



CITY OF MERCEDES REQUEST FOR PROPOSALS

RFP NUMBER # 2023-002

RFP TITLE: CITY WIDE BROADBAND EXPANSION

DATE DUE: July 13, 2023

DUE NO LATER THAN 3:00 P.M.

RFPs will be opened at the CITY OF MERCEDES CITY HALL, 400 S. Ohio Ave. Mercedes, Texas in the City Commission Chambers located at 400 S. Ohio Ave., Mercedes, Texas on July 13, 2023 at 3:00 p.m. (as per City Secretary's time clock) on deadline due date.

RFPs received later than the date and time above will not be considered.

Please return RFP **ORIGINAL (marked "ORIGINAL") AND SEVEN (7) COPIES (marked "COPY")** sets and **an electronic (PDF format file only)** of your proposal for review by evaluation committee in a sealed envelope. Be sure that return envelope shows the RFP Number, Description and is marked "SEALED RFP".

RETURN RFP TO:
by U.S. mail or delivered to the office of the City Secretary.,
**Mercedes City Hall
400 S. Ohio Ave.,
Mercedes, Texas 78570.**

For additional information, clarifications and/or questions or to request addendum please contact: Javier Ramirez at (956) 565-3114 ext. 132, E-mail: jramirez@cityofmercedes.com and cc'd Joselynn Castillo at jcastillo@cityofmercedes.com.

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

Company Name: _____

Company Address: _____

City, State, Zip Code: _____

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

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

Print Name: _____ Signature: _____

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

Is Proposer's principal place of Business within CITY OF MERCEDES? Yes - No

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

CHECK LIST

Proposers are asked to review the package to be sure that all applicable parts are included. If any portion of the package is missing, notify the City Secretary's Department immediately. It is the Proposer's responsibility to be familiar with all the Requirements and Specifications. Be sure you understand the following before you return your RFP packet.

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

Attachments

- Attachments A, B, C, D, E, F, G, H**
Be sure to complete these forms and return with packet.
- Minimum Insurance Requirements**
Included when applicable
- Worker's Compensation Insurance Coverage Rule 110.110**
This requirement is applicable for a building or construction contract.
- Financial Statement**
When this information is required, you must use this form.

Other - Final reminders to double check before submitting RFP

- Is your RFP sealed with RFP #, title, Proposer's Name, & return address, on outside?
- Did you complete, sign and submit page 1?
- Did you provide the number of copies as required on the cover page?
- Did you visit our website for any addendums? <https://www.cityofmercedes.com/bids-and-contracts/>

If not interested in responding please let us know why e-mail to: jcastillo@cityofmercedes.com

RFP # 2023-002
INSTRUCTIONS FOR SUBMITTING RFP'S

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

Carefully read all instructions, requirements and specifications. Fill out all forms properly and completely. Submit your RFP with all appropriate supplements and/or samples. Prior to returning your sealed RFP response / submittal, all Addendums - if issued - should be reviewed and downloaded by entering the CITY website at <https://www.cityofmercedes.com/bids-and-contracts/>

Addendums Column (updated Addendums). These Addendums must be signed and returned with your RFP in order to avoid disqualification.

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

CITY OF MERCEDES is an Equal Employment Opportunity Employer. Review this document in its entirety. Be sure your RFP is complete, and doublecheck your RFP for accuracy.

GOVERNING FORMS: In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, CITY OF MERCEDES's interpretation shall govern. Where substitutions are used, they must be of equivalent value or service, and specified by the Proposer as such, in the columns to the right on the "Minimum Specifications' Forms". The CITY's specifications may be exceeded and should be noted by the Vendor as such. Any RFP NOT MEETING the Minimum Requirements specified will be rejected.

GOVERNING LAW: This invitation to RFP is governed by the competitive RFP requirements of the CITY Purchasing Act, Texas Local Government Code, §262.021 et seq., as amended. Offerors shall comply with all applicable federal, state and local laws and regulations. Offeror is further advised that these requirements shall be fully governed by the laws of the State of Texas and that CITY OF MERCEDES may request and rely on advice, decisions and opinions of the Attorney General of Texas and the CITY Attorney concerning any portion of these requirements.

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

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

CONFLICT OF INTEREST QUESTIONNAIRE:

For vendor or other person doing business with local governmental entity

This questionnaire must be filed in accordance with chapter §176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator (CITY Clerk's Office) of the local government not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section §176.006, Local Government Code. A person commits an offense if the person violates Section §176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section §176.006(a), Local Government Code, is pending and not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.

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

DISCLOSURE OF INTERESTS:

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

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

TEXAS ETHICS COMMISSION FORM 1295

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

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

Texas Ethics Commission (TEC) Form 1295 must be completed (by firm - on line "New Form 1295 Certificate of Interested Parties Electronic Filing Application" Site at: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

If any Vendors have questions as to TEC Form 1295 visit the CITY Website at the bottom of the bids and contracts page for more information. TEC Website links can be found at this location including Question / Answers and Video instructions.
tab Link: <https://www.cityofmercedes.com/bids-and-contracts/>

PROPOSER SHALL SUBMIT RFP ON THE FORM PROVIDED, SIGN THE VENDOR AFFIDAVIT, AND RETURN ENTIRE RFP PACKET. In the event of inclement weather and CITY Offices are officially closed on a Proposal deadline day, RFP's will be received until 2:00 p.m. of the next business day. Proposals will be opened at the CITY OF MERCEDES Courthouse, 1100 East Monroe Street, Mercedes, Texas in the Secretary Department – 3rd Floor – Room # 345 (as per Secretary Dept. time clock.

RFP's SUBMITTED AFTER THE SUBMISSION DEADLINE SHALL BE RETURNED UNOPENED AND WILL BE CONSIDERED VOID AND UNACCEPTABLE.

PRESENTATIONS SEQUENCE TO EVALUATION COMMITTEE. Presentations to Evaluation Committee will be sequenced (in order) of submission. Process will be conducted in the Commission Chambers.

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

PROPOSERS MAY ATTEND PUBLICLY HELD COMM COURT MEETING FOR AWARD OF THIS SOLICITATION. All responding proposers are welcome to attend the publicly held City Commission meeting relative to the outcome / award of this solicitation. Court Meeting agenda date and times may be obtained at the following web site: <https://www.cityofmercedes.com/agendas-minutes/>

OPEN RECORDS ACCESS TO ALL INFORMATION SUBMITTED. All information included will be open to the public, other proposers, media as per the Open Records Act and not be confidential in nature. If you deem any information as confidential, it should not be made part of your RFP package.

PLEASE NOTE CAREFULLY

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

1. **ORIGINAL (marked "ORIGINAL") AND SEVEN (7) COPIES (marked "COPY")** sets and an **electronic (PDF format file only) MUST BE SUBMITTED** Each RFP shall be placed in a separate envelope completely and properly identified with the name and number of the RFP. RFP's must be in the Secretary Department **BEFORE** the hour and date specified.
2. RFP's **MUST** give full firm name and address of the Proposer. **Failure to manually sign RFP will disqualify it. Person signing RFP should show TITLE or AUTHORITY TO BIND THE FIRM IN A CONTRACT.**
3. RFP's **CANNOT** be altered or amended after deadline time. Any alterations made before deadline time must be initiated by Proposer or his authorized agent. No RFQ can be withdrawn after opening time without approval by the City Commission based on a written acceptable reason.
4. The CITY is exempt from State Sales Tax and Federal Excise Tax. **DO NOT INCLUDE TAX IN RFP.** CITY OF MERCEDES claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates will be furnished upon written request to the CITY OF MERCEDES.
5. Any Catalog, brand name or manufacturer's reference used in an RFP invitation is descriptive-NOT restrictive-it is to indicate type and quality desired. RFP's on brand of like nature and quality will be considered. If RFP is based on other than reference specifications, proposal must show manufacturer, brand or trade name, lot number, etc., of article offered. If other than brand(s) specified is offered, illustrations and complete descriptions should be made part of the RFP. If Proposer takes no exception to specifications or reference data, he will be required to furnish brand names, numbers, etc. as specified.

6. Written and verbal inquiries pertaining to RFP's must give RFP Number and Company.
7. NO substitutions or cancellations permitted without written approval of Assistant City Manager.
8. The CITY reserves the right to accept or reject all or any part of any RFP, waiver minor technicalities. The CITY OF MERCEDES reserves the right to award by item category or by total RFP. CITY also reserves the right to award either with or without trade-in, if applicable. CITY OF MERCEDES retains the option to re-solicit at any time if in its best interest and is not automatically bound to renewal or re-solicitation. The CITY reserves the right to hold all RFPs for 60 days from the due date of receipt without actions. The CITY reserves the right to add additional CITY Departments (at a later time during this RFP award) as the need arises. The CITY also reserves the right to consider utilizing CO-OP Interlocal Agreements if determined to be more advantageous to the CITY.
9. This is an RFP inquiry only and implies no obligation on the part of CITY OF MERCEDES.
10. Partial RFP's will not be accepted unless awarded by complete category or line item.
11. If PROPOSER takes exception to specifications or reference data, he will be required to provide details etc. as specified.
12. It is expected that the Proposer will meet all state and federal safety standards and laws in effect on the date of the RFP for the item(s) being specified, and the particular use for which they are meant.
13. It is the responsibility of the proposer to ask any and all questions the proposer feels to be pertinent to the proposal. CITY OF MERCEDES shall not be required to attempt to anticipate such questions for proposers. CITY OF MERCEDES will endeavor to respond promptly to all questions asked.
14. CITY OF MERCEDES reserves the right to test equipment, supplies, material and goods proposed for quality, compliance with specifications and ability to meet the needs of the user. Demonstration units must be available for review. Should the goods or service fail to meet requirements and/or be unavailable for evaluation, the proposal is subject to rejection.
16. The CITY shall have the right to inspect the goods at delivery before accepting them.

PURCHASE ORDER AND DELIVERY: The successful PROPOSER shall not deliver products or provide services without a contract approved by the CITY OF MERCEDES City Commission and a CITY OF MERCEDES Purchase Order signed by an authorized agent of the CITY OF MERCEDES Finance Department.

This shall be understood to include bringing merchandise to the appropriate room or place designated by the using 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 CITY OF MERCEDES without prejudice to other remedies provided by law. **Where delivery times are critical, CITY OF MERCEDES reserves the right to award accordingly.**

NO PLACEMENT OF DEFECTIVE TENDER: Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender provided, where the time for performance has not yet expired, the Seller may seasonably notify Buyer of their intention to cure and may then make a conforming tender within the contract time but not afterward.

PLACE OF DELIVERY: The place of delivery shall be that set forth on the purchase order. Any change thereto shall be affected by modification as provided for in clause 20, "Modifications", hereof. The terms of this agreement are "no arrival, no sale".

DELIVERY TERMS AND TRANSPORTATION CHARGES: RFP must show number of days required to place material in receiving agency's designated location under normal conditions. Failure to state delivery time obligates Proposer to complete delivery in 24 hours. A five-day difference in delivery promise may break a tie. Unrealistically short or long delivery promises may cause RFP to be disregarded. Consistent failure to meet delivery promises without valid reason may cause removal from Proposer list.

An accurate delivery date must be quoted on the "RFP Form". When there are various items, a delivery date must be included with each item quoted. Freight and shipping charges to CITY OF MERCEDES must be included in the RFP price. Final location will be supplied to the vendor on award of RFP,

F.O.B. destination. Delivery locations will be: Various CITY Building locations. Delivery days after receipt of order (ARO). Specify all (various) dates by categories or item if different.

If delay is foreseen, contractor shall give written notice to the City Secretary. The CITY has the right to extend delivery date if reasons appear valid. Contractor must keep CITY advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications, authorized the CITY to purchase supplies elsewhere and charge full increase in cost and handling to defaulting contractor.

Delivery shall be made during normal working hours only, 8:00 a.m. to 5:00 p.m. unless otherwise noted in RFP.

VARIATION IN QUANTITY: The CITY assumes no liability for commodities produced, processed or shipped in excess of the amount specified herein.

SELLER TO PACKAGE GOODS: Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently packed as follows: (a) Seller's name and address; (b) Consignee's name, address and purchase order or purchase release number and the supply agreement number if applicable; (c) Container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

SHIPMENT UNDER RESERVATION PROHIBITED: Seller is not authorized to ship the goods under reservation, and no tender of a bill of lading will operate as a tender of goods.

TITLE AND RISK OF LOSS: The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.

INSPECTION: Upon receiving item(s), they will be inspected for compliance with the RFP Specifications. If the item(s) do not pass inspection, the vendor will be required to pick up the rejected item(s) at the delivery point, provide the necessary replacement, and return the item(s) to the original point of delivery.

All items proposed shall be new, in first class condition, including containers suitable for shipment and storage (CITY OF MERCEDES prefers recycled packaging whenever possible), unless otherwise indicated in RFP. Verbal agreements to the contrary will not be recognized. All materials and services shall be subject to Purchaser's approval. Unsatisfactory material will be returned at Seller's expense. CITY OF MERCEDES reserves the right to inspect any item(s) or service location for compliance with specifications and requirements and needs of the using department. If an offeror cannot furnish a sample of an RFP item, where applicable, for review, or fails to satisfactorily show an ability to perform, the CITY can reject the RFP as inadequate.

TESTING: CITY OF MERCEDES reserves the right to test equipment, supplies, material and goods Proposed for quality, compliance with specifications and ability to meet the needs of the user. Demonstration units must be available for review. Should the goods or services fail to meet requirements and/or be unavailable for evaluation, the RFP is subject to rejection. **CITY Dept.(s) reserves the right to make the final determination as to equivalents.**

SPECIAL TOOLS AND TEST EQUIPMENT: If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.

INVOICES AND PAYMENTS: (a) Vendor shall submit separate invoices, in duplicate, on each purchase order after each delivery. Invoices shall indicate the purchase order number, shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight weigh bill when applicable, should be attached to the invoice. Mail to: CITY OF MERCEDES, ATTN: City Secretary's Office, 400 S. Ohio Ave., Mercedes, Texas 78570. Payment shall not be due until the above instruments are submitted after delivery. Vendors must keep the Auditor advised of any changes in your remittance addresses. (b) CITY's only obligation to pay Vendor is to pay from funds budgeted and available for the purpose of the purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to Vendor by the CITY. (c) Do not include Federal Excise, State or City Sales Tax. CITY shall furnish tax exemption certificate if required.

Any invoice, which cannot be verified by the contract price and/or is otherwise incorrect, will be returned to the Vendor for correction. Under term contracts, when multiple deliveries and/or services are required, the Vendor may invoice following each delivery and the CITY will pay on invoice. Contracts providing for a monthly charge will be billed and paid on a monthly basis only. Prior to any and all payments made for good and/or services provided under this contract, the Vendor should provide his Taxpayer Identification Number or social security number as applicable. This information must be on file with the CITY OF MERCEDES City Secretary's office. Failure to provide this information may result in a delay in payment and/or back-up withholding as required by the Internal Revenue Services.

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

**CITY OF MERCEDES
ACCOUNTS PAYABLE
400 S. OHIO AVE.,
MERCEDES, TEXAS 78570
invoices@cityofmercedes.com**

Please note that any payment due under this RFP award will be applied towards any debt, including but not limited to delinquent taxes that is owed to CITY OF MERCEDES.

PAYMENT DISCOUNT: Indicate the payment discount (s) available depending on the when invoices are paid. For example, 1/30 means a 1% discount if paid within 30 days, 2/15 means a 2% discount if paid within 15 days, etc. Payment in full will be made within thirty (30) days of delivery, inspection, and receipt of invoice.

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

**CATEGORY A
CITY OF MERCEDES, TEXAS
REQUEST FOR QUALIFICATIONS
CITY WIDE BROADBAND EXPANSION
RFP # 2023-002**

You are invited to submit Qualifications for providing CITY WIDE BROADBAND EXPANSION services within CITY OF MERCEDES city limits, to meet the needs of Government, Residential and Business subscribers. A Broadband Feasibility study was completed in preparation for this RFP with a full Needs and Gaps Analysis, High Level Network Considerations and Requirements, and Implementation Recommendations. CITY OF MERCEDES is seeking qualified broadband infrastructure and internet service providers to participate in a Public Private Partnership to address the needs and gaps as identified in the study to enhance the state of broadband within the CITY and provide a foundation for Digital Equity.

The RFP is particularly interested in Proposers' ability to meet the funding eligibility requirements set for in the American Rescue Plan Act of 2021 (ARPA) *Please see Appendix A "FHWA 1273" & Appendix B "Super Circular- Procurement Standards 2 CFR Parts 200.317 – 200.327"*

CITY OF MERCEDES is an Affirmative Action/Equal Opportunity Employer and strives to attain goals for Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) as amended.

1. Introduction

1.1 Network Background

CITY OF MERCEDES is requesting qualifications from Vendors to build, manage and operate a next generation communications network ("Network") that will provide Internet access service to businesses, homes, and community institutions within the Service Area. A baseline of 1 Gbps symmetric service will serve as the definition of "next generation" service for this RFP. CITY OF MERCEDES will provide a variety of forms of support, including (but not necessarily limited to): (i) streamlining access to infrastructure, rights-of-way and inspections; (ii) assistance in demand aggregation; (iii) long-term contracts and support for development of high bandwidth applications to drive adoption; (iv) marketing assistance (including working directly with Vendors, local business leaders and community leaders to increase the revenue opportunities and lower the costs associated with constructing and operating the Network); (v) revising local rules, regulations or requirements to decrease the cost to deploy or operate the Network; and (vi) collaboration with local research and education networks.

The selected Vendor will provide vertically integrated retail services and may operate the Network on a wholesale basis. If it chooses to do so, it will not have to implement an open access requirement to ensure that retail services competitors will be given treatment equal to that it provides to itself. However, the Vendor must not limit the ability of customers to run applications, use services and connect devices of their choice to the Network.

The Vendor will bear all of the costs for the Network, including but not limited to design, engineering, construction, equipment and insurance for the Network, up to the end user drop point or network interface device. In addition, the Vendor will bear all the operating and maintenance costs of the Network. In addition, Vendor should demonstrate a clear upgrade path for the Network to meet future consumer demand and service development needs. Vendor must participate in the Affordable Connectivity Program (ACP) and provide a low-cost option for qualifying households.

CITY OF MERCEDES will not charge Vendor for access to CITY OF MERCEDES's assets and infrastructure except as set forth herein. CITY OF MERCEDES intends the Network to serve as a development platform for innovation, next generation application development, workforce development and job creation throughout the Service Area.

1.2 Overview

The CITY seeks to make available reliable and affordable high-speed internet/broadband services to as many premises in the CITY as possible, specifically to underserved or unserved households and businesses, defined as those not currently served by a connection that reliably delivers at least 100 Mbps download speed and 100 Mbps upload speed.

The high-speed internet/broadband services shall specifically provide a service designed to reliably meet or exceed a speed of 100 Mbps download and 100 Mbps upload; or in cases where the symmetrical 100/100 Mbps service is not practicable, provide a service

designed to reliably meet or exceed 100 Mbps download and at least 20 Mbps upload speeds, and be scalable to a minimum of 100 Mbps download and 100 Mbps upload. Interim Rule, 31 C.F.R § 35.6(e)(2), 86 Fed. Reg. 26786, 26823.

The purpose of the RFP is to seek innovative or traditional internet/broadband solutions from one or more Proposers proposing one or multiple solutions over all or portions of the CITY. From these RFP responses, the CITY will select the best Proposer(s), to finalize project details by creation and execution of a contract with the CITY.

The CITY does not intend to enter the internet/broadband business as a competitive service provider.

The CITY does not intend to operate the network enterprise it financially supports through this RFP process. The network enterprise will be owned and operated by the selected Proposer, and/or Proposer's subcontractor, as per the contract to be negotiated with the CITY.

If the Proposer is currently providing service in some areas of the CITY, the CITY requires that the Proposer provide similar pricing and service tiers for data services for the Assets in the newly served areas.

This request for proposals does not constitute a contract for services performed or to be performed.

The objectives are to establish a Network that:

1. is able to offer retail broadband services with a guaranteed sustained minimum 1 Gbps dedicated symmetrical transmission speed over each connection provided to a premise;
2. is able to support high quality voice, data and video services;
3. uses fiber-to-the-premises network architecture where able;
4. provide a low-cost option for household internet service;
5. is rolled out and made operational progressively, on a demand driven basis, over 5 years from the date of execution of a contract between CITY OF MERCEDES and the Vendor;
6. promotes the long term economic and community interests of CITY OF MERCEDES and end users; and
7. facilitates opportunities for small and medium enterprises (SMEs) and local enterprises to provide services to the community.

2. **Scope of work**

Vendor shall detail the ability to design, build, install, own, operate and manage the Network. The Network shall have the following features and functionality.

Network Equipment, Design and Technical Specifications.

The Proposer must provide network architecture documentation that shows active equipment locations and where assets will be added.

Network architecture should consider a redundant topology that provides resiliency in the network. While not every component of the network can be redundant, where feasible the Proposer should take steps to make service offerings as resilient as possible.

It is expected that Proposer may have some preexisting core assets (fiber, towers, hut sites, etc.) they intend to utilize in providing services to the proposed service areas. Proposers utilizing pre-existing infrastructure should describe how these Assets fit into their proposed network architecture.

Network Test and Acceptance Standards

The Proposer will be required to demonstrate network performance to specified test standards. These standards will need to be met for services offered and infrastructure built or contracted. Speeds will be tested and proven as negotiated in the contract.

Test standards are outlined in Section 8.

Presence in CITY

While the successful Proposer will receive an RFP award letter from the CITY, the CITY has the option to request best and final offer to the Proposer. The Proposer will be contributing significant capital and operational Assets and shall demonstrate they can successfully deliver internet/broadband where the network is required to offer service.

A significant component of the scoring criteria will be the CITY's assessment of the Proposer's proposed presence within the CITY, demonstrating its ability to provide adequate service and support to its customers.

Network Deployment Timing

The CITY intends the project be deployed in a continuous fashion commencing immediately upon contract execution.

The CITY desires that all Rural Internet Connectivity Project(s) be completed prior to September 30, 2023 preferably sooner, or by the negotiated date of the contract with the CITY. Within their RFP response, Proposer shall provide a proposed schedule for implementation that reflects the most expeditious timeline possible, including engineering, permitting, licensing, construction, and validation.

Public Safety Services

- Dedicated public safety service network
- Secure public safety access
- Public infrastructure monitoring (e.g., traffic lights, speed cameras, cameras on other public structures)

Retail/Local Services on Integrated Open Network

- Internet access service – residential and business class
- SIP trunking and customized Internet service plans for enterprises and institutions
- Hosted VoIP solutions for small business and residential customers
- Multi-channel video service
- On-demand content delivery
- Customized local content
- Video conferencing
- Hyper-local open technology gateway for local access to cloud-based community application and OTT services
- Support for community innovation research and development efforts

Community Services on Network

- Cooperation on development and implementation of a “Smart Grid” program for stakeholders and customers (e.g. digital technology that allows for two-way communication between the utility and its customers and the sensing along transmission lines)
- Community public service video channels
- Dedicated community health services network
- Health information exchange with secure media access
- Patient center managed telemedicine services
 - Secure portal
 - EMR data extraction from EMR systems (e.g., EPIC, Cerner, etc.)
 - Institutional/physician/clinic/home based access
 - Community health kiosks
 - Managed home health service portfolio
 - Physician-patient secure video network access
- Support for a local application developer community
- Access to cloud-based development environment
- Access to content distribution network (CDN) development and distribution channels

Proposer information requirements, Considerations and Anticipated Contract Terms

The CITY, at its option, may make a single award for this RFP. The CITY may also, at its option, make multiple awards. The contract may be awarded on the merits of the whole proposal or only a part of it. By submission of a proposal, each Proposer offers or acknowledges the right of the CITY to make the award, which is in its best interest. The CITY may also make no award after the completion of this RFP process.

There is no guarantee a contract will successfully be awarded related to a winning Proposer's response. The CITY reserves the right to cancel this RFP at any time.

The CITY is not required to accept the lowest cost proposal.

The CITY reserves the right to accept any proposal, to reject any or all proposals, to reissue a request for proposals, to waive irregularities and/or informalities in any proposal, and to make the award in any manner deemed in the best interest of the CITY.

The CITY reserves the right to reject any proposal if there is cause to believe that such Proposer is not properly qualified to carry out the obligations of the contract and to complete the work contained therein. The CITY may make such investigation as deemed necessary to determine the ability of the Proposer to perform the work, and the Proposer shall furnish to the CITY all such information by the date specified by the CITY.

The CITY may conduct such investigations as it deems necessary or appropriate to assist in the evaluation of any RFP response and to establish the responsibility, qualifications, and financial ability of the Proposer, their proposed subcontractors, and other persons or organizations submitted within a Proposer's response to do the work to the CITY's satisfaction within the prescribed time.

The submission of an RFP response will constitute representation by the Proposer that it understands and has complied with the requirements of the RFP. Submission of a response indicates the RFP information provided was sufficient in scope and detail to convey understanding of anticipated terms and conditions for performance of the work.

While not shown in the schedule above, the CITY reserves the right to conduct interviews of short-listed Proposer(s) prior to making a final selection.

The information contained in proposals submitted for consideration by the CITY will be held in confidence only to the extent allowable by law. The CITY will honor specific requests for confidentiality for information of a proprietary nature only to the extent allowed by law if clearly marked by Proposer as "Proprietary" or "Confidential."

All proposals become public documents and are subject to public review (upon request and as allowed by law). "Proprietary" or "Confidential" items should be noted and will not be eligible for public review to the extent allowed by law. During the RFP process itself, and until a contract is awarded or this process is canceled, all information and documents received are confidential.

RFP Proposers assume all costs of preparation of the proposal.

Each Proposer may be requested during the scoring process to provide background history, staff resumes, current capabilities, and financial statements. The CITY may also request information to support Proposer's track record regarding customer acquisition capabilities and customer service capabilities.

The CITY may require the successful Proposer(s) to post a letter of credit or performance bond to support its performance obligations. The Proposer shall describe in the RFP response its ability to acquire such surety and denote the limitations of such (e.g., maximum credit lines, bond coverages, etc.)

Startups or new Service Providers with limited performance history are not excluded from participation in the RFP response process; however, they should anticipate providing similar performance and financial due diligence information upon request.

The CITY reserves the right as a function of the RFP analysis process to require Proposers to identify the source(s) of Proposer's share of project funding.

The CITY reserves the right to contact references as deemed necessary to complete its analysis.

The CITY acknowledges the potential for a variety of contract frameworks that may result from this RFP process and subsequent contract negotiations; however, any final contract must comply with CITY requirements.

If chosen for contract negotiation, the selected Proposer candidate must provide a description of all liability and property insurances that would be in place relative to the contract as outlined in this RFP.

The Proposer will be expected to execute a contract within 45 days of notification they have been selected by the CITY as an awarded candidate. The CITY reserves the right to select other candidates if a contract is not executed within the 60-day timeline.

The Proposer should expect that disbursement of CITY capital fund participation will be coordinated with the achievement of specific, mutually agreed-to project milestones. Additionally, a performance bond, construction bond, letter of credit, or other method of surety will be required for all or certain portions of the project scope.

Network Construction Standards

Proposers should expect that upon successful completion of a negotiated contract for deployment of a rural internet/broadband network, and commencement of work by the selected Proposer.

The selected Proposer will fully engineer and permit the project prior to commencement of construction as a function of the negotiated contract.

Deployment of all fiber and fiber-related infrastructure must comply with all National Electrical Contractors Association (NECA) codes and laws at the local, state, federal, and private land levels as they pertain to fiber optic installations.

Should wireless technology be selected for deployment, all towers, antennas, and other components utilized to deliver wireless internet/broadband must comply with all FCC regulations regarding tower construction, spectrum registration, and applicable state/CITY authority over zoning and land use regulations. All newly constructed towers shall become the property of the Proposer; however, the CITY reserves the right to attach signal capability for Central Dispatch. This right will expire after 2 years if unused. No fees may be charged to CITY for Central Dispatch use the selected

Proposer will be expected to have all routes and tower sites surveyed by a licensed surveyor as well as provide the CITY with GIS/CAD mapping showing the locations of all facilities deployed and service areas of engineered coverage design(s).

Other construction requirements that are the responsibility of the Proposer include:

- Provide the CITY with periodic reports of monthly activities and progression towards milestones, such reports to include information as negotiated in the contract.
- Work with all appropriate agencies to obtain all required right of way approvals.
- Obtain all required permits and private easement approvals.
- Coordinate project deployment with all utilities.
- Obtain any necessary contractor licensing issued by the CITY Planning Department.
- Provide on-site construction inspections to ensure design.
- Coordinate and resolve third party or private claims.
- Repair any and all damages to private property.
- At all times, maintain an adequate staff of experienced and qualified employees for efficient performance.

At all times, furnish or perform any services in a safe, proper, and professional manner.

2.1 Proposer Qualifications

- A. Experience in high speed network design and operation – Vendor should provide a statement of experience highlighting [at least 3] similar network systems that it has designed, constructed and operated, including project name, location, size, technology used, and name and phone number for reference contacts. Also indicate whether each system is owned by the Vendor or another entity.
- B. Financial Stability – Vendor shall submit its two most recent annual financial statements in order to permit analysis of its financial resources. If financial statements are unavailable due to confidentiality reasons, submit recent D&B reports. If Vendor is part of a team, the two most recent annual financial statements for each team member should be submitted. If the Vendor’s response includes vendor financing or committed bank or other financing, the two most recent annual financial statements of such equipment vendors and financial institutions should be submitted.
- C. Staff Technical and Managerial Experience – include a statement of experience and resumes of the project team, including the project manager and other key personnel who will be assigned to this project. Also include a list of any known or anticipated subcontractors along with their roles and responsibilities.
- D. Evidence of Legal Capacity – include copies of Vendor’s most recent federal and Texas annual reports and current licenses to provide telecom/communications services, together with a certification that all Texas business and regulatory registrations/filings/taxes are current, and all internal corporate documents are kept and up to date (e.g. meeting minutes, bylaws, etc.).

3. Administrative Issues

3.1 Availability of the RFP and Amendments

Adobe Acrobat (PDF) versions of this RFP are available on the city website at: <https://www.cityofmercedes.com/bids-and-contracts/> Amendments to the RFP will be posted on the project website at <https://www.cityofmercedes.com/bids-and-contracts/> . Any amendments supersede prior provisions and are effective upon posting on the project website, and each potential bidder is responsible for checking the website to learn of any amendments.

3.2 Questions about the RFP

The primary RFP contact for the CITY OF MERCEDES is: Mr. Javier Ramirez, Assistant City Manager, office number: 956-565-3114 ext. 132, e-mail address: jramirez@cityofmercedes.com

All general correspondence and any questions about this RFP must be submitted in writing to the City of Mercedes via email at: jramirez@cityofmercedes.com and cc'd to jcastillo@cityofmercedes.com. The CITY OF MERCEDES project team will not entertain any oral contacts regarding this RFP. **The last date for questions will be 5:00 pm Central Time on Wednesday, July 5, 2023.** All questions will be considered to be public and released with an answer via addendum at <https://www.cityofmercedes.com/bids-and-contracts/> as expeditiously as possible. The identity of the person posing the question will not be disclosed.

Vendors should not contact CITY OF MERCEDES directly. Any attempts to contact CITY OF MERCEDES staff regarding this RFP other than via this email process may be grounds for the CITY OF MERCEDES to reject your submission.

3.3 Additional Material

Vendors are encouraged to review and complete the following material prior to submitting their proposals.

3.4 Proposal Format and Certification

Proposals should be organized as per section 4.0 with responses referencing the appropriate corresponding RFP item(s). Proposers should respond to each item at the level of detail at which each is presented or list a variance with a particular item and propose alternate terms and, as applicable, and supply any supportive detail. Proposals not conforming to the proper format or failure to respond to any required items may result in a Proposer's disqualification and/or rejection of the proposal. Where the Proposer is requested to supply information, include that information in the body of the proposal, or reference the attachment where it is included.

A duly authorized officer or agent of the Proposer must sign the proposal. Proposals that are not signed will not be considered. In the case where multiple vendors team to present a proposal, a signature by a duly authorized officer or agent of each entity is required on the proposal, though one entity should be designated the lead entity in the proposal. The lead entity will be the contracting Vendor and will be responsible for subcontracting with its partners.

3.5 Project Calendar

Anticipated Event Dates

- RFP Advertised and issued: 1st ad on **Wednesday, June 21, 2023**
- Proposals Due: **Thursday, July 13, 2023 at 3:00 P.M.**
- Proposal Evaluation Completed by: TENTATIVE Week of July 17 to 21
- Interviews with finalist firms no later than: TENTATIVE **August 1, 2023**
- CITY Commission Agenda presentation to recommend award: T E N T A T I V E **August 1, 2023**
- Award and Letter of Intent for Contract no later than:
- Selected firm begins work no later than:
- Contract finalized no later than:
- First progress report due:

3.6 Proposal Due Date and Submission

Proposals are due by 3:00 p.m. local time on Thursday, July 13, 2023. Proposals received after the deadline will not be considered. Proposals must be submitted in a sealed envelope marked with RFP # 2023-002 and the name and address from the Proposer (participant). ORIGINAL (marked “ORIGINAL”) AND SEVEN (7) COPIES (marked “COPY”) sets in a sealed envelope and an electronic (PDF format file only) in a flash drive are required for any proposal submitted. *Faxed proposals will not be accepted.* Vendors assume the risk of the methods of dispatch or delivery chosen. Office hours for receipt of seal proposals are: Monday through Friday, 8:00 am - 5:00 pm (CST).

3.7 Commencement of Work

The submission of response to this RFP and the subsequent evaluation of that response by CITY OF MERCEDES, does not constitute a contract or any type of agreement between CITY OF MERCEDES and any Proposer for the commencement of work or the performance of any obligation. Only a written contract with CITY OF MERCEDES will authorize the commencement of work or obligate CITY OF MERCEDES on this project.

3.8 Use of Subcontractors

Proposers may use subcontractors to fulfill any obligations in connection with the project. Use of subcontractors shall be subject to all applicable state and federal laws. A Proposer shall remain liable for fulfilling all its obligations on the project, and for any claims or damages arising from the subcontractor’s work.

3.9 Applicable Statutes

CITY OF MERCEDES is a public entity. As a result, this RFP is subject to a variety of public procurement requirements, including but not limited to federal and state records disclosure statutes referenced above and the following:

- Small Business obligations
- Local Business obligations
- Minority Business obligations
- Veteran-Owned and Service-Disabled Veteran-Owned Small Businesses
- Economic Development Zone Small Businesses
- Woman-Owned Small Businesses (WOSBs)
- Union/Non-union labor use

3.10 Errors and Omissions in a Response

The responding Proposer is responsible for all errors and omissions in its proposal. If it discovers an error and wishes to withdraw its proposal, the responding vendor should notify the CITY immediately.

3.11 Errors and Omissions in the RFP

If CITY OF MERCEDES becomes aware of an error or omission in the RFP, it will post a notice on the website. If it discovers and error or omission after the proposals are submitted, it may in its discretion proceed or reissue the RFP. Even if it elects to rebid the RFP, CITY OF MERCEDES will not be liable for any costs or damages incurred by any Proposer in preparing and submitting the original proposal.

3.12 Objections to RFP Terms

Any objections to RFP terms must be conveyed in writing to [the address for RFP questions] and must be submitted by the deadline for submission of questions about the RFP.

3.13 Acceptance of RFP/Response Content

By submitting a proposal, a Proposer certifies that it has read, understood, and agreed to all requirements, terms, and conditions in this RFP, including any and all attachments, exhibits, and appendices. A Proposer may withdraw its proposal prior to the RFP response deadline.

3.14 No Waiver of RFP Provisions

CITY OF MERCEDES may, but is under no obligation to, waive any provision in this RFP at the request of a potential Proposer. Any such waiver shall apply to all potential bidders, and no waiver shall constitute a waiver of any provision not specifically referenced therein.

3.15 Ownership and Confidentiality of Proposals

CITY OF MERCEDES will not pay for any information requested herein, and all proposals submitted become the property of CITY OF MERCEDES. Proposals will not be returned and may be subject to disclosure pursuant to the federal Freedom of Information Act and/or the Texas Public Records Act. Pricing and other information that is an integral part of the proposal cannot be considered confidential after an award has been made. CITY OF MERCEDES may receive information that may be confidential as part of your response. If you believe that any portion of your proposal includes proprietary or other confidential information, please clearly mark it as such and state the basis for your claim to confidential treatment. Unless otherwise required by law, CITY OF MERCEDES will treat the information as confidential and will not disclose it to a third party without your permission. However, pricing and other information that is an integral part of the proposal will likely not be considered confidential after an award has been made.

4. Process and Criteria for Evaluation of Proposals

Proposals will be opened and reviewed internally at the convenience of CITY OF MERCEDES. All proposals will be evaluated and, at CITY OF MERCEDES discretion, an award made to the Vendor who demonstrates the best ability to meet the overall goals of the project, with particular emphasis on the ability to fulfill the scope of work in the most timely and efficient manner. The CITY OF MERCEDES team will initially assess the qualifications of each Vendor submitting a proposal and rank the proposal according to the following point system:

The following scoring matrix shall be used to determine successful Proposer(s).

Criteria	Points	Score
Project Costs and CITY Contribution	50	
Proposed Cost to CITY per Total Miles proposed to build	50	
Proposed Solution	30	
Overall deployment timing - priority given to projects that can be done the quickest	6	
Adherence to project requirements to meet CITY OF MERCEDES’s primary priority to build a foundational “backbone” in CITY OF MERCEDES set forth in section 1.2	17	
Potential New Connections	5	
Improvement to currently served premises	2	
Proposer Background, Qualifications, and Capabilities	20	
Proposed CITY-wide presence	15	
Knowledge, team, and technical competence	3	
Financial stability	2	
TOTAL	100	

Evaluators score by category will be multiplied by the assigned weight for each criteria by vendor then totaled. Scoring for price will be a ratio and based on a pro rata factor of the best price submitted.

Ex: Vendor W - price \$100,000 = 4 points X assigned weight (ie: 25%) = 100 points
 Vendor X – price \$150,000 = 2.66 points X assigned weight (ie: 25%) = 66.6 points
 Vendor Y – price \$200,000 = 2 points X assigned weight (ie: 25%) = 50 points
 $100,000 \div \$200,000 = .50 \times 4 = 2 \times 25 = 50$
 $100,000 \div \$150,000 = .66 \times 4 = 2.666 \times 25 = 66$

Once RFPs are reviewed and scored, a short list will be compiled. Interviews may be conducted with Proposers determined by total score rankings. Additional information may be required at that time. Negotiations will begin with the Proposer selected for the project. City Commission will make the final selection and possible approval of the contract.

Other Project Evaluation Criteria

In addition to the qualification criteria, CITY OF MERCEDES will examine the extent to which each response meets the criteria below, which are not listed in order of importance. CITY OF MERCEDES will then undertake a comparative assessment of all proposals in order to make a decision as to which proposal(s) should be selected [for further analysis and negotiation]. The evaluation criteria against which proposals will be assessed are:

1. the extent to which the proposal meets CITY OF MERCEDES's objectives for the Network (as set out in **Section 2**). (including, but not limited to, build out requirements/selection of neighborhoods, the level of pre-construction demand commitment required to trigger build out for specific areas, and the proposed price point if demand levels are met);
2. the capability of the Proposer to design, construct, finance, maintain, upgrade and operate the Network;
3. the nature, scope and impact of any local community legislative and/or regulatory changes that are necessary to facilitate the proposal;
4. the cost to CITY OF MERCEDES of the proposal;
5. the acceptability of the contract terms and conditions proposed by the Proposer and the extent to which the proposal departs from the RFP and from CITY OF MERCEDES's proposed commercial terms (if any).

[Once the comparative assessment of the proposals is complete, CITY OF MERCEDES will select the [two] highest-ranked for further negotiations. It will select one at the completion of such negotiations.]

The CITY reserves the right to reject any proposal if there is cause to believe that such Proposer is not properly qualified to carry out the obligations of the contract and to complete the work contained therein. The CITY may make such investigation as deemed necessary to determine the ability of the Proposer to perform the work, and the Proposer shall furnish to the CITY all such information by the date specified by the CITY.

The CITY may conduct such investigations as it deems necessary or appropriate to assist in the evaluation of any RFP response and to establish the responsibility, qualifications, and financial ability of the Proposer, their proposed subcontractors, and other persons or organizations submitted within a Proposer's response to do the work to the CITY's satisfaction within the prescribed time.

The submission of an RFP response will constitute representation by the Proposer that it understands and has complied with the requirements of the RFP. Submission of a response indicates the RFP information provided was sufficient in scope and detail to convey understanding of anticipated terms and conditions for performance of the work.

5.0 Clarification of Proposals

Notwithstanding any other provision of this RFP, CITY OF MERCEDES reserves the right to:

1. Conduct discussions with any or all potential vendors for the purpose of clarification of proposals;
2. Waive, or decline to waive, any defect in any proposal;
3. Accept, reject, or negotiate any or all proposals or the terms of any proposal, or any parts thereof, for the purpose of obtaining the best and final offer;
4. Cancel or amend this RFP or issue other requests for proposals;
5. Select a Vendor or Vendors based on its analysis and evaluation of proposals submitted and request presentations on proposals if it believes further information is appropriate to the decision-making process;
6. Select no proposals at all; or
7. Use any and all concepts presented in any proposal to obtain the most beneficial and effective path to achieving its desired goals for the project.

6.0 RFP Response Format

In an effort to expedite the evaluation of the RFP responses received, Proposers are required to organize proposals in the sequence below.

There is no restriction on the number of pages submitted in the proposal.

1. Cover Sheet
2. Executive Summary of Scope of Work
3. Cost Proposal
4. Technical Approach and Work Plan
5. Company Background
6. Statement of Qualifications
7. Company Financial Statement
8. Appendices

6.1 Cover Sheet

Complete the RFP 'Attachment A: Cover Sheet' worksheet provided.

Provide the full legal name of the Proposer, including any previous names or doing-business-as names. Signature of an owner, corporate officer, or agent authorized by the Proposer is required.

6.2 Executive Summary of Scope of Work

Proposer shall provide an overview of the major features of the RFP submission. Include any suggestions, conclusions, recommendations, or assumptions the Proposer believes are significant to the understanding of the RFP. Sequencing and description of the tasks and/or the time frame for completion of the tasks is required.

6.3 Cost Proposal

Proposer shall provide a detailed breakdown of the total project cost, then clearly indicate the requested CITY contribution and Proposer's contribution. Attachment C has been provided as a template for the cost proposal. Total project cost shall not include ongoing fees such as licenses, O&M costs, or lease/rent expenses. Additional points will be awarded accordingly for the more Proposer contributes to the total project cost. Should any technical alternatives be included for the CITY's consideration, a separate cost proposal should be included for each alternative.

6.4 Technical Approach and Work Plan

A detailed scope of work, to include the specific information listed below.

6.5 Technical and Procedural Concerns

Address technical and/or procedural concerns that may influence the proposed project. Proposers should also include any assumptions made within their response.

Explain any type of support required from CITY personnel.

6.6 Technical Alternatives

Describe any technical alternatives or exceptions to listed specifications. Cite the applicability of alternative approaches/procedures to address CITY objectives and the advantages to be gained through their use.

Clearly acknowledge the project requirements as outlined in Section 2. Any exceptions the Proposer may have to the project requirements as outlined in in Section 2 of this RFP must be clearly called out and described.

The inability of Proposer's proposal to meet the project requirements and speeds of this RFP is not an automatic means of disqualification. The Proposer shall clearly and thoroughly define any proposed solutions or technical alternatives which may not meet the eligibility requirements of ARPA due to constraints with geography, topography, or excessive costs, but will expand high-speed internet to un/underserved premises.

6.7 Implementation Schedule

In this section of the proposal, the Proposer is to describe the anticipated schedule to deploy, operate, and maintain an Internet/Broadband Network, including anticipated resources required. Proposer should provide a proposed schedule for design, permitting, construction, and initiation of internet/broadband services to the specified areas of the CITY. The timeline schedule should include key milestones and phasing plans. Should any technical alternatives be included for the CITY's consideration, a separate schedule should be included for each alternative.

6.8 Staff Capabilities and Experience

Proposer should clearly describe the capabilities, qualifications, and certifications of the staff to be assigned to support the CITY.

The CITY realizes that this work effort may require the services of multiple entities organized into a project team. Proposers have the option of engaging the services of subcontractors for completion of this project. If the proposal involves any subcontractors, provide full details on the nature of work to be performed by them.

The division of work assigned to subcontractors must be clearly specified in the Technical Approach and Work Plan section of the Proposal. The subcontractors' qualifications must be detailed in the Company Background section of their proposal. Subcontractor financial statements must also be provided with the Cost Proposal.

6.9 Project Location

Describe proposed project location(s). Provide coverage area Asset narratives as applicable to support the proposed design that demonstrates coverage of the project location within the specified area(s). Provide map(s) outlining Asset placement as applicable to support the proposed design that demonstrates coverage of the project location within the specified area(s).

Clearly state how many premises will be covered and at what levels of service.

6.10 Service Delivery and Design

Provide detailed service delivery and design information, as outlined in the Proposer's submission, to fully describe the service delivery platform being proposed. Provide a detailed narrative and related diagrams outlining the proposed network design, the specific equipment to be used and verification that it meets the standards specified to deliver the products as outlined in Section 2.

For each product being proposed within the scope of this RFP please provide the following information as applicable:

- Downstream speed
- Upstream speed
- Narrative of installation requirements/process.

6.11 Wireless Solutions

Wireless solutions are networks that use wireless to reach rural areas for last mile connectivity. Proposed wireless solutions should provide the following information:

- Map of planned tower locations and expected coverage. Coverage maps shall be modeled using equipment that meets CITY zoning codes.
- Documented tower characteristics such as type and height.
- Document describing Licensed or Unlicensed wireless spectrum to be utilized.
- Detailed description of last mile line of sight requirements.

6.12 Wireline Solutions

Wireline solutions are networks that utilize fiber or copper (including coaxial cable) for last mile access. Proposed wireline solutions should provide the following information:

- Provide maps describing planned cable installation and preexisting cable routes that support meeting coverage requirements specified in the RFP.

- Document last mile access technology.

6.13 Point-to-Point Solutions

Proposers may also propose any point-to-point data products or business class Internet products.

6.14 Services Required

All proposals are required to include a description of the services required as the Proposer's organization would address support of the deployment, operation, and maintenance for the delivery of internet/broadband network products and services throughout the CITY. Provide a narrative of the current and/or intended presence in the CITY (i.e., sales, administrative, customer service personnel) in support of the Internet infrastructure established as a result of this RFP.

7.0 Company Background

Please provide the following information as part of the company background and current capabilities:

- Overview of the company history, number of years in operation, and management team. Also, indicate if the company is currently registered to do business in the State of Texas.
- Overview of the organization's services products and capabilities. Include any brochures or marketing material that would help give the CITY a better appreciation for its capabilities.
- Outline the company's capacity to handle a project of this size and complexity. If its capacity entails hiring additional staff should the organization be awarded the CITY contract for this work effort, identify the quantity and type of staff the company envisions adding, and the time frame it anticipates the acquisition to take. The CITY would prefer that the staff were in place by the time the initial assessment is completed.

7.1 Statement of Qualifications

Provide a description of (up to) three (3) projects similar to the one described in this RFP that the company has deployed within the last five (5) years. Outline services offered, geography covered, network design utilized, and customer types served. For each project provide the contact information. The preference of the CITY would be to receive a list with both older established sites as well as new installations if possible.

7.2 Company Financial Statement

All Proposers must provide audited financial statements of the entity that would enter a contract with the CITY (unaudited financial statements are acceptable if Proposer does not have audited financials) from the past three years, and Proposers may also include credit ratings/reports, reference letters from your bank and reference letters from suppliers.

7.3 Appendices

Proposers can attach such documentation as desired to support the RFP response to assist the CITY to better assess the Proposer's RFP submission. If used, Appendices must be clearly labeled with a purpose for submission.

8. Network and Testing Standards

Proposers will be required to demonstrate network performance to specified test standards. These standards will need to be met for services offered and infrastructure built or contracted.

Test standards will be per user and include the following as outlined:

8.1 Fiber and Cabling Infrastructure:

Proposer shall provide the CITY with the following testing documentation:

8.1.1 Insertion Loss Test

All optical fiber cables and cable plants shall be tested for insertion loss using Electronic Industries Alliance/Telecommunication Industries Association (EIA/TIA) Standards EIA/TIA 526-14 or EIA/TIA 526-7.

Insertion loss refers to the optical loss of the installed fibers when measured with a test source and power meter (OLTS).

8.1.2 OTDR Testing

The Proposer will be required to test all fiber segments with an optical time domain reflect-o-meter (OTDR). The tests performed are to verify the quality of the installation and for establishing baseline data for future troubleshooting. However, it shall not be used as a measurement of the light loss of the cable.

OTDR measurements should follow procedures outlined in EIA/TIA 455-59, -60, and -61.

The CITY reserves the right to verify through separate testing the Proposer's test data submitted.

8.2 Wireless Elements:

8.2.1 Coverage Mapping

For all point-to-multipoint wireless technologies, coverage must be tested and documented in a GIS format with documentation provided to the CITY.

8.2.2 Simulated End User Testing

If a wireless solution is proposed, the CITY will test Last Mile Elements at a select number of active customer sites per tower deployed. At a minimum, the Proposer will be required to secure and provision one active customer per tower deployed for this test.

To ensure the required coverage specified in **Appendix I**, the CITY will also test at the maximum product service delivery levels proposed by the Proposer, at three (3) sites selected by the CITY. These CITY selected sites will be located within each specified coverage area. The maximum bandwidth size proposed by the Proposer will be tested at each of these CITY-selected test sites.

If the selected Proposer's proposed point-to-point data and/or business class Internet bandwidth level products, these are also subject to verification testing by the CITY at the proposed service delivery level speeds in each Coverage Segment Zone proposed.

Simulated User Testing will consist of:

- Downstream throughput at the speeds proposed by Proposer
- Upstream throughput at the speeds proposed by the Proposer
- Latency of 100 ms or less
- Packet Loss: 99.9% or more packets must be passed

8.3 Leased Capacity or Wireless Point-to-point:

RFC 2544 benchmark testing or equivalent. Test should benchmark throughput, latency, and frame loss at multiple frame sizes to ensure performance is within specifications.

All test results will be documented and delivered to the CITY.

The CITY reserves the right to test any and all network components delivered to verify quality standards are met.

8.4 Speed testing to the POP:

Applicant will provide premise by premise speed test results to the Point of Presence at the customer premise at the completion of installation, and will provide a random sample of at least 10% of the connected premises on an annual basis

Exhibit A: COVER SHEET

Name of Person, Business or Organization:	
Type of Entity:	
Federal Tax ID Number:	
DUNS Number:	
Contact Person – Name	
Contact Person – Address	
Contact Person – Phone Number(s)	
Contact Person – E-mail address(es)	

By signing this *Cover Sheet* I hereby attest: that I have read and understood all the terms listed in the RFP; have read and understood all terms listed in this proposal; that I am authorized to bind the listed entity into this agreement; and that should this proposal be accepted, I am authorized and able to secure the resources required to deliver against all terms listed within the RFP as published by CITY OF MERCEDES, Texas, including any amendments or addenda thereto except as explicitly noted or revised in my submitted proposal.

Signature of Authorized Representative	Printed Name of Authorized Representative
---	--

Date	Printed Title of Authorized Representative
-------------	---

Exhibit B: COST PROPOSAL

Complete this form in its entirety. Identify the costs for the services outlined in the RFP. If the Proposer wishes to propose any technical alternatives, please submit those costs on the optional sections of the Cost Proposal form marked Technical Alternatives.

Vendor Name: _____

CATEGORY*	COST ESTIMATE
<i>Total Project Cost</i>	
<i>Total CITY OF MERCEDES Cost</i>	
<i>Total Proposer Cost</i>	
<i>CITY Contribution as a Percentage of Total Cost</i>	

NOTES:

*Category - please add categories to provide a detailed breakdown of the total project cost. Categories may depend on the proposed technology and solutions.

Exhibit C: TECHNICAL ALTERNATIVES (OPTIONAL)

Use this form to identify costs only if the Proposer has outlined technical alternatives as part of its response to this RFP

Vendor Name: _____

CATEGORY*	COST ESTIMATE
Technical Alternative 1 (SPECIFY)**	
A.	
B.	
C.	
D.	
E.	
Technical Alternative 1 Project Total	
Technical Alternative 2 (SPECIFY)	
A.	
B.	
C.	
D.	
E.	
Technical Alternative 2 Project Total	

Cost Project Total

NOTES:

***Category - please insert the needed categories for the technical alternative. Insert rows as needed to provide the full cost estimate of the technical alternative.**

**Technical Alternative - please be sure to include a cost proposal for each of the technical alternatives provided in the RFP response.

RFP Title _____

Proposer's Name _____

Date: _____

REFERENCES

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

THIS FORM MUST BE RETURNED WITH YOUR RFP.

REFERENCE ONE

Government/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ e-mail address: _____

Contract Period: _____ Scope of Work _____

REFERENCE TWO

Government/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ e-mail address: _____

Contract Period: _____ Scope of Work _____

REFERENCE THREE

Government/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ e-mail address: _____

Contract Period: _____ Scope of Work _____

THIS FORM MUST BE RETURNED WITH YOUR RFP

STATE OF TEXAS
CITY OF MERCEDES

AFFIDAVIT

The undersigned certifies that the RFP prices contained in this RFP have been carefully checked and are submitted as correct and final and if RFP is accepted (up thru RFP award date), agrees to furnish any and/or all items upon which prices are offered, at the price(s) and upon the conditions contained in the Specifications.

BEFORE ME, the undersigned authority, A Notary Public in and for the State of _____, on this day personally appeared _____ who, after having first been duly sworn, upon oath did depose and say;

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

Name and Address of Proposer:

Telephone number _____ Fax number _____

Signature

Name: _____ Title: _____

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

Notary Public in and for CITY _____ State _____

THIS FORM MUST BE RETURNED WITH YOUR RFP

RESIDENCE CERTIFICATION

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

“Nonresident Proposer” refers to a person who is not a resident.

“Resident Proposer” refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

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

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

(City and State)

Print Name: _____ Signature: _____

THIS FORM MUST BE RETURNED WITH YOUR RFP

CITY OF MERCEDES EXPRESSLY REQUESTS THAT PROPOSERS NOT DISCUSS THIS ENGAGEMENT OR THIS PROPOSER'S PLANS, EXPERIENCE OR CREDENTIALS WITH OTHER PROPOSERS OR ANY MEMBER OF COMMISSIONERS' COURT, ANY CITY OFFICIAL, OR ANY EVALUATION COMMITTEE MEMBER APPOINTED BY CITY COMMISSION. EXCLUDED ARE PRE-PROPOSAL CONFERENCES, EVALUATION COMMITTEE SCHEDULED PROPOSER PRESENTATIONS OR PROPOSER INTERVIEWS, OR EVALUATION COMMITTEE SCHEDULED EQUIPMENT OR SERVICES DEMONSTRATIONS. YOU MAY CONTACT THE ASST. AUDITOR / SECRETARY DEPARTMENT AT ANY TIME.

FROM RFP OPENING DATE THROUGH CITY COMMISSION MEETING FOR SELECTION, VENDORS WILL NOT APPROACH THE CITY JUDGE OR COMMISSIONERS TO DISCUSS MATTERS PERTAINING TO THIS BID.

- 01. Has any individual with the firm submitting this Response made any contact with any member of City Commission, any CITY Official, or an Evaluation Committee member concerning this Invitation to RFP, other than questions to the Assistant City Manager?

- 02. Has any individual with the firm submitting this Proposal Response made any contact with any other Proposer concerning this Invitation to RFP?

Signature of person submitting this RFP

Date

THIS FORM MUST BE RETURNED WITH YOUR RFP

Certification Regarding Debarment, Suspension Ineligibility

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

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

Company name: _____

Signature: _____

Print Name: _____

Title: _____

Telephone Number: _____

Date: _____

If the Proposer is unable to certify to all of the statements in this Certification, such Proposer should attach an explanation to this RFP Response.

THIS FORM MUST BE RETURNED WITH YOUR RFP

CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ****For vendor doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

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

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

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

OFFICE USE ONLY

Date Received

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

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

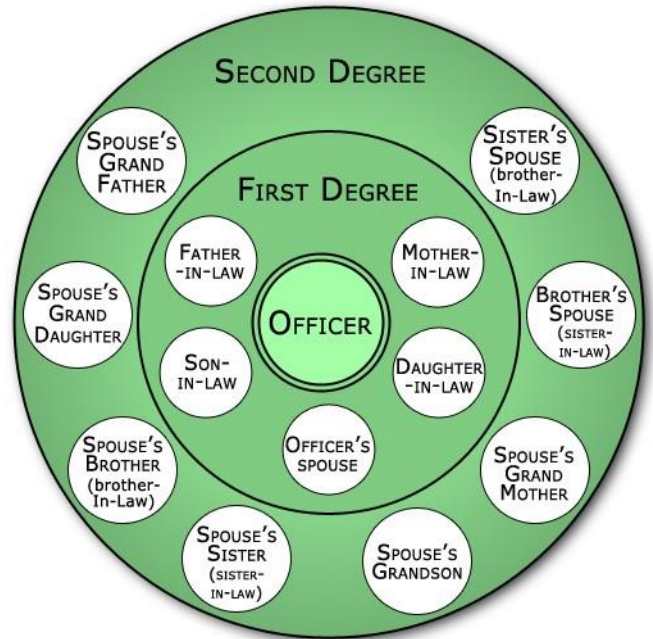
Date

NEPOTISM CHART

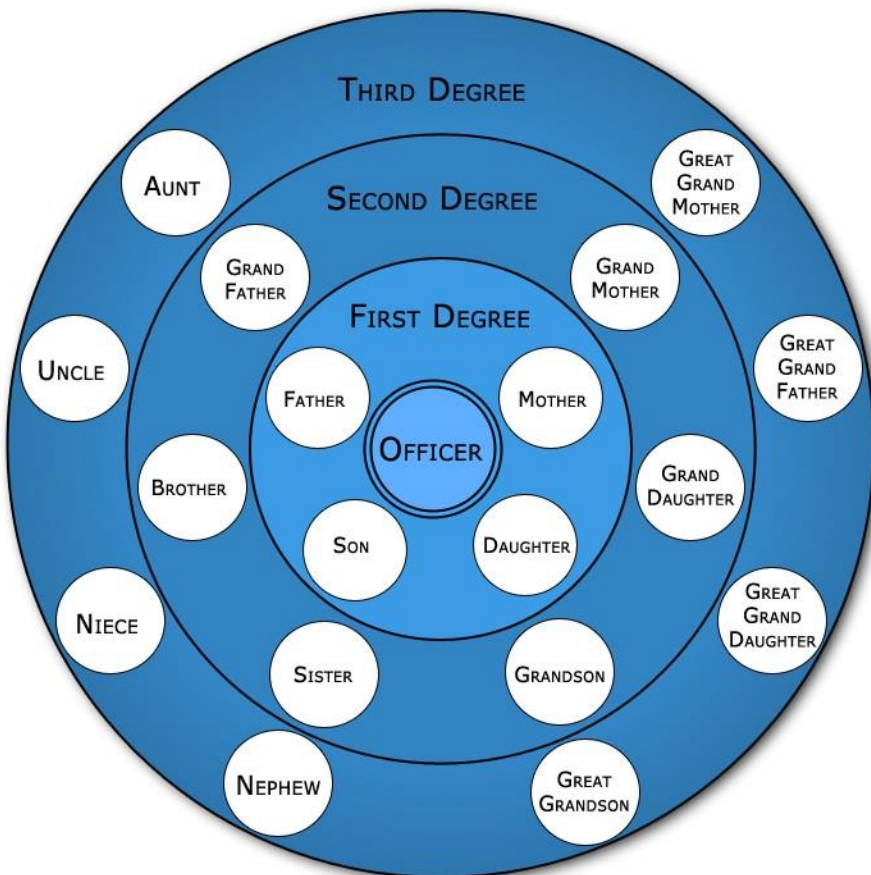
The chart below shows

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

AFFINITY KINSHIP Relationship by Marriage



CONSANGUINITY KINSHIP Relationship by Blood



DISCLOSURE OF INTERESTS

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

CITY OF MERCEDES, Texas requires all persons or firms seeking to do business with the CITY to provide the following information. Every question must be answered. If the question is not applicable, answer with “N/A.” By law this questionnaire must be filed with the records administrator (CITY Secretary’s Office) of the local government.

Date _____

FIRM NAME: _____

ADDRESS: _____

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

DISCLOSURE QUESTIONS

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

- 1. State the names of each “employee, elected official, or member of City Commission” of CITY OF MERCEDES having Substantial Interest in Business Entity Local Govt. Code 171.002

DISCLOSURE OF INTERESTS (CONTINUED)

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

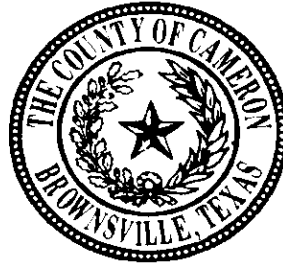
Name	Title	Department

CERTIFICATE

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

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

Signature of Certifying Person: _____ Date: _____



HOUSE BILL 89 VERIFICATION (REVISED)

I, _____,
[Person Name]

the undersigned representative of _____
[Company or Business Name]

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

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

Signature: _____ **Date:** _____

Pursuant to Section 2270.001, Texas Government Code:

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

EXEMPTIONS APPLY TO THE FOLLOWING:

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

THIS FORM MUST BE RETURNED WITH YOUR RFP

GENERAL TERMS & CONDITIONS (Requests for Qualifications (RFP))

ADDENDA: If RFP specifications, terms or conditions are revised, the CITY OF MERCEDES will issue an addendum addressing the nature of the changes and notify interested potential Proposers. Proposers must acknowledge receipt and consideration of any such changes by signing the addendum and including it in the RFP package containing the Proposer's submittal.

ADVERTISING: Unless otherwise required by law, Proposers to CITY RFPs shall not publish and shall keep confidential their intentions and actions respecting any response to the RFP.

AWARD: CITY OF MERCEDES may hold RFP responses for a period of sixty (60) days. CITY OF MERCEDES reserves the right to reject any or all responses to RFPs. CITY OF MERCEDES reserves the right to award a contract, if any, based on the Proposer's response when compared to the EVALUATION CRITERIA (AS STATED IN THE RFP) and, in accordance with the laws of the State of Texas, reserves the right to waive any formality or irregularity, to make awards to more than one proposer. City Commission reserves the right to determine the method and procedures for the final award of all RFPs at any time they may choose, regardless of the Point System used by the Evaluation Committee.

BONDS: If the contract that may be entered into with the CITY will likely require a performance guarantee or bond, the Secretary Department will attach a separate page to the RFP explaining those requirements.

CANCELLATION AND TERMINATION: In any contract resulting from the RFP, the CITY shall have the right to cancel all or any part of the undelivered portion of the contract if (1) Proposer breaches any of the terms hereof, including, but not limited to, applicable warranties, and/or (2) Proposer becomes insolvent or files for bankruptcy. Such right of cancellation is in addition to, and not in lieu of, any other remedies which the CITY may have in law or equity. Cancellation of work hereunder shall be effected by the delivery to the Proposer of a "Notice of Cancellation of Undelivered Work" specifying the extent to which performance of work, including all goods and services, under the contract is cancelled and the date upon which such cancellation becomes effective.

The performance of work under any resulting contract may be terminated in whole, or in part, by the CITY in accordance with this provision. The CITY shall have the right to terminate all or any part of the contract if (1) the Proposer breaches any of the terms hereof, including, but not limited to, applicable warranties, and/or (2) Proposer becomes insolvent or files for bankruptcy. Such right of termination is in addition to, and not in lieu of, any other remedies which the CITY may have in law or equity. Termination of work hereunder shall be effected by the delivery to the Proposer of a "Notice of Termination" specifying the extent to which performance of work, including all goods and services, under the contract is terminated and the date upon which such termination becomes effective.

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

CONTRACT RENEWALS: Contract Renewals must receive City Commission approval. For contract renewal status and information, please contact Joselynn Castillo at 956-565-3114 ext. 138 e-mail: jcastillo@cityofmercedes.com CITY OF MERCEDES City Secretary's Office. Any price escalations are limited to those stated by the original contract terms. All contracts with a one (1) year renewal option require that the Proposer must notify CITY OF MERCEDES of any anticipated price increases in writing at least three months (90 calendar days) prior to the annual renewal award date unless otherwise specified within the specific provisions of the contract up for renewal. This allows the CITY sufficient time to find an alternative vendor if possible. If Proposer fails to notify the CITY within time noted it shall be assumed that there will be no price increase for the following year's award period if renewed. This procedure does not apply to any contract which allows for Open Market Price increases or Cost allowance increases.

DISCRIMINATION: In order to encourage fair employment practices, the Proposer agrees as follows: 1.) Proposer will not discriminate against any employee or Proposer for employment because of race, sex, color, age, religion, handicap, or national origin; 2) in all solicitations or advertisements for employees, the Proposer will state that all qualified Proposers will receive consideration without regard to race, color, sex, age, religion, handicap or national origin; 3) the Proposer will furnish such relevant information and reports as requested by the CITY for the purpose of determining compliance with these regulations; and 4) failure of the Proposer to comply with these laws will be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part as a result thereof.

DISQUALIFICATION OF PROPOSER: Upon submitting a response to this RFP, Proposer certifies that the Proposer has not violated the antitrust laws of this state codified in Texas Business and Commerce Code 15.01, *et seq.*, as amended, or the federal antitrust laws, and has not communicated directly or indirectly its RFP considerations, plan or response to any competitor or any other person engaged in such line of business. Any and all responses may be rejected if the CITY believes that collusion exists among the Proposers. If multiples are submitted by a Proposer and after all responses to the RFPs are opened one or more of the responses are withdrawn, the result will be that all of the responses submitted by that Proposer will be withdrawn; however, nothing herein prohibits a Proposer from submitting multiples for different products or services.

EVALUATION: All responses will be evaluated in accordance with law and reviewed to assure they are in the best interest of CITY OF MERCEDES. Evaluations shall be based on criteria bearing on price and performance of the items or services in the user environment. Any specific criteria section or sections identified elsewhere in this RFP may be evaluated by one or more evaluators once the basis and details of this process have been approved by the Purchasing Officer and acknowledged by the Evaluation Committee. Detailed information pertaining to this selective evaluation process is available to Proposers and the City Commission upon request. Evaluation sheets and any summary of all responses are subject to review by the CITY OF MERCEDES Purchasing Department and Evaluation Committee's recommendation to CITY OF MERCEDES City Commission. Compliance with all RFP requirements, delivery terms and needs of the using department are considerations in evaluating responses. Pricing is NOT the only criterion for making a recommendation (see criteria and relative importance of price and other evaluation factors, if any, specified elsewhere in this RFP). The CITY OF MERCEDES Purchasing Department reserves the right to contact any Proposer, at any time, to clarify, verify or request information with regard to that Proposer's response. The CITY OF MERCEDES Purchasing Department further reserves the right to hold negotiation discussions with any responsible Proposer determined to be reasonably susceptible of being selected for award in accordance with law.

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

Debriefing Conference – A debriefing conference must be requested in writing to the City Secretary's Office within five (5) business days from the date of the RFP award by the CITY OF MERCEDES City Commission. Debriefing questions must be submitted in writing to the City Secretary no later than two (2) business days before the scheduled date for the Debriefing Conference. These questions will be answered at the debriefing conference. Follow-up questions must be submitted (in writing) no later than one (1) business day after the date of the Debriefing Conference and answered no later than two (2) business days after the date of the Debriefing Conference. Follow-up answers will be sent via e-mail or fax (if e-mail not available). For RFPs, Proposers are given the opportunity to ask questions of the Evaluation Committee relative to their responses and the Committee's scores.

Protests are made: 1. To the City Secretary's Department after the debriefing conference. Proposer protests shall be received, in writing, by the City Secretary's Department within five (5) business days after the debriefing conference. 2. To the Protest Committee, only after the protest to the City Secretary's Department was not satisfactorily resolved. Protests to the Protest Committee shall be made within five (5) business days after the Proposer has received notification from the CITY Secretary's Department of its decision.

Grounds for protest

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

Format and Content - Protesting Proposers shall include, in their written protest to the CITY OF MERCEDES Secretary's Department, all facts and arguments upon which they rely. Proposers shall, at a minimum, provide:

1. Information about the protesting Proposer; name of firm, mailing address, phone number and name of individual responsible for submission of the protest.
2. Information about the acquisition and the acquisition method.
3. Specific and complete statement of the CITY's action(s) being protested.

4. Specific reference to the grounds for the protest.
5. Description of the relief or corrective action requested.
6. For protests to the Protest Committee, a copy of the Purchasing Department's written decision on the protest.

Review Process:

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

Final Determination:

The final determination shall:

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

Protest Committee Review Process:

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

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

GRATUITIES AND PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: Any elected or appointed official who has any substantial interest, either direct or indirect, in any business entity seeking to contract with the CITY, shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body is also required to file, and do file similar affidavits, then the member is not required to abstain from further participation. Attached and included in this RFP is a disclosure of all of this Company's business or pecuniary financial relationships with officers or employees of CITY OF MERCEDES or CITY entities (if any such relationships exist) which must be filled out, attached and included with the RFP response. The CITY may, by written notice to the Proposer, cancel this contract without liability to Proposer if it is determined by CITY that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Proposer, or any agent, or representative of the Proposer, to any officer or employee of CITY OF MERCEDES with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making or any determinations with respect to the performance of such a contract. In the event this contract is cancelled by CITY pursuant to this provision, CITY shall be entitled, in addition to any other rights and

remedies, to recover or withhold the amount of the costs incurred by Proposer in providing such gratuities. Proposer guarantees that he has not retained a person to solicit or secure any contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Proposer for the purpose of securing business.

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

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

MAINTENANCE: Maintenance required for equipment requested in RFPs should be available in CITY OF MERCEDES by a manufacturer authorized maintenance facility. Costs for this service shall be shown on the Pricing/Delivery Information form. If CITY OF MERCEDES 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.

MATERIAL SAFETY DATA SHEETS: Under the "Hazardous Communication Act", commonly known as the "Texas Right To Know Act", a Proposer must provide to the CITY with each delivery, material safety data sheets which are applicable to hazardous substances defined in the Act. Failure of the Proposer to furnish this documentation will be cause to reject any RFP applying thereto.

NAME BRANDS: Specifications may reference name brands and model numbers. It is not the intent of CITY OF MERCEDES to restrict responses to RFPs in such cases, but to establish a desired quality level of merchandise or to meet a pre-established standard common to similar existing items. Proposers may offer items of equal stature and standard, but the burden of proof of such stature and standard rests with Proposers. CITY OF MERCEDES shall act as sole judge in determining equality and acceptability of products offered.

PRICING: Prices for all goods and/or services shall be firm for the duration of the contract and shall be stated on the Pricing/Delivery Information form. Prices shall be all inclusive: No price changes, additions, or subsequent qualifications will be honored during the term of the contract. All prices must be written in ink or typewritten. Pricing on all transportation, freight, drayage and other charges are to be prepaid by the Proposer and included in the price. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, Proposer MUST indicate the items required and attendant costs or forfeit the right to payment for such items. Where unit pricing and extended pricing differ, unit pricing prevails.

RECYCLED MATERIALS: CITY OF MERCEDES 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. CITY will be the sole judge in determining product preference application.

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

SILENCE OF SPECIFICATIONS: The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. The manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item needed in the RFP. Substitute items will not be accepted unless approved (in advance).

SUPPLEMENTAL MATERIALS: Proposers are responsible for including all pertinent product data in the returned RFP package. Literature, brochures, data sheets, specification information, completed forms requested as part of the RFP package and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements, which the Proposer wishes to include as a condition of the RFP response must also be in the returned RFP response package. Failure to include all necessary and proper supplemental materials may be cause to reject the Proposer's entire RFP.

TITLE TRANSFER: Title and Risk of Loss of goods shall not pass to CITY OF MERCEDES until CITY OF MERCEDES actually receives and takes possession of the goods at the point or points of delivery. Receiving times may vary with the using department. Generally, deliveries may be made between 8:30 a.m. and 4:00 p.m., Monday through Friday. Proposers are advised to consult the using department for instructions. The place of delivery shall be shown under the "Special Requirements/Instructions" section of this RFP package and/or on the Purchase Order as a "Deliver To:" with the address.

USAGE REPORTS: CITY OF MERCEDES reserves the right to request, and receive at no additional cost up to two (2) times during the contract period, a usage report detailing the products and/or services furnished to date under a contract resulting from this RFP. The reports must be furnished no later than five (5) working days after written request and itemize all purchases to date by

CITY OF MERCEDES department with a description, of each item purchased, including the manufacturer, quantity of each item purchased, the per unit and extended price of each item purchased, and the total amount and price of all items purchased.

WARRANTY PRICE: (a) The price to be paid by the CITY shall be that contained in Proposer's response to the RFP which Proposer warrants to be no higher than Proposer's current prices on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Proposer breaches this warranty, the prices of the items shall be reduced to the Proposer's current prices on orders by others, or in the alternative, CITY may cancel this contract without liability to Proposer for breach or Proposer's actual expense.

(b) The Proposer warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Proposer for the purpose of securing business. For breach or violation of this warranty, the CITY shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

Proposers shall furnish all data pertinent to warranties or guarantees which may apply to items in the RFP.

Proposers may not limit or exclude any implied warranties.

Proposer warrants that products sold and services provided to the CITY shall conform to the highest commercial and/or professional standards in the industry and laws established by the U.S. Department of Labor, U.S. Department of Homeland Security, Occupational Safety and Health Administration and O.S.H.A. Act of 1970. In the event any product does not conform to OSHA Standards, where applicable, CITY OF MERCEDES may return the product for correction or replacement at the Proposer's expense. If Proposer fails to make the appropriate correction within a reasonable time, CITY OF MERCEDES may correct at the Proposer's expense.

-WARRANTY ITEMS/PRODUCTS: Proposer warrants that products sold and services provided to the CITY shall conform to the highest commercial and/or professional standards in the industry and laws established by the U.S. Department of Labor, U.S. Department of Homeland Security, Occupational Safety and Health Administration and O.S.H.A. Act of 1970. In the event product does not conform to OSHA Standards, where applicable, CITY OF MERCEDES may return the product for correction or replacement at the Proposer's expense. If Proposer fails to make the appropriate correction within a reasonable time, CITY OF MERCEDES may correct at the Proposer's expense.

Proposer shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the CITY.

Proposer warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the RFP invitation and to the sample(s) furnished by Proposer, if any. In the event of a conflict between the specifications, drawings and descriptions,

the specifications shall govern. All items must be new, in first class condition, unless otherwise specified. The design, strength, and quality of materials must conform to the highest standards of manufacturing practice.

Items supplied under this contract shall be subject to the CITY's approval. Successful Proposer shall warrant that all items/services shall conform to the proposed specifications and/or all warranties as stated in the Uniform Commercial Code and be free from all defects in material, workmanship and title. Any items found defective or not meeting specifications shall be picked up and promptly replaced by the successful Proposer at no expense to the CITY.

SAFETY WARRANTY: As noted above, Proposer warrants that the products sold to CITY shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, CITY may return the product for correction or replacement at the Proposer's expense. In the event Proposer fails to make the appropriate correction within a reasonable time, correction made by CITY will be at Proposer's expense. Have you attached the required warranty information to the RFP (if applicable)? "Yes" or "No"

APPLICABLE LAW

To the extent it is applicable, this agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning "the Uniform Commercial Code" as adopted in the State of Texas as effective and in force on the date of this agreement. Otherwise, Texas state and federal law shall apply.

ASSIGNMENT DELEGATION: No right, obligation or interest in this contract shall be assigned or delegated to another by Proposer without the written permission of the CITY. Any attempted assignment or delegation by Proposer shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

CONTRACT OBLIGATION: CITY OF MERCEDES City Commission must award any resulting contract and the CITY Judge or other person authorized by the CITY OF MERCEDES City Commission must sign the contract before it becomes binding on CITY OF MERCEDES or the Proposer. Department Heads are NOT authorized to sign agreements for CITY OF MERCEDES. Binding agreements shall remain in effect until all products and/or services covered by this RFP have been delivered and accepted and all contract requirements have been satisfied.

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

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

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

INFRINGEMENTS: There will be no warranty by CITY against infringements. As part of this contract for sales, Proposer agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. CITY makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall CITY be liable to Proposer for indemnification in the event that Proposer gets sued on the grounds of infringement or the like. If Proposer is of the opinion that an infringement or the like will result, Proposer shall notify CITY to that effect in writing within two (2) weeks after the signing of this agreement. If CITY does not receive notice and is subsequently held liable for the infringement or the like, Proposer will hold CITY harmless. If Proposer in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void, except that CITY will pay Proposer the reasonable cost of Proposer's search as to infringement. The Proposer agrees to protect the CITY from claims involving infringement of patents or copyrights.

INTERPRETATION PAROLE EVIDENCE: Unless a separate contract or addendum hereof is prepared and entered into following the award of this RFP to a successful Proposer, this writing is intended by the parties as a final expression of the terms of this RFP and the general terms of any resulting contract. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term. Acceptance or acquiescence in a course of performance rendered under this RFP and any resulting contract shall not be relevant to determine meaning even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to Control, if applicable.

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

MODIFICATIONS: This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

O.S.H.A: Proposer must meet all Federal and State OSHA requirements.

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

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

SEVERABILITY: If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

VENUE: Both parties agree that venue for any litigation arising from this contract shall lie in CITY OF MERCEDES, Texas.

PROPOSER SHALL CONFIRM ACCEPTANCE OF RFB TERMS: The Proposer shall specifically state acceptance of these terms and conditions as a basis for providing the CITY with a response to this RFP.

THESE TERMS INCORPORATED: These General Terms and Conditions shall be incorporated in the response to the RFP and any resulting contract to this RFP. The Proposer shall specifically state acceptance of these terms and conditions as a basis for providing the CITY with a response to this RFP.

OTHER TERMS: The Proposer shall state any exceptions desired to these terms and conditions and may suggest alternate wording that addresses the intent of the term or condition. The CITY may accept or reject any suggestions in accordance with law.

REQUIRED CONTRACT CLAUSES FOR CONTRACTS UNDER FEDERAL AWARD

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

The United States Office of Management and Budget (OMB) issued in 2 C.F.R. 200: *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* (Uniform Guidance). Subpart D: Post Federal Award Requirements: 2 CFR §§200.317-200.327 of the Uniform Guidance contain provisions applicable to procurements made with federal grant funding. [Except as otherwise provided, updated Post Federal Award Requirements (i.e.: 2 CFR §§200.317-200.327) apply to declarations and awards issued on or after November 12, 2020]. <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200#subject-group-ECFR45ddd4419ad436d> *See Appendix "B"*

As a non-Federal entity, the CITY of Mercedes's ("CITY") 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 CITY of Mercedes 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 CITY, the CITY 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 CITY of MERCEDES, Texas.

2. Termination for Cause and Convenience.

a. Applicability. This requirement applies to all Federal grant and cooperative agreement programs.

b. Standard. All contracts in excess of \$10,000 shall address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement as follows. See 2 C.F.R. Part 200, Appendix II, B.

c. Statement. *Termination*. CITY may terminate this Agreement for any reason upon ten (10) days written notice to the other party. CITY 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 CITY any and all Work Materials prepared for the CITY prior to the effective date of such termination, all of which shall become CITY’s sole property. After receipt of the Work Materials, CITY will pay Contractor for the services which the CITY 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 CITY of Mercedes’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, CITY of Mercedes 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 CITY 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 CITY for all costs incurred by CITY in completing or procuring the completion of performance in excess of the contract price herein specified. The CITY’s right to require strict performance of any obligation hereunder shall not be affected by any previous waiver, forbearance or 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 CITY of Mercedes 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 CITY of Mercedes, 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 CITY of Mercedes will, in turn, be reported as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the applicable Federal awarding agency (e.g. FEMA).

8. Debarment and Suspension.

a. Applicability: This requirement applies to all Federal grant and cooperative agreement programs.

b. Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).

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

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

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

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

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

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

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

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

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

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

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

9. Byrd Anti-Lobbying Amendment.

- a. **Applicability:** This requirement applies to all Federal grant and cooperative agreement programs.
- b. **Standard.** Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, I; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, 4. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any City, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See Chapter IV, 6.c and Appendix C, 4.
- c. **Statement.** The following statement in bold provides a Byrd Anti-Lobbying contract clause:

(IF APPLICABLE, PLEASE FILL IN BLANKS AND SIGN)

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

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for

making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

10. **Procurement of Recovered Materials.**

a. **Applicability:** This requirement applies to all Federal grant and cooperative agreement programs.

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

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

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

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

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

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

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

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

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

- b. Standard. A non-Federal entity is prohibited against using federal funds to purchase telecommunications and video surveillance equipment and services (such as but not limited to mobile phones, land lines, internet, video surveillance, and cloud servers) from certain companies/entities in covered foreign countries for national security reasons. This regulation is being incorporated into federal grants and contracts received by the CITY 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 CITY or required to complete the contract. The cost for any changes to the contract price, whether requested by the CITY or the Contractor will be approved only after submitting the contractor’s true costs for the work and related equipment costs and site expenses.”

2. Access to Records.

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

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

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

- (1) The contractor agrees to provide the City of Concord, the FEMA or applicable Federal Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The contractor agrees to provide the FEMA or applicable Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

3. DHS Seal, Logo, and Flags.

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

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

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

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

- a. Standard. All non-Federal entities must place into their contracts an acknowledgement that FEMA or applicable Federal financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA or applicable Federal policies, procedures, and directives.
- b. Statement. The following provides a contract clause regarding Compliance with Federal Law, Regulations and Executive Orders:

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

5. No Obligation by Federal Government.

- a. Standard. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. Statement. The following provides a contract clause regarding no obligation by the Federal Government:

“The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

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

- a. Standard. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. Statement. The following provides a contract clause regarding Fraud and False or Fraudulent Related Acts:

“The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

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

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

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

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

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

Vendor's Name/Company Name:

Printed Name and Title of Authorized Representative:

Signature of Authorized Representative:

Date: _____

Appendix A

FHWA 1273

I. General

II. Nondiscrimination III. No segregated Facilities
FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final

- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

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

I. GENERAL

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

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

II. NONDISCRIMINATION

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

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

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

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

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

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

- a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
- b. The contractor will accept as its operating policy the following statement:

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

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

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

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
- d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

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

- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.
- b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.
- c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

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

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions:

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

- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
- b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

- a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
- b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

- a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
- b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

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

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

- (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
- (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

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

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

1. Minimum wages

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

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

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

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

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

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

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

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

Super Circular – Procurement Standards 2 CFR Parts 200.317 – 200.327

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

§ 200.317 Procurements by states.

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

§ 200.318 General procurement standards.

- (a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.
- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c)
 - (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
 - (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.
- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

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

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

(j)

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

(i) The actual cost of materials; and

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

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

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

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

§ 200.319 Competition.

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

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

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

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

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

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

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

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

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

§ 200.320 Methods of procurement to be followed.

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

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

(1) ***Micro-purchases*** -

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

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

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

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

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

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

(2) **Small purchases -**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Affirmative steps must include:

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

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

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

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

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

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

§ 200.322 Domestic preferences for procurements.

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

(b) For purposes of this section:

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

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

§ 200.323 Procurement of recovered materials.

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

§ 200.324 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

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

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

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

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

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

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

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

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

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 200.326 Bonding requirements.

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

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§ 200.327 Contract provisions.

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

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

Code of Federal Regulations

Subpart D – Post Federal Award Requirements

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

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