submitted to TxDOT for approval and concurrence prior to beginning negotiations);
- A cost proposal from that firm will be requested at the time of negotiating the fees;
- The Purchasing Department will begin a fee negotiation phase with the most qualified

firm;

- If negotiations with the number one (1) ranked firm fail, the Purchasing Department will recommend to the Commissioner's Court that negotiations cease with the number one ranked firm and commence to negotiate with the next highest ranked firm; and
- The negotiated contract including best and final offer with the successful firm will be presented to Commissioners' Court for consideration and approval.

**TxDOT will review the contract and the negotiated fees before execution of the contract.**

Any concealed cost proposals submitted with the RFP will not be opened. A cost proposal for a selected consultant may be considered when the negotiations are initiated. Any concealed cost proposal from unsuccessful consultants will be filed unopened in project records.

**10. Establishing elements of contract costs, accepting indirect cost rates for application to contracts, and assuring consultant compliance with the Federal cost principles in accordance with §172.11;**

Hidalgo County shall establish the elements of contract costs as per 23 CFR 172.11.b.1-4. Consultants are required to comply with Federal Cost principles in accordance with 23 CFR 172.11 and 23 CFR 172.9.c.1.ix. Hidalgo County shall receive a certificate of final indirect costs and shall establish elements of costs such as those specified in 23 CFR 172.11.b.1.

**11. Ensuring consultant costs billed are allowable in accordance with the Federal cost principles as contained in 48 CFR part 31 and consistent with the contract terms as well as the acceptability and progress of the consultants' work per 23 CFR 172.9(d) and 23 CFR 172.11**

Payment will be made while work is in progress as executed through a lump sum fee assigned to each work authorization. Payment of the lump sum fee for each work authorization identified in the request for payment will be in proportion to the percent completion of the work tasks identified in work authorization together with a detailed breakdown of the amount and the sum of all prior payments. Progress reports shall also be included in each invoice. The progress report shall describe the work performed during the period covered by the invoice. County will review each request for payment and verify that costs are consistent with the cost rates exhibit in the contract and submit to the auditor's office.

**12. Monitoring the consultants' work and compliance with the terms, conditions, and specification of the contract;**

The designated Responsible Person in Charge for the county will monitor the contract by;

- a. attending progress meetings;
- b. be familiar with the qualifications and responsibilities of the consultant's staff;
- c. announced and unannounced visits to the site and the offices of contractor;
- d. be aware of day to day operations as they relate to the construction contract;
- e. be involved in decisions leading to change orders or supplemental agreements;
- f. verify work is complete, accurate and consistent with the contract;
- g. review and verify that costs billed are consistent with the acceptability and progress of contractors work; and
- h. prepare a final evaluation report for contractor performance.

The RPIC will review and verify the work associated with monthly billing invoice and will notify the purchasing department. The purchasing office prepares an agenda on the next available Commissioners' Court agenda seeking approval of payment. The invoice and activity documentation is forwarded to the Auditor's Office for payment and the Department of Budget & Management for review and completion of reimbursement request from TxDOT per 23 CFR 172.9.d and 172.11.

A copy of all documents pertaining to monitoring of the contract and verification of invoices will be submitted to TxDOT for review, approval, and/or file documentation.

**13. Preparing a consultants' performance evaluation when services are completed and using such performance data in future evaluation and ranking of a consultant to provide similar services;**

The County will prepare and conduct performance evaluations when the services are completed. These evaluations summarizing the consultants' performance shall include, but not be limited to;

- a. an assessment of the timely completion of work;
- b. adherence to contract scope and budget; and
- c. quality of the work conducted.

The county will provide a copy of the performance evaluation report to the consultant. The contractor shall be allowed the opportunity to provide written comments on their performance evaluation report. The performance evaluations shall be archived by the Purchasing Department and made available to all procurement and precinct staff for future consideration of the consultant in other similar services per 23 CFR 172.9.d.2.

**Consultant Performance Evaluations will be submitted to TxDOT for review and monitoring.**

**14. Closeout of contract;**

At the completion of the contract, the county will coordinate with consultants' project manager and TxDOT to ensure that the project scope has been completed according to the Advance Funding Agreement (AFA) and the contract and is acceptable to TxDOT. The AFA will contain project-specific information on the audit requirements. Any outstanding issues or disputes will be resolved prior to final payment. The county will provide TxDOT with all necessary project documentation for review. The Federal awarding agency or pass-through entity should complete all closeout actions for Federal awards no later than one year after receipt and acceptance of all required final reports per 2 CFR 200.343(g). Per 2 CFR 200.333, the county will ensure that all contract project files are complete and stored securely to protect the file of record until the legal document retention requirements are met. TxDOT district has the primary responsibility to fiscally close-out an AFA project. The district maintains cost data throughout the project and will determine the actual shared cost at the conclusion of the work.

**15. Retaining supporting programmatic and contract records, as specified in 2 CFR 200.333 and the requirements of this part;**

All supporting programmatic and contract records shall be retained in accordance with 2 CFR 200.333.

The county will retain all project records for no less than three (3) years after the final payment.

The records will be retained until all litigation, claims, or audit findings have been resolved and final action was taken.

The county shall provide accessibility to TxDOT and Federal Agencies for the purpose of audits and reviewing project records.

**16. Determining the extent to which the consultant, which is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors and omissions in the work furnished under its contract;**

It is the County's policy to enforce its contracts with engineering, architectural, and surveying consultants to ensure the delivery of quality professional services, the prudent expenditure of public funds, and the preservation of business relationships.

County contracts for professional services include standard provisions that address the consultant's responsibility for error and omissions. Consultants are subject to these provisions before, during, and after the construction of a project, as well as before and after contract termination. When a dispute arises under one of those contracts regarding apparent errors or omissions in the work provided to the county, every effort will be made to resolve that dispute in a way ensuring that the public receives the services for which it has paid and that the consultant is treated with respect and fairness. When an apparent error or omission is identified in work provided by a consultant, the county will;

- A. Notify the consultant of the problem; and
- B. Involve the consultant in efforts to resolve the problem.

These efforts must include consideration of the totality of relevant facts, including the level of services provided, the consultant's overall performance, the cost to the County of the services provided and of the apparent error or omission, and the value of the services provided. If these efforts do not succeed, the consultant must be given an opportunity to raise the issue with Hidalgo County Commissioners Court and Hidalgo County Administration before any effort is made by the county to institute legal proceedings to collect damages. The consultant will be given an opportunity to submit a response before any final action is taken per 23 CFR 172.9.c.x.

**17. Assessing administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and providing for such sanctions and penalties as may be appropriate;**

Consultants are subject to suspension and debarment actions as specified in 2 CFR part 1200 and 2 CFR part 180, potential cause of action under False Claims Act as specified in 32 U.S.C. 3729-3733, and prosecution for making a false statement as specified in 18 U.S.C. 1020.

Upon failure of the consultant to fulfill obligations set forth in the contract in a satisfactory manner as determined by the County and in the sole opinion of the County, the County will issue a written notice of such failure. The consultant will be allowed thirty (30) days

to correct such failure. If the consultant does not correct the failure within thirty (30) days, the County may take over the project and prosecute the work to completion. In such case, the consultant shall be liable to the County for any additional cost occasioned by the County.

Throughout the project, consultant agrees to maintain an insurance policy listing the County as an additional insured in the amounts required by County. Should the consultant fail to maintain an insurance policy in the minimum requirements identified by County the consultant will be considered to be in breach of contract.

**18. Resolution disputes in the procurement, management, and administration of engineering and design related consultant services;**

All disputes will be brought to the attention of the RPIC as they arise. The RPIC will gather appropriate documentation regarding the alleged dispute and will schedule a conference with all parties involved within seven (7) working days to implement corrective action. The RPIC will make every effort to resolve disputes/misinterpretations in a mutually beneficial agreement; however, if all parties cannot agree on corrective actions, the RPIC will notify the Evaluation Committee Liaison (project engineer on staff with HCID No. 1) and all documents pertaining to the dispute will be reviewed by the engineer/liaison. The liaison will submit in writing his opinion as to corrective action needed within five (5) working days. If these attempts to come to an agreement as to corrective action are not successful, the RPIC will then involve the Commission and legal counsel.

Hidalgo County, Texas

*Ramon Garcia*

By: *Ramon Garcia*

Date: 05/03/2018

Texas Department of Transportation

By: *Eduardo Poy*

Date: 01/10/2018



## **EXHIBIT B**

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**PROFESSIONAL SERVICE  
PROVIDER'S RFP RESPONSE - SCOPE  
OF SERVICES TO BE PROVIDED BY  
THE PROFESSIONAL SERVICE  
PROVIDER, FEE SCHEDULE/COST  
RATES, ETC.**



**HIDALGO COUNTY  
REQUEST FOR PROPOSALS**

**"Professional Engineering Services for Construction  
Management, Material Testing, and Inspection for the Liberty  
Blvd. Project (US 83 to Mile 3 Rd.)"**

**RFP No. 24-0065-07-17-10**

**July 17, 2024**

Submitted by:



**SAMES, Inc.  
200 S. 10th Street,  
Suite 1500  
McAllen, Texas 78501**

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**1. Provide the number of staff members available in order to render (but not limited to) all the services needed for this project.**

SAMES provides a core Project Team of 11 professionals, 4 support Staff members and the availability of another 8 engineers in-house to aid in any needs of the project.

Name	Role	Responsibility
Mario A. Garcia, PE	Construction Manager	<ul style="list-style-type: none"> <li>Owner Representative</li> <li>Oversee Scope, Budget and Schedule Compliance</li> <li>Program Funding Compliance</li> </ul>
Samuel Maldonado, PE	Sr. Construction Manager	<ul style="list-style-type: none"> <li>Overall Project Operations</li> <li>Manage Multiple Entity Coordination and Communication</li> </ul>
Isael Posadas Jr., EIT	Assistant Construction Manager	<ul style="list-style-type: none"> <li>Schedule and Budget Compliance and Progress Tracking</li> <li>Review Contractor Submittals, Requests for Information and Payment Applications</li> </ul>
Rusbel Pena, EIT	Project Controls Engineer – Quality Control	<ul style="list-style-type: none"> <li>Field Inspection Oversight</li> <li>Traffic and Safety Review</li> <li>Verification of Project Benchmarks and Control Points</li> </ul>
Luis S. Gonzalez	Field Engineer Inspector	<ul style="list-style-type: none"> <li>Construction Inspections and Field Observation Documentation</li> </ul>
Whitney Ulerio Duverna	Document Control Specialist	<ul style="list-style-type: none"> <li>Administration / Record Keeping</li> <li>Progress Reporting</li> <li>Maintain Construction Filing System</li> </ul>
Jessica M. Maldonado, PE	Contract Administrator	<ul style="list-style-type: none"> <li>Contract Compliance</li> <li>Administrative QA/QC</li> </ul>
Saul D. Maldonado, PE	Environmental Compliance Manager	<ul style="list-style-type: none"> <li>Compliance with Best Management Practices and Environmental Regulations</li> </ul>
Raul Palma, PE	Geotechnical Manager	<ul style="list-style-type: none"> <li>Oversee Geotechnical and Construction Material Testing (CMT)</li> </ul>
Andres Palma, PE	Geotechnical Engineer	<ul style="list-style-type: none"> <li>Evaluate Laboratory and Field Construction Material Testing</li> <li>CMT QA/QC Procedures</li> </ul>
Juan M. Borjon, PE	Construction Materials Testing Engineer	<ul style="list-style-type: none"> <li>Coordination of Field Personnel</li> <li>Manage Material Testing Schedules</li> <li>Material Testing Logs and Reports</li> </ul>
Ricardo Leal, EIT	Support Staff	Assistant Project Manager
Yulissa Morales	Support Staff	Project Controls Engineer
Luis B. Hernandez, EIT	Support Staff	Project Controls Engineer
Eduardo Huerta	Support Staff	Project Controls Engineer

## 2. Describe your approach, as the Project Manager of the Professional Engineering Services for Inspection, Material Testing, and Construction Management Team, in determining your work plan and staffing needs for the Liberty Blvd Road Project.

As the Project Manager, Mario understands that the 2.4-mile expansion of Liberty Boulevard will require detailed construction management for the following key scope of work: Traffic Signal Improvements, flexible and rigid pavement Roadway Improvements, Irrigation Canal roadway at-grade and bridge crossings, utility relocation, and drainage improvements. Although a major segment of the Project will be constructed within undeveloped land, SAMES has identified the following challenges for Liberty Boulevard.

**Challenge:** Traffic Control during Traffic Signal Improvements on US 83 EB/WB **Solution:** Traffic control plans will be reviewed and inspected daily for the high volume of traffic expected along US 83 east and west bound lanes. Social media and digital board, if available, announcements and communication to the public of upcoming lane and street closures will be encouraged in order to advise drivers of any upcoming changes in their commute due to construction.

**Challenge:** Irrigation Canal Pipeline Crossings and Rip-Rap **Solution:** SAMES will plan for proposed irrigation canal construction activities in advance with Contractor and the Irrigation District to account for any design discrepancies or requirements that will require modification before commencement of construction. An irrigation bypass system is proposed during this milestone and will be monitored and inspected daily to address any losses of irrigation water from the irrigation district system. During the construction of the concrete riprap, proper density testing of the subgrade will be conducted with the CMT laboratory to minimize any potential future failure or cracking of the proposed concrete rip-rap improvements due to the moisture condition of soils typically found in irrigation canals.

**Challenge:** Existing utilities within the existing Right-of-Way **Solution:** Obtain a Utility Conflict plan or matrix from the Design Engineer, identify any pending utility relocation designs or relocations, coordinate and attend meeting with all applicable entities on status of required relocations to be out of the project construction limits for proposed improvements. The following entities have been identified for Liberty Boulevard: Agua Special Utility District, City of Peñitas, Texas Gas Service, AT&T, American Electric Power (AEP), Enterprise Products, and Hilcorp Energy Company.

To address these challenges, SAMES will approach this project with the following summarized work plan and expected staffing needs for a successful project. Also, SAMES will support the Liberty Boulevard Project with Procore – our preferred construction management software with cloud based, correspondence, and at-will access to required user capabilities.

### Inspections

SAMES' inspection team (Construction Manager, Materials Engineer & Key Staff) will review the project schedule and contractor's proposed "burn rate" to determine inspection team resources for the work.

SAMES implements one inspector for each foreman on site. Our construction manager, Mario A Garcia, will assign inspectors for each work category and area of work by reviewing the contractor's schedule on a weekly basis. Our inspection team will together develop a 3-week look ahead schedule for our inspection man-loader schedule. Inspection staff will be supplemented as needed during peak construction times to maintain upkeep with construction activities.

**Challenge:** Hurricane Season. The Contractor will have to observe immediate and upcoming weather conditions that may impact construction schedule as well as monitor and maintain erosion control measures for the Project. **Solution:** SAMES and the Contractor will implement weather conditions into 3-week lookahead and modify any construction activities or scheduled inspections, if necessary, to accommodate shifts in schedule. Environmental compliance and erosion controls will be inspected daily so that any major cleanup or maintenance items are addressed in a timely manner.

## Material Testing

Construction Material Testing will be led by MEG with a detailed testing plan to be maintained during the construction phase of the Liberty Boulevard project by utilizing the CMT Project Managers to manage the daily reports and budget for the project as construction progresses. As the Project Manager, SAMES will have Field Engineers and Inspectors present during construction material testing and verify results conform to technical specifications, local and state requirements for construction.

- A. When issues are identified in the field based on material tests not passing, scheduling, or other items, SAMES will lead coordination efforts with the Contractor and CMT Engineers to determine the root cause of such issue to determine the best path forward as to not cause any time delays or additional cost to the Liberty Boulevard project.
  - a. If the Contractor is unwilling to address failures or non-conformance of the tested material – SAMES will notify Hidalgo County with a plan of action to move forward with a remedy for the project.
- B. CMT reports, issues, and resolutions will all be documented per SAMES' Construction Management Plan which includes Procore with at-will access, a SAMES server, and by hard copy in a centralized location within a SAMES office.

## Construction Management Team

SAMES will have a dedicated project team identified in a Construction Management Plan to communicate directly with TxDOT, Hidalgo County, the Contractor, and any other required parties at the start of the project, during the construction phase, and post construction for project close-out procedures.

The Construction Management team includes:

- A. Mario A Garcia, PE – Construction Manager
- B. Isael Posadas, EIT – Assistant Construction Manager
- C. Rusbel Peña , EIT– Project Controls Engineer / Quality Control
- D. Luis S. Gonzalez – Field Engineer Inspector
- E. Whitney Ulerio Duverna – Document Control Specialist
- F. Jessica M. Maldonado, PE, CFM, PMP, SIT – Contract Administrator

SAMES' Construction Management team will support the inspections, material testing, reporting and quality assurance needs of Liberty Boulevard by following the Construction Management Plan developed for this project. Each key staff member will have specific duties, responsibilities, and an identified correspondence chain of command for each of the categories previously mentioned to fulfill reporting and documentation requirements and to maintain effective communication with TxDOT, Hidalgo County, the Contractor and CMT lab during the construction phase of the project based on frequencies identifies in the Construction Management Plan.

A detailed Construction Management Plan will be used to establish Roles and Responsibilities of our team presented above and be available to Hidalgo County upon request.

### 3. Describe your team's key staff members and their roles and responsibilities for this specific deliverable.



**Mario A. Garcia PE, Construction Manager**, brings over 8 years of diverse experience and technical expertise to the Liberty Boulevard project. His experience encompasses design through construction phase services and most recently the Construction Management for the Mid-Valley Industrial Park in Weslaco. The complexity of this recent project required the attentiveness of a proactive manager like Mario to address project stakeholders' concerns as challenges surfaced.

Mario's role as the project Construction Manager is to ensure the contractor adheres to the Liberty Blvd. project specific Construction Management Plan, ensuring State and Federal contractual compliance is met.

#### Project Experience:

- 2021/2022 La Joya CDBG Street Improvements, La Joya, Texas
- 2021/2022 San Juan CDBG Street Improvements, San Juan, Texas
- 2022 Rio Grande City Street Improvements, Rio Grande City, Texas
- 2022 Roma Street Improvements, Roma, Texas
- Las Americas Roma Industrial and Logistics Park, Roma, Texas
- Mid-Valley International Industrial Park, Weslaco, Texas
- Harlingen Storm Sewer System 204 & 252, Harlingen, Texas



**Sam Maldonado, PE, RPLS, Senior Construction Manager**, brings over 27 years of diverse experience and technical expertise to the Liberty Blvd. project. He has navigated the challenges of program management as an owner, contractor, and design consultant, all of which has strengthened his management capabilities for large complex projects. Sam's proactive approach is led by clear communication of expectations and set processes.

Sam's role as the Senior Construction Manager is to leverage his expertise and best practices to guide the team in providing a strong response to any project challenge.

#### Project Experience:

- Hidalgo County Pct 1 - Mile 6 Roadway Expansion, Weslaco, Texas
- US DOE – LANL Asphalt Pavement Reconstruction (10 Miles), New Mexico
- Texas Facilities Commission – Border wall Project, Eagle Pass, Texas
- US DOE – Pantex Asphalt Pavement Reconstruction (32 Miles), Amarillo, Texas
- Pharr Port of Entry – Northbound Lanes Expansion Project, Pharr, Texas



**Jessica Maldonado, PE, PMP, CFM, SIT, Contract Administrator**, brings over 18 years of experience in design and construction management of government-funded projects. Jessica's experience includes local, state and federal projects involving public utility and roadway improvements where she ensured all contractual requirements were met and implemented as required by Texas Department of Transportation.

Jessica's role as the Contract Administrator, is to utilize her experience with similar projects to successfully support the project needs as related to documentation and reporting for: Advance Funding Agreements, Standard Utility Agreement (SUA), Compensable Utility Documentation, and Use of Force Account.

#### Project Experience:

- Ware Road (FM 2220) Utility Relocation, (CSJ 2094-01-038), McAllen, Texas
- Sam Houston Boulevard Widening, (CSJ 0921-02-256), Pharr, Texas
- Pharr Port of Entry Northbound Lanes Expansion, Pharr, Texas



***Saul Maldonado, PE, Environmental Compliance Manager***, brings over 19 years of experience in roadway construction management and environmental inspections. Saul is well-versed in the Texas Commission on Environmental Quality procedures for storm water Best Management Practices on projects such as roadways and bridge crossings.

Saul's role as the Environmental Compliance Manager ensures compliance with environmental regulations by reviewing project EPIC, SW3P Sheets, contract documents, and permits, and verifying "modifications" or post rain events are field verified and in compliance with Best Management Practices.

**Project Experience:**

- Bentsen Palm Drive Bridge Reconstruction, Palmview, Texas
- Abram Road Bridge Rehabilitation, Palmview, Texas
- Athens Road, East Bravo Avenue to Roma Creek Road, Roma, Texas
- Sam Houston Boulevard, Cage Boulevard to I Road, Pharr, Texas
- McColl Road Widening Project, McAllen, Texas
- Trenton Expansion Project, McAllen, Texas



***Isael Posadas Jr., EIT, Assistant Project Manager***, is a certified Engineer-in-Training with 5 years of experience in civil engineering design, construction management, and field inspections. He has collaborated with local government entities and state agencies on roadway improvements, subdivisions, site plans, and utility projects. Isael's is knowledgeable of various rules, regulations and design standards due to his experience with local roadway and public improvement projects.

**Project Experience:**

- 2021/2022 San Juan CDBG Street Improvements, San Juan, Texas
- 2022 La Joya CDBG Street Improvements, La Joya, Texas
- Schunior Regional Detention Pond, Edinburg, Texas
- FM 493 and County Road, Bond Project 12, Phase II, Donna, Texas
- Highland Heights Subdivision, Edinburg, Texas
- Conway Crossing Subdivision, Palmhurst, Texas
- Starbucks Site Civil Improvements, Weslaco, Texas



***Rusbel Pena, Project Controls Engineer & Quality Control***, is a certified Engineer-in-Training with experience in civil engineering design, project management, and professional land surveying. He collaborates with Project Managers to develop comprehensive project schedules for roadway, drainage, and public improvements. Rusbel assists in utility and drainage layouts, drainage reports, and coordinates with project owners. His surveying experience includes topographic surveys for government clients and ALTA surveys for commercial clients. Rusbel is dedicated to customer satisfaction, ensuring compliance with contract requirements and local, state, and federal regulations.

**Project Experience:**

- 2020 Donna CDBG Street Improvements, Donna, Texas
- 2021/2022 San Juan CDBG Street Improvements, San Juan, Texas
- Escobares CDBG Street Improvements, Escobares, Texas
- Las Americas Roma Industrial and Logistics Park, Roma, Texas
- USDA Moore Air Base Main Entrance Turning Lane, Edinburg, Texas
- Edinburg CISD Brewster Elementary School, Edinburg, Texas
- SpaceX SH 4 Chamber Adjustment Project, Cameron County, Texas



**Luis S. Gonzalez, Field Engineer Inspector**, is a Graduate Engineer with civile engineering experience in field operations and construction inspections. His current responsibilities include field operations, construction inspections and documentation, engineering drafting design, and construction administration. He has recently worked on land development, public utility design, and construction engineering inspections of road improvement projects and commercial land developments.

**Project Experience:**

- County Wide Street Inventory and Assessment Project, Hidalgo County, Texas
- Mid-Valley International Industrial Park, Weslaco, Texas
- Highland Heights Subdivision, Construction Engineering Inspections, Edinburg, Texas
- Heights on Wisconsin Subdivision, Construction Engineering Inspections, Edinburg, Texas
- La Paloma Subdivision, Construction Engineering Inspections, San Juan, Texas



**Whitney Ulerio Duverna, Document Control Specialist**, brings over 10 years of experience in contract documentation and project administration. She has previously coordinated projects in Florida and Texas and currently has 2 years of working experience in the Rio Grande Valley. Her experience encompasses the administration of contracts, support documentation related to the project, along with the management and coordination of project reporting and adhering to project schedules.

**Project Experience:**

- Mile 6 W Road Project, CSJ 0921-02-420, Weslaco, Texas
- Mid-Valley International Industrial Park, Weslaco, Texas



**Raul Palma, PE, Geotechnical Manager**, brings over 39 years of experience in geotechnical engineering, construction materials testing, and engineering design for highways, streets, and utilities. His expertise includes subsurface utility explorations, laboratory testing, foundation investigation and design, and construction monitoring. Mr. Palma is a former District Materials Engineer for TxDOT's Pharr District, where he oversaw material testing and approval for construction projects in several counties.

**Project Experience:**

- TxDOT US Highway 83, FM 494 to Business 83, Mission, Texas
- TxDOT US Highway 83, FM 1426 to FM 493, Alamo, Texas
- TxDOT US Highway 83/77 Interchange, Harlingen, Texas
- IBTC Corridor Hidalgo County Regional Mobility Authority, Hidalgo County, Texas
- Pharr International Bridge Improvements, Pharr, Texas



**Andres Palma, PE, Geotechnical Engineer**, brings over 17 years of experience in geotechnical engineering and construction material testing. Mr. Palma has worked on projects involving mixed-use developments, commercial buildings, water & wastewater treatment facilities, and parking garages. His pavement and roadway design experience includes highways, industrial parks, brick paving, and freight centers.

**Project Experience:**

- SH 365 Hidalgo County Regional Mobility Authority, Hidalgo County, Texas
- IBTC Corridor Hidalgo County Regional Mobility Authority, Hidalgo County, Texas
- Pharr Produce District Industrial Subdivision, Pharr, Texas
- McIntyre Streetscape Brick Paving Project, Edinburg, Texas
- North Edinburg Industrial Park, Edinburg, Texas



**Juan M. Borjon, PE, Construction Materials Testing Engineer**, brings over 13 years of experience in civil engineering and construction materials testing in South Texas. His responsibilities include coordinating field personnel, client communication, generating logs and reports, training technicians, evaluating testing data, and managing material testing schedules.

**Project Experience:**

- Hidalgo UP 281 (CSJ 0255-09-094) Fast Track and Class P Concrete Pavement for UP 281 Highway, Hidalgo County, Texas
- Hidalgo County Regional Mobility Authority BSIF Connector, Hidalgo County, Texas
- North Alamo Road Realignment Project (CSJ 0921-02-311), Edinburg, Texas
- Taylor Road Widening Project (CSJ 0921-02-327), Mission, Texas

**4. Elaborate on your past project experience, describing any lessons learned that could be applied to the Liberty Blvd Project to bring value to the Project.**

✓ Material Testing Lesson Learned -

Through Sam’s experience working for the (DoE), the CM’s role of verifying material conformance must also be supported by documentation of a valid certification for the personnel, lab, and/or equipment providing the certifying the materials. This was a notable lesson learned after it was determined that although the material submittal supported “compliance” further inquiry determined the lab’s certification had expired. As Senior Construction Manager, Sam expects that Material Submittal compliance verification goes beyond just the material certification.

✓ Added Value Provided through Collaboration –

Contractor fill material estimated costs was a large portion of the 146.09-acre project site and due to rising haul prices there was a potential for cost increase. With Sam’s local relationships, SAMES proactively united two stakeholders to address one another’s issues. The Industrial Park needed fill and the Drainage District needed to discard excavated material. Benefiting both projects with cost savings.

**5. Describe a recent similar project that your team has managed. Discuss significant issues that either did, or could have, increased cost, caused delay impacts to the contractor. Elaborate on how you worked through these issues with the client and the contractor or how you will handle these issues if they were to occur on this project.**

Hidalgo County Pct 1 - Mile 6 Roadway Expansion is a local government project with participation from TXDOT. This 2.0-mile project expanded the existing roadway cross-section to the new right-of-way, required dry-utility relocation, waterline relocation, drainage improvements, irrigation crossings, and traffic signals.

1. **ISSUE** – “Unmonumented NEW Right-of-Way” - Contractor was unable to prep Right-of-Way to project limits without proper field monumentation, impacting Project Schedule.

**SOLUTION** – With our in-house surveying capabilities, the SAMES team was able to temporarily stake-out and monument the new right-of-way so that contractor may stay on schedule. SAMES brings the same proactive surveying capabilities to Liberty Blvd. Project.

2. **ISSUE** – “Irrigation Crossing” – Unforeseen moisture conditions around an existing irrigation crossing caused delays due to additional material testing, water pumping, and approvals of differing backfill.

**SOLUTION** – Liberty Blvd. Project will also require coordination with two Irrigation Districts, Hidalgo

County Irrigation District No. 6 and United Irrigation District. To prevent unforeseen underground circumstances, **SAMES will proactively advise the contractor** ahead of schedule to investigate irrigation line crossing areas to determine risk level and associated mitigation plan to avoid cost increases and delays.

3. **ISSUE** – “Traffic Accident” - Saturday afternoon traffic accident could have caused significant impacts to not only the project costs and schedule but also stakeholder liability.

**SOLUTION** – Once notified, our team immediately responded for project documentation purposes. The contractor was also requested onsite to re-establish the Traffic Control Plan (TCP) that had been impacted. TCP weekly inspection report supported accident was not induced by construction activities nor TCP. SAMES **proactively assigned personnel** “on-call” should issues occur during non-construction periods.

6. **Describe the procedure your team utilizes for handling design and construction issues, answering requests for information (RFI’s), and addressing change orders.**

SAMES implements procedures specifically designed to receive, review, and respond to Design & Construction Issues, Requests for Information (RFI), and Change Orders. The procedures as part of the Construction Contract Administration will be managed by the Assistant Construction Manager as the single point of contact. The Assistant Construction Manager’s response is managed by a designed timeline and matrix for determining appropriate support needed (design, budget, testing, etc.) and is narrated as follows:

**Intake:** Design & Construction Issue, RFI, Change Orders

- A. 4-Hour Determination of follow-up Required
  - a. Construction Issue: Field Visit to Determine Issue and Determine Steps to Take – 12-24 Hour
    - i. RFI – see ii below
    - ii. Change Order – see iii below
  - b. RFI: Meet with Design Engineer and Determine Appropriate Response – 3 Day
    - i. Provide official response to Client, Contractor, Design Engineer – 24 Hour
  - c. Change Order(s): Determine type and source of request – 1 Day
    - i. Contractor Request – RFI (ii above)
      - 1. Meet with Design Engineer – Determine cause, discuss alternatives to change order, value engineer 3- Days
      - 2. Meet with Owner – Present request with cause, alternatives, and proposed cost vs. value – 7 Days
    - ii. Owner Request
      - 1. Meet with Owner: Determine request need, discuss alternatives to change order, meet with Design Engineer – 3 Days
        - a. Obtain Design & Specifications Changes (if needed) – 7 Days
      - 2. Meet with General Contractor: introduce request with plans and specifications, request quote – 3 days

7. **Provide two examples from similar projects that demonstrate your approach to proactively resolving issues.**

The following examples are from experiences encountered on the Mile 6 Expansion Project.

1. **ISSUE** – “Constituent Complaints” – Constituents complained about new location of property fencing, causing construction delays.  
**SOLUTION** – “SAMES Responded” – With our in-house surveying capabilities, the SAMES team was able to temporarily stake-out the new right-of-way at intervals that gave constituents a visual representation of their new property line. Proceeding with setting visual stakes ahead of the contractor enabled the relocation schedule to stay on track. SAMES brings the same proactive surveying capabilities to Liberty Blvd. Project.
  2. **ISSUE** – “Utility Coordination” – Unknown utility relocation status due to personnel changes with utility entity was impacting contractor schedule since utilities were still in conflict with proposed improvements at project onsite. Design engineer to CEI manager transition of status was pending.  
**SOLUTION** – “SAMES Responded” – SAMES made direct contact with utilities in conflict to obtain firsthand information of status so decisions could be made to finalize construction phasing and contractor schedule. SAMES will bring the same proactive utility coordination to Liberty Blvd. Project.
- 8. Provide a detailed testing plan and how you will address deficiencies.**

The detailed testing plan is maintained by CMT Project Managers to:

- Manage the daily reports and project budget and communicate when issues arise at project site in terms of failures or non-conformance.
- Ensure quality assurance by referring to the procedures that the laboratory uses in its everyday function.
- Set procedures are used in the quality system as outlined in plan, including:
  - Work instructions, flow charts, forms, and checklists. Work instructions provide a step-by-step procedure for completing a task. Flow charts provide a process description with decision points. Forms provide documentation and procedures for laboratory use. Checklists are used to ensure that specific details have been completed as part of a task or process.
- Employees are trained in basic laboratory skills, specific training, equipment specific training, training in company policies and regulatory training until he demonstrates familiarity with the quality policy, manual, procedures, equipment within the laboratory, work instructions, checklist, and documents that relate to their area of responsibility and authority.

The detailed testing plan also provides procedures to notify, audit, and address deficiencies. Should test results or observations indicate noncompliance with the project contract, plans, or specifications the following communication and follow-up action will be implemented, as applicable.

- Verbal notification to the construction manager, construction superintendent, work area foreman and/or plant operator.
- Calibration checks on equipment used to determine the noncompliance item, if applicable.
- Confirmation of noncompliance through retesting and/or follow-up observations.
- If a solution to the nonconformance issue is not reached in a reasonable time frame, additional qualified contractor personnel will be contacted to assist in identifying and correcting the problem.
- If a severe nonconformance problem is detected and a reasonable solution cannot be implemented in a reasonable time frame, the construction manager will consult with the project engineer and the work will be suspended. Hidalgo County will be kept informed throughout the coordination.
- Nonconformance items will be recording in a log for tracking by Construction Manager until resolved, within seven (7) days.

9. The organization of project records, both digital and hard copy, along with at-will access to these files is important to the County in order to perform milestone reviews, audits, project closeout, and inquiries throughout the record retention timeline. Considering this, please describe your proposal for managing construction record keeping and communication with the County's staff.

Overall project oversight will focus on providing RECORD KEEPING with the intention of:

1. Creating a clear picture of project status
2. Reducing liability for all stakeholders
3. Ensuring contractual compliance

To ensure effective record keeping for the Liberty Blvd. project specific team roles with corresponding responsibilities are set for recording criteria in compliance with TxDOT for successful audits. **The oversight strategy will include RECORDING:** documentation provided by the contractor, inspections daily reports, material testing reports, standard weekly and monthly TCP and SW3P inspection reports, review and auditing such files, and maintaining consistent and accurate records both digitally and in hard copy. All documents will be uploaded to the project web-based portal and filed in project binders, ensuring they are easily accessible and well-organized for at-will access by County Staff.

For the Liberty Blvd Project the communication expectations are to the following four project stakeholders: Hidalgo County – Precinct 3, Pharr Area Office, CEI Team, and Contractor. Five reporting frequencies (monthly, weekly, daily, impromptu, emergency) and associated reporting methods for communicated are detailed below.

1. MONTHLY
  - **Method:** Electronically via Project Portal
  - **To:** HC Precinct 3
  - **Purpose:** Communicate Updates on: (1) past month's progress (safety, scope, schedule and budget) and (2) a 3-month look ahead for key milestones.
2. WEEKLY
  - **Method:** Electronically via Project Portal
  - **To:** CEI Team
  - **Purpose:** (1) Scheduled weekly construction activities based on contractor's schedule: material verifications, inspections, testing requirements, CA support, and safety. (2) The weekly work plan includes staffing resources to support construction
3. DAILY
  - **Method:** Emails and or Impromptu communications (phone, text or verbal) are supported with follow-up emails/ written meeting minutes
  - **To:** Document Control Specialist, CEI team
  - **Purpose:** Address changes in the planned activities, coordinating schedules, supplementing work schedules and/or addressing unexpected issues, and design issues. The CEI team has a group chat for daily coordination that supports on demand changes.

Procore is our preferred project portal software for managing the project, which has correspondence capabilities for at-will access to County Staff.



# EXHIBIT C

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## CERTIFICATES OF INSURANCE





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/6/2024

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

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

<b>PRODUCER</b> AssuredPartners of Texas, LLC 500 N. Central Expressway #550 Plano TX 75074	<b>CONTACT NAME:</b> Judith Webb		
	<b>PHONE (A/C. No. Ext):</b> 972-331-3722	<b>FAX (A/C. No.):</b>	
<b>E-MAIL ADDRESS:</b> judith.webb@assuredpartners.com			
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>	
<b>INSURED</b> SAME INC-02 SAMES, Inc. 200 S. 10th Street Suite 1500 McAllen TX 78501	<b>INSURER A:</b> Bridgeway Insurance Company		12489
	<b>INSURER B:</b> StarStone National Insurance Company		25496
	<b>INSURER C:</b> LEXINGTON INS CO		19437
	<b>INSURER D:</b> Nautilus Insurance Company		17370
	<b>INSURER E:</b>		
<b>INSURER F:</b>			

**COVERAGES**

CERTIFICATE NUMBER: 1738502453

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Bikt AI&WOS per <input checked="" type="checkbox"/> Bikt PNC GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			674BG0529803	10/1/2023	10/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Policy Aggregate \$ 5,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			87449X233ALI	10/1/2023	10/1/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N <input checked="" type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C D	Professional Liability Pollution Liability			031565508 CPL203883211	10/1/2023 10/1/2023	10/1/2024 10/1/2024	Each Claim/Aggregate \$ 3,000,000 Deductible per Claim \$ 50,000 Occurrence/Aggregate \$ 5,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

The general liability policy include an automatic additional insured endorsement that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status. The general liability policy contains a special endorsement with "primary and non-contributory" wording. The general liability and professional liability policies include an automatic waiver of subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it.  
 Project: Extension of Shary Road 2 Miles North of SH 107

**CERTIFICATE HOLDER****CANCELLATION**

Hidalgo County  
 2812 S. Highway Bus 281  
 Edinburg TX 78539

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Any person or organization for whom you are performing operations, but only if you have agreed, in a written contract, to add such person or organization as an additional insured on your policy for that location or part thereof, provided such a written contract is fully executed prior to an "occurrence" in which coverage is sought under this policy.	Any location(s) of your covered operations.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Any owner, lessee or contractor with whom you have agreed, in a written contract, that such person or organization should be added as an additional insured on your policy, provided such written contract is fully executed prior to an "occurrence" in which coverage is sought under this policy.	Any and all of your completed operations.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **AMENDMENT – OTHER INSURANCE (PRIMARY AND NON-CONTRIBUTORY COVERAGE)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**Schedule of Additional Insured(s):**

Any person or organization named in an Additional Insured endorsement attached to this policy with whom you have agreed, in a written contract, that such person or organization should be provided primary and non-contributory coverage, but only when such written contract is fully executed prior to an "occurrence" in which coverage is sought under this policy.

- A.** Paragraph **C.** of this endorsement replaces paragraph **4. Other Insurance** of **Section IV-Commercial General Liability Conditions**, but only with respect to the insurance afforded to the additional insured(s) scheduled above.
- B.** Paragraph **C.** of this endorsement replaces paragraph **4. Other Insurance** of **Section IV-Products-Completed Operations Liability Conditions**, but only with respect to the insurance afforded to the additional insured(s) scheduled above.
- C. Other Insurance**

Notwithstanding other valid and collectible insurance available to the insured for a loss we cover under the applicable Coverage Part to which this endorsement is modifying, this insurance is primary and non-contributory.

However, this endorsement:

- 1.** Applies only when you are required by contract, agreement or permit to provide primary and non-contributory coverage for the additional insured, provided such written contract, agreement or permit is fully executed prior to an "occurrence" in which coverage is sought under this policy, and
- 2.** Does not apply to any claim, loss or liability due to the sole negligence of the additional insured.

**All other terms and conditions of this Policy remain unchanged.**