



# SOLICITATION, OFFER AND AWARD

Caldwell County  
Purchasing Office  
631 S Colorado St  
Lockhart, TX 78644

**Solicitation No.: RFQ22CCP01Q**  
**Engineering Services Pool**

**Date Issued: April 25, 2023**

## SOLICITATION

Respondents must submit proposals as listed: one (1) original copy at the Caldwell County Purchasing Office at the address shown above until:

**2:00 p.m. local time May 23, 2023.**

**Proposals received after the time and date set for submission will be returned unopened.**

For information please email:  
[carolyn.caro@co.caldwell.tx.us](mailto:carolyn.caro@co.caldwell.tx.us)

Questions concerning this RFP must be received in writing no later than 5:00 on May 16, 2023.

Phone No.: (512) 644-1502

## OFFER (Must be fully completed by Respondent)

In compliance with the above, the undersigned offers and agrees to furnish all items or services awarded at the prices stipulated for each item delivered at the designated point(s) and within the time specified herein. Award shall include all solicitation documents and attachments.

**MANUALLY SIGN ALL COPIES SUBMITTED. SIGNATURE IS MANDATORY.**

Respondent		Respondent's Authorized Representative	
Entity Name:		Name:	
Mailing Address:		Title:	
		Email Address:	
		Phone No.:	
Signature:		Date:	
Name, Email Address and Phone No. of person authorized to conduct negotiations on behalf of Respondent:			

## NOTICE OF AWARD (To be completed by County)

Funding Source:	Awarded as to item(s):	Contract Amount:
Vendor:		Term of Contract:
Issued pursuant to award made by Commissioners Court on:	Date:	Agenda Item:

<b>Important: Award notice may be made on this form or by other Authorized official written notice.</b>	_____	_____
	Caldwell County Judge	Date
	_____	_____
	Caldwell County Clerk	Date

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## I. RFQ Submittal Checklist

This checklist is provided for the Vendor's convenience and identifies documents that must be submitted with the bid/proposal in order to be considered responsive. Any bids/proposals received without these requisite documents may be deemed nonresponsive and may not be considered for contract award.

### **A COMPLETE SOLICITATION RESPONSE PACKAGE SHALL INCLUDE:**

- \_\_\_\_ 1. Solicitation, Offer and Award completed and signed
- \_\_\_\_ 2. Vendor Reference Form
- \_\_\_\_ 3. Form 1295 (Certificate of Interested Parties) filed online with the Texas Ethics Commission and signed
- \_\_\_\_ 4. Conflict of Interest Questionnaire completed and signed
- \_\_\_\_ 5. Code of Ethics signed
- \_\_\_\_ 6. HUB Practices signed
- \_\_\_\_ 7. House Bill 89 Verification signed and notarized
- \_\_\_\_ 8. Senate Bill 252 Certification
- \_\_\_\_ 9. Debarment & Licensing Certification signed and notarized
- \_\_\_\_ 10. Vendor/Bidder's Affirmation completed and signed
- \_\_\_\_ 11. Federal Affirmations and Solicitation Acceptance
- \_\_\_\_ 12. FHWA 1273 Certification
- \_\_\_\_ 13. Related Party Disclosure Form
- \_\_\_\_ 15. DBE Commitment Agreement
- \_\_\_\_ 16. Any addenda applicable to this solicitation
- \_\_\_\_ 18. One original of the proposal in a sealed envelope with the Solicitation

Number and Vendor's Name on the outermost envelope, addressed to:

Caldwell County Purchasing  
631 S Colorado St  
Lockhart, TX 78644

## II. Summary

- 1. Type of Solicitation:** Request for Qualifications
- 2. Solicitation Number:** RFQ 22CCP01Q Engineering Services Pool
- 3. Issuing Office:** Caldwell County  
Purchasing Office  
631 S Colorado St  
Lockhart, TX 78644
- 4. Responses to Solicitation:** Sealed proposals marked with Solicitation Number and Respondent Name.
- 5. Deadline for Responses:** May 23, 2023; 2:00 p.m. Central Time (CT)
- 6. Initial Contract Term:** June 13, 2023: Pool Approval On-Call contracts with work authorization as needed.
- 7. Optional Contract Terms:** 6-month Company Profile update required.
- 8. Designated Contact:** Caldwell County Purchasing Agent  
Carolyn Caro  
[carolyn.caro@co.caldwell.tx.us](mailto:carolyn.caro@co.caldwell.tx.us)
- 9. Questions & Answers:** Questions regarding this solicitation must be made in writing and submitted to the designated contact above no later than May 16, 2023, 5:00 p.m. Telephone inquiries will not be accepted. Questions may be submitted by email to the address above. Answers to questions will be provided in the form of an email response, and posted to the Caldwell County website for the benefit of all potential respondents after the question deadline. The County reserves the right to contact the person submitting a question to clarify the question received, if necessary. Each clarification, supplement, or addenda to this RFP, if any, will be posted on the Caldwell County website. All potential or actual respondents are responsible for monitoring the website for such materials. Respondents are deemed to have notice of, and are required to comply with, any such material posted in accordance with this paragraph. Respondents shall not rely upon any other sources of written or oral responses to inquiries.
- 10. Addenda:** Any interpretations, corrections, or changes to the RFQ and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the Caldwell County Purchasing Office. It is the Respondent's responsibility to acknowledge receipt of all addenda with qualifying submissions.

**11. Contact with County Staff (Anti lobbying Requirement):**

Upon issuance of this solicitation, employees and representative of Caldwell County, other than the Purchasing Office staff identified as the Designated Contact above, will not discuss the contents of this solicitation with any Respondent or its representatives. Failure of a Respondent or any of its representatives to observe this restriction may result in disqualification of any related offer. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

**Anticipated Schedule of Events**

April 25, 2023	Issuance of RFQ
May 16, 2023	Deadline for Submission of Questions (5:00 PM CT)
May 23, 2023	Deadline for Submission of Bids (2:00 PM CT) <b>Late bids will not be accepted.</b>
June 13, 2023	Award of Proposals

### III. Specifications

#### A. Introduction

Caldwell County, Texas (“County”) is issuing this REQUEST FOR QUALIFICATIONS (RFQ) to maintain and further develop a pool of engineering firms from which to choose to provide engineering design, review, coordination, administration, consultation, and general engineering expertise on an as-needed basis. As individual projects requiring engineering expertise are developed, Caldwell County Department Directors or Elected Officials, or the Commissioners Court, will generally choose from this pool of pre-qualified engineering firms, absent additional considerations that necessitate an additional, project-specific RFQ. A firm chosen from this pool will then negotiate a professional services agreement with Caldwell County to perform the required duties, which must be accepted and approved via Commissioners Court.

Engineering services could include federally-funded, state-funded and locally-funded projects.

The County intends to use this RFQ process to assist the County in efficiently selecting qualified professionals. Any entity may submit a response to this RFQ provided it is qualified to perform the scope of services described herein.

The County will select entities who demonstrate, through their response to the RFQ, an ability to provide required services. The County will review the submitted qualifications, evaluate all submissions, and ultimately determine a final pool of the most competent and qualified applicants. From this final “pre-qualification” pool, the County may select firms to negotiate with for specific upcoming projects. However, the County reserves the right, at its discretion, to contract with a firm not included on the final “pre-qualification” pool if circumstances warrant.

**Be advised**, the creation of a final “pre-qualification” pool shall not be deemed as creating any type of contractual expectancy for the award of any contracts on the part of the County. This pool is being assembled for the purpose of ensuring that the County has the ability to quickly negotiate contracts with competent and qualified entities in an efficient manner when upcoming projects are deemed necessary to proceed.

During the evaluation process, the County reserves the right to request additional information or clarifications from submitting entities, or to allow corrections of errors or omissions in a submittal. At the County’s discretion, submitting entities may be requested to make oral presentations as part of the evaluation process.

The County is issuing this RFQ in accordance with applicable laws that allow an agreement to be negotiated with a private entity that displays demonstrated competence and qualifications to perform services for the County.

The County reserves the right to terminate this process and to cancel or modify this solicitation process at any time. In no event will the County or any of its respective agents, representatives, consultants, directors, officers, or employees be liable for, or otherwise be obligated to reimburse, the costs incurred in preparation of a response to this RFQ, or any other related costs. The prospective entities are fully responsible for all costs incurred in the preparation and/or presentation of the RFQ submittals. All received RFQ submittals will become the property of the County.

All portions of each proposal shall be subject to the Texas Public Information Act unless the respondent clearly and prominently identifies a particular submittal item as proprietary and said item unequivocally qualifies for this exception under the Act as determined by the Texas Attorney General.

**B. Scope of Work**

This “Request for Qualifications” is to create a pool for on-call general professional engineering expertise performed or supervised by a registered professional engineer in the State of Texas including but not limited to mechanical, structural, electrical, geotechnical, architectural, environmental, and general civil engineering services.

Consultants should specify which services they can provide; the objective is to clarify all service options and associated personnel. The general engineering and technical areas of service required by the County may include, but is not limited to:

- Design
- Plan review
- Land surveys and reviews
- Subdivision plan review
- Hydraulic design and design review
- Flood plain determinations
- Surveying and mapping
- Civil
- Geological/Geotechnical
- Water/wastewater/storm water/drainage
- Street and roadway
- Transportation
- Site planning/permitting/development/plan review
- Environmental documentation
- CADD
- Utility Services and rates analysis
- Construction plans and specifications
- Acquisition of property
- Public Involvement Services
- Intersection Design
- Estimating
- Construction Support

All interested firms shall have sufficient, readily available resources in the form of experienced personnel, support services, and specialized subconsultants to carry out the work without delay or shortcomings. Engineering services may be short duration and fast-paced. Therefore, in addition to having sufficient resources to complete selected tasks, the submitting firms must have capacity to complete work within time limits established by the County.

Any firm that is deemed unresponsive (*e.g.*, did not submit form and required information) or is unable to perform the duties laid out in the scope of work will be removed from the Engineering Services Pool.

### C. Qualification Requirements

**REFERENCES:** Caldwell County requires Respondents to supply the County with the statement of qualifications, a list of at least three (3) references where like services have been supplied by their company. Include the name of company, address, telephone number, and name of a representative.

**RESPONSIBILITY:** Respondent must affirmatively demonstrate their responsibility. A respondent must meet the following requirements:

- Have adequate financial resources, or the above ability to obtain such resources as required;
- Have a satisfactory record of performance; and
- Be otherwise qualified and eligible to receive an award

**TIME OF PERFORMANCE:** It is imperative that the prospective respondent respond to County requests in a timely manner and comply with required or proposed delivery schedules. Please describe how you intend to respond to and track County requests.

**SYSTEM FOR AWARD MANAGEMENT:** Respondent and its Principals may not be debarred or suspended; nor otherwise on the Excluded Parties List System (EPLS) in the System for Award Management (SAM). Include verification that the company as well as the company's principals are not listed (*e.g.*, are not debarred) through the System for Award Management ([www.SAM.gov](http://www.SAM.gov)). Enclose a printout of the search results that includes the record May 19, 2023.

### D. Submittal Requirements

Vendor must deliver their proposals to the Caldwell County Purchasing Department by the specified deadline:

Mailed or Dropped off Proposals:

- One (1) original proposals with required forms manually signed by Vendor with original signatures
- All items must be in a sealed envelope marked with the Solicitation Number and Vendor Name on the outermost envelope

**Proposal should include, but is not limited to:**

- General description of capabilities

- Resumes of principle personnel;
- Professional Certification; and
- Organizational Chart containing the names, addresses, telephone numbers, and e-mail addresses for the prime provider and any sub-providers if proposed for the team and their contract responsibilities by work category.

Proposal shall not exceed ten (10) pages in length, but not including:

- Letter of Transmittal
- Title Page
- Table of Contents
- Appendix materials
- Front and rear covers

Sheet size is limited to 8½" x 11" sheets only, using 12-point font.

Appendix materials (related project graphics, resumes, etc.) are not included in the 10-page limit but should be conservative in their inclusion. The organizational chart is included in the 10-page limit and it is permissible to use an 11" x 17" sheet (one-sided) and a font smaller than 12-point for the organizational chart, provided text is clearly legible. It is permissible to use a font smaller than 12-point for graphics, provided text is clearly legible.

All items must be in a sealed envelope marked with the Solicitation Number and Respondent Name on the outermost envelope.

**LATE SUBMITTALS WILL NOT BE ACCEPTED.**

Submittals may be withdrawn at any time prior to the official opening. After the official opening, submittals may not be amended, altered or withdrawn without the recommendation of the County Purchasing Office and the approval of Commissioners Court.

Submittals will be publicly opened at the Caldwell County Purchasing Office upon the deadline for submittal. Respondents, their representatives and interested persons may be present.

It is understood that Caldwell County reserves the right to accept or reject any and all submittals as it shall deem to be in the best interest of Caldwell County.

ALTERING PROPOSALS: Any interlineations, alteration, or erasure made before receiving time must be initialed by the signer of the proposal, guaranteeing authenticity.

ADDENDA: Any interpretations, corrections or changes to this RFQ and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in Caldwell County Purchasing Agent. It is the Respondent's responsibility to acknowledge receipt of all addenda with proposal submission.

FORMS: Changes to forms herein, made by respondents, shall disqualify the respondent. Proposals cannot be altered or amended after submission deadline.

REFERENCES: Caldwell County requires respondent to supply a list of at least three (3) references (See Section V for Vendor Reference Form) where like services have been supplied by their company. Include the name of the company, address, telephone number, and name of a representative.

**E. State of Texas federally approved DBE program**

Caldwell County will require compliance with the State of Texas federally-approved DBE program and compliance with the requirements established by 49 CFR part 26. For some projects, Caldwell County may be required to set an aspirational goal, as recommended by the State, to secure a certain percentage of its competitively procured contracts with vendors that qualify as Disadvantaged Business Enterprises, as defined by the Act. Regardless of the project, Caldwell County, and qualified respondents, shall not discriminate on the basis of Race, color, national origin, or sex in the award and/or performance of the work described herein. Failure by the selected respondent to comply with the requirements described in this section will be considered a material breach of any contract that issues from this RFQ and may result in the termination of that agreement or the assertion of other remedies by Caldwell County.

**F. Small, Minority, and Women Business Enterprises, and Labor Surplus Area Firms**

Affirmative Steps. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. Small and minority businesses, women's business enterprises, and labor surplus area firms are encouraged to participate in this RFP. If the awarded vendor is a prime contractor and may use subcontractors, the following affirmative steps are required of the prime contractor.

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; and,
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,
6. Section 3 Residents, Minority Business Enterprises, Small Business Enterprises, Women Business Enterprises, and labor surplus area firms are encouraged to submit proposals.

**G. Statement of Qualification Evaluation**

The County will review and evaluate the Statement of Qualification (SOQ) submissions to determine whether, on the basis of demonstrated competence and qualifications, Respondents are capable of providing the required professional services. Respondents will receive a determination of "Pass" or "Fail". Only respondents who receive a "Pass" determination will be selected for inclusion on the pre-qualified list.

It is the practice of Caldwell County to encourage local participation and to promote and encourage contracting and subcontracting opportunities for locally owned businesses and labor in all contracts.

The County of Caldwell does not discriminate on the basis of race, color, national origin, sex, religion, age and disability in employment or the provision of services. Caldwell County is an 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. Section 3 Residents and Business Concerns, Minority Business Enterprises, Small Business Enterprises and Women Business Enterprises are encouraged to submit proposals.

THE CONTRACT AWARD shall be based on but not necessarily limited to, the following factors:

- Vendor's qualifications & competency;
- Special needs and requirements of Caldwell County;
- Vendors past performance record with Caldwell County;
- Caldwell County's evaluation of vendor's ability; and
- Vendor's references

RESPONSIBILITY: A respondent must affirmatively demonstrate respondent's responsibility. A respondent must meet the following requirements:

- Have adequate financial resources, or the above ability to obtain such resources as required;
- Be able to comply with required or proposed delivery schedule;
- Have a satisfactory record of performance; and
- Be otherwise qualified and eligible to receive an award;

BASIS OF AWARD: The County reserves the right to award a contract for named project to a respondent on the basis competence and qualifications.

#### **H. Limitations**

RIGHT TO ACCEPT OR REJECT: The County reserves the right to accept or reject any or all submissions as a result of this RFQ, to negotiate with all qualified sources, or to cancel in part or its entirety if found to be in the best interest of the County. The RFQ does not commit the County to award a contract, issue a purchase order, or pay any costs incurred in the preparation of a submission in response to this RFQ. SOQs may be held for one hundred twenty (120) calendar days after opening without taking action.

COMMISSIONERS COURT APPROVAL REQUIRED: The Caldwell County Commissioners Court must approve the contractors selected to provide the services requested in this RFQ. The County reserves the right to authorize contract negotiations to begin without further discussion with contractors submitting a response. Therefore, each SOQ should be submitted as completely and accurately as possible. The County reserves the right to request additional data, oral discussions, or presentations in support of the written SOQ.

Contractor or Individual's Obligation Regarding Evaluation

- a. SUBMISSION OF INFORMATION. Submitters are cautioned that it is each contractor and or individual's sole responsibility to submit information related to the evaluation categories, and the County is under no obligation to solicit such information if it is not included with the SOQ. Failure of a contractor or individual to submit such information may cause an adverse impact on the evaluation of the specific SOQ.
- b. SUBMITTER REVIEW OF RFQ. Submitters are responsible for examining and being familiar with all specifications, terms, conditions, provisions, and instructions of the RFQ and their responses. Failure to do so will be at the contractor and/or individual's risk and will not be a determinative factor when awarding the contract for services.

ORAL NON-BINDING: Any non-written representations, explanations, or instructions given by County staff or County agents are not binding and do not form a part of, or alter in any way, the RFQ, a written agreement pertinent to the RFQ, or the awarding of the contract.

RESERVATIONS BY COUNTY: The Commissioners Court has the right to accept, reject, or cancel any and all submissions. In addition, the County expressly reserves the following:

- a. waive any defect, irregularity, or informality in any submission or RFQ procedure;
- b. extend the RFQ closing time and date;
- c. reissue this RFQ in a different form or context;
- d. procure any item by other allowable means;
- e. revise and modify, at any time before the RFQ submittal due date, the factors and/or weights of factors the County will consider in evaluating RFQ submittals and to otherwise revise or expand its evaluation methodology as set forth herein;
- f. investigate the qualifications of any contractor under consideration and require confirmation of information furnished by a contractor;
- g. require additional information from a contractor concerning contents of its RFQ submittal and/or require additional evidence of qualifications;
- h. waive minor deviations from specifications, conditions, terms, or provisions of the RFQ, if it is determined that waiver of the minor deviations improves or enhances the County's business interests under the RFQ;
- i. extend any contract when most advantageous to the County, as set forth in this RFQ.
- j. appoint an evaluation committee to review RFQ submittals or responses, make recommendations and seek the assistance of outside technical experts in RFQ submittal evaluation;
- k. hold interviews and conduct discussions and correspondence with one or more of the contractors responding to this RFQ to seek an improved understanding and evaluation of the responses to this RFQ.
- l. disclose information contained in an RFQ submittal to the public as required under the Texas Public Information Act; AND/OR
- m. exercise any other right reserved or afforded to Caldwell County under this RFQ. The County reserves the right to modify the process, in its sole discretion, to address applicable law and/or the best interest of the County.

The County shall not, under any circumstances, be bound by or be liable for any obligations with respect to any construction project until such time (if at all) a contract has been awarded and all approvals obtained in form and substance satisfactory to the County have been executed and authorized by the County, and then only to the extent of such agreements.

## **I. Elements of a Contract**

1. RFQ. This Request for Qualifications is an invitation for individuals and companies to submit Statements of Qualifications (SOQs).
2. SOQ IS AN INDICATION OF ABILITY TO PERFORM REQUESTED SERVICES. The SOQ submitted by a contractor or individual is an indication of the ability of the contractor or individual to perform the requested services.
3. AWARD IS ACCEPTANCE. The selection of a contractor or individual and award of a contract by the Caldwell County Commissioners Court based upon a negotiated price is acceptance on the part of the County, thereby resulting in a binding contract between the County and the selected contractor.
4. CONSIDERATION. Consideration consists of the services to be performed under the contract awarded in exchange for compensation, based upon a final negotiated project price, to be paid by the County to the selected firm or individual.
5. AGREEMENT; EXCEPTIONS.
  - a. Submission of an SOQ is a representation by a submitter that the submitting contractor or individual agrees to the terms, conditions, and other provisions contained in the RFQ, unless the submitter clearly and specifically presents in its SOQ any exceptions to the terms, conditions, and other provisions contained in the RFQ.
  - b. Exceptions presented in an SOQ are not to be considered incorporated into the contract between the County and the selected contractor or individual unless and until the County agrees to accept such exceptions.
  - c. The selected contractor must acknowledge and agree that the negotiated contract resulting from this RFQ includes the terms, conditions, and other provisions contained in the RFQ, the SOQ selected (including any exceptions accepted by the County) which is acceptable to the County and is not in conflict or contravention of the RFQ, and any other documents mutually agreed upon by the County and the selected contractor or individual.
  - d. No oral statement of any person shall modify or otherwise change or affect the terms, conditions, or specifications stated in the RFQ or the resulting negotiated contract.
6. CONFIDENTIALITY OF DOCUMENTS.
  - a. ALL STATEMENTS OF QUALIFICATION SUBMITTED WILL BE SUBJECT TO THE TEXAS PUBLIC INFORMATION ACT.
  - b. On each page where confidential information appears, the Contractor or Individual must label the confidential information. Failure to so label the confidential information shall be considered as a waiver of any confidentiality rights or interests by said Contractor or Individual.
  - c. Marking your entire SOQ CONFIDENTIAL/PROPRIETARY is not in conformance with the Texas Open Records Act.

7. MISCELLANEOUS.

- a. All costs directly or indirectly related to the preparation of a response to this SOQ shall be the sole responsibility of and shall be borne by the contractor.
- b. During the evaluation process, the County reserves the right, where it may serve the County's best interest, to request additional information or clarifications from contractor or individuals, or to allow corrections of errors or omissions.
- c. The County reserves the right to retain all qualifications submitted and to use non-confidential information in a SOQ regardless of whether or not that SOQ is selected.
- d. Each SOQ shall state that it is valid for a period of one hundred twenty (120) days from the date of opening of the SOQ by the County.

8. NON-NEGOTIABLE TERMS. The following terms or conditions are not negotiable:

- a. **Unfunded Liability.** The County will not incur a debt or obligation to pay selected contractor or individual any amounts the County does not have the current funds available to pay, unless the contract includes a provision for the County to appropriate funding for the debt or obligation.
- b. **Indemnification.** The County does not assume any liability to third persons, nor will the County reimburse the contractor for its liability to a third person, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of a contract or any subcontract hereunder, and the contractor further agrees to provide the defense for, and indemnify and hold harmless County from any and all claims, suits, causes of action, and liability, arising in connection with a contract.
- c. **Advance Payments.** The County will not make advance payments to a selected contractor or individual or any third party pursuant to this RFQ or resulting contract.
- d. **Gift of Public Property.** The County will not agree to any terms or conditions that cause the County to lend its credit or grant public money or anything of value to the selected contractor or individual.
- e. **Procurement Laws.** The County will not agree to any terms or conditions that cause the County to violate any federal, Texas, or local procurement laws.
- f. **Limitation of Liability.** The County will not agree to allow the selected contractor or individual to limit its liability for breach or default of contract to the contract amount or to the amount the County has paid up to the time of the breach or default.
- g. **Attorney's fees; Legal Costs.** The County will not agree to pay the selected contractor or individual's attorney's fees or other legal costs under any circumstances.
- h. **Venue; Applicable Law.** This RFQ and any resulting contract will be governed and construed according to the laws of the State of Texas. The terms and conditions of the contract awarded pursuant to the RFQ are fully performable in Caldwell County, Texas and venue for any dispute regarding contract shall be in Caldwell County, Texas.

**J. Warranty of Performance**

The successful respondent expressly warrants that all services specified in the RFQ will be performed with care and diligence and in accordance with all specifications of the RFQ. The successful respondent agrees to correct any deficiencies in performance of services upon notification by the County and without additional expense to the County.

CONTINUING NON-PERFORMANCE of the respondent, in terms of specifications, shall be basis for the termination of the contract by the County. The County shall not pay for merchandise/services that are unsatisfactory. Failure to perform any provision will constitute a default of contract, in which case, corrective action shall take place within ten (10) days from the date of written notice citing the nature of breach. Failure to take corrective action or to provide a satisfactory written reply excusing such failure within the prescribed ten (10) days will authorize the County to terminate this agreement by written notice.

COMPLIANCE WITH LAWS: The successful Respondents shall comply with all applicable federal, state and local laws and regulations pertaining to the practice of the profession and the execution of the duties under the proposal. Any contract executed as a result of this RFQ shall be governed by the laws of the State of Texas.

# I. General Terms and Conditions for Solicitations Applicable To: Request for Qualifications (RFQ)

## 1. GENERAL DEFINITIONS:

- a. "Commissioners Court" means Caldwell County Commissioners Court.
- b. "Contract" means the contract awarded pursuant to the RFQ and negotiated cost proposal.
- c. "Contractor" means a person or firm receiving an award of contract from Commissioners Court.
- d. "County" means Caldwell County, Texas, a political subdivision of the State of Texas.
- e. "County Building" means any County owned buildings and does not include buildings leased by County.
- f. "Is doing business" and "has done business" mean:
  - i. Paying or receiving in any calendar year any money or other valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for purchase of any property or property interest, either real or personal, either legal or equitable; or
  - ii. Loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;
  - iii. But does not include any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the general public.
- g. "Key Contracting Person" means any person or business listed in Exhibit A to Affidavit.
- h. "Purchasing Agent" means the Caldwell County Purchasing Agent.
- i. "Sub-contractor" means a person or firm doing business with a Contractor.

2. FUNDING: Funds for payment on Contracts will be provided through the County budget approved by Commissioners Court for the fiscal year in which the contract is approved. State of Texas statutes prohibit the obligations and expenditure of public funds beyond the fiscal year for which a budget has been approved. County cannot guarantee the availability of funds, and enters into contracts only to the extent such funds are made available. The Fiscal Year for County extends from October 1st of each calendar year to September 30th of the next calendar year.

3. FUNDING OUT: Despite anything to the contrary in a Contract, if, during budget planning and adoption, Commissioners Court fails to provide funding for a Contract for the following fiscal year of County, County may terminate a Contract after giving Contractor thirty (30) calendar days written notice that a Contract is terminated due to the failure to fund it.

## 4. INVOICING/PAYMENTS:

- a. Contractor shall provide County with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification, that is completed in compliance with the Internal Revenue Code and its rules and regulations before any Contract funds are payable.
- b. As a minimum, invoices shall include: (i) name, address, and telephone number of Contractor and similar information in the event payment is to be made to a different address; (ii) County Contract or Purchase Order number; (iii) identification of products or services as outlined in the Contract; (iv) quantity or quantities, applicable unit prices, total prices, and total amount; and (v) any additional payment information called for by the Contract. County will not pay invoices that are in excess of the amount authorized by the purchase order.
- c. Payment shall be made by check or warrant by County upon satisfactory delivery and acceptance of products and services and submission of an invoice to the address below:  
County Accounts Payable  
PO Box 98  
Lockhart, Texas 78644
- d. Payment shall be deemed to have been made on the date of mailing of the check or warrant. For purposes of payment discounts, time will begin upon satisfactory delivery of products and services

and/or submission of acceptable invoice, whichever is last. Partial payments will not be made unless specifically requested and approved by County prior to Contract award.

- e. Accrual and payment of interest on overdue payments shall be governed by Tex. Gov't Code Ann., ch. 2251.
5. COUNTY TAXES: If the Contractor subsequently becomes delinquent in the payment of County taxes, it will be grounds for cancellation of the contract. Despite anything to the contrary, if the contractor is delinquent in payment of County property taxes at the time of invoicing, Contractor assigns any payments to be made for performance under the contract to the County Tax Assessor-Collector for the payment of delinquent taxes.
6. PROMPT PAYMENT ACT: TEX. GOV'T CODE ANN., ch. 2251 (Vernon Supp. 1995) requires that payments be made within 30 calendar days. If County fails to pay within 30 days, interest on overdue amounts is subject to Chapter 2251, Texas Government Code. The law does not apply if the terms of a federal grant, contract, regulation, or statute prevent local governments from making timely payments with federal funds. Contractors and subcontractors must pay their suppliers interest if the supplier is not paid within 10 calendar days after the contractor or subcontractor receives payment. Contractors must apply for interest payments within 6 months of submitting a proper invoice if they believe such interest was due but not paid. Interest begins accruing 30 days after either of the following, whichever is later; (i) satisfactory delivery or performance has been completed, or, (ii) a correct invoice is received at the designated place.
7. FOB POINT: Delivery of all products under a contract, if any, shall be made Free on Board to final destination, at the address shown in the contract or as indicated on each Purchase Order placed against the contract. The title and risk of loss of the goods shall not pass to County until acceptance takes place at destination.
8. INSPECTION AND ACCEPTANCE: The County office or department receiving items pursuant to a contract shall inspect and accept only those items that are satisfactory to them, and reject those items which are damaged or which do not conform to specifications. Contractor shall be responsible for the proper labeling, packing, and delivery to final destination, including replacement of rejected deliveries.
9. VARIATION IN QUANTITY: No variation in the quantity of any item called for by a contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in the contract.
10. OFFICIALS NOT TO BENEFIT: If a member of Commissioners Court belongs to a cooperative association, the County may purchase equipment or supplies from the association only if no member of the Commissioners Court will receive a pecuniary benefit from the purchase, other than as reflected in an increase in dividends distributed generally to members of the association.
11. NONDISCRIMINATION; CIVIL RIGHTS/ADA COMPLIANCE:
  - a. Contractor shall not engage in employment practices that have the effect of discriminating against employees or prospective employees because of age, race, color, sex, creed, national origin or handicapped condition.
  - b. Contractor shall provide all services and activities required in a manner that would comply with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans with Disabilities Act of 1990, Public Law 101-336 [S.933] if Contractor were an entity bound to comply with these laws.
12. CHANGES:
  - a. A Contract may be amended only by written instrument signed by both County and Contractor. It is acknowledged by Contractor that NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO CHANGE THE SCOPE OF A CONTRACT

OR OTHERWISE AMEND A CONTRACT, OR ANY ATTACHMENTS HERETO, UNLESS EXPRESSLY GRANTED THAT AUTHORITY BY THE COMMISSIONERS COURT.

- b. Contractor shall submit all requests for changes to a Contract or any attachment(s) to it to the Purchasing Agent. The Purchasing Agent shall present Contractor's requests to Commissioners Court for consideration.

13. REPRESENTATIONS:

- a. Contractor represents that he has thoroughly examined the drawings, specifications, schedule, instructions and all other contract documents. Contractor has made all investigations necessary to be thoroughly informed regarding plant and facilities for delivery of material, equipment and/or services as required by the proposal conditions.
- b. The Contractor's delivery time includes weekends and holidays.
- c. Contractor certifies that he is a qualified, bondable business entity that he is not in receivership or contemplates it, and has not filed for bankruptcy. He further certifies that the Company, Corporation, Partnership, or Sole Proprietorship is not delinquent with respect to payment of County property taxes.
- d. Contractor warrants that all applicable patents and copyrights which may exist on items that will be supplied under the contract have been adhered to and further warrants that County shall not be liable for any infringement of those rights. Warranties granted County shall apply for the duration of the contract or for the life of equipment or supplies purchased, whichever is longer. County must not extend use of the granted exclusive rights to any other than County employees or those with whom County has established a relationship aimed at furthering the public interest, and then only for official public uses. County will not knowingly or intentionally violate any applicable patent, license, or copyright. Contractor must indemnify County, its officers, agents, and employees against all claims, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees arising in connection with any alleged or actual infringement of existing patents, licenses or copyrights applicable to items sold.
- e. The Contractor warrants that upon execution of a contract with the County, he will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of age, religion, race, color, sex, creed, handicap, or national origin and will submit reports as the County may require to assure compliance.
- f. Contractor warrants to County that all items delivered and all services rendered will conform to the specifications, drawings, or other descriptions furnished or incorporated by reference, and will be of merchantable quality, good workmanship, and free from defects. Contractor further agrees to provide copies of applicable warranties or guarantees to the Purchasing Agent. Copies will be provided within 10 days after the Notice of Award is issued. Return of merchandise under warranty shall be at Contractor's expense.

14. SUBCONTRACTS:

- a. Contractor shall not enter into any subcontracts for any service or activity relating to the performance of the Contract without the prior written approval or the prior written waiver of this right of approval from County. IT IS ACKNOWLEDGED BY CONTRACTOR THAT NO OFFICER, AGENT, EMPLOYEE OR REPRESENTATIVE OF COUNTY HAS THE AUTHORITY TO GRANT SUCH APPROVAL OR WAIVER UNLESS EXPRESSLY GRANTED THAT SPECIFIC AUTHORITY BY THE COMMISSIONERS COURT.
- b. If a subcontract is approved, Contractor must make a "good faith" effort to take all necessary and reasonable steps to insure DBEs maximum opportunity to be subcontractors under a Contract. Contractor must obtain County approval of all proposed DBE subcontractors through the Purchasing Agent. Failure by Contractor to make a good faith effort to employ HUBs as subcontractors constitutes a breach of a Contract and may result in termination of the Contract. For this project there is no specific DBE participation goal. See Section VIII. HUB Practices for more information regarding the County's practices related to Historically Underutilized Businesses.

15. ASSIGNMENT:

- a. The parties to a Contract shall not assign any of the rights or obligation hereunder without the prior written consent of the other party. No official, employee, representative or agent of County has the authority to approve any assignment under this Contract unless that specific authority is expressly granted by Commissioners Court.
- b. The terms, provisions, covenants, obligations and conditions of a Contract are binding upon and inure to the benefit of the successors in interest and the assigns of the parties to the Contract if the assignment or transfer is made in compliance with the provisions of the Contract.
- c. Contractor remains responsible for the performance of the Contract when there is a change of name or change of ownership. If a change of name is required, the Purchasing Agent shall be notified immediately. No change in the obligation of or to Contractor will be recognized until it is approved by Commissioners Court.

16. DISPUTES AND APPEALS: The Purchasing Agent acts as the County representative in the issuance and administration of a contract in relation to disputes. Any document, notice, or correspondence not issued by or to the Purchasing Agent or other authorized County person, in relation to disputes is void unless otherwise stated in the contract. If the Contractor does not agree with any document, notice, or correspondence issued by the Purchasing Agent, or other authorized County person, the Contractor must submit a written notice to the Purchasing Agent within ten (10) calendar days after receipt of the document, notice, or correspondence, outlining the exact point of disagreement in detail. If the matter is not resolved to the Contractor's satisfaction, Contractor may submit a written Notice of Appeal to the Commissioners Court, through the Purchasing Agent, if the Notice is submitted within ten (10) calendar days after receipt of the unsatisfactory reply. Contractor then has the right to be heard by Commissioners Court.

17. MEDIATION: When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in §154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

18. FORCE MAJEURE: If the performance by either party of any of its obligations under a Contract is interrupted or delayed due to an act of God or the common enemy or as the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party to the Contract, then it shall be excused from performance for such period of time as is reasonably necessary to remedy the effects thereof.

19. NON-WAIVER OF DEFAULT:

- a. No payment, act or omission by County may constitute or be construed as a waiver of any breach or default of Contractor which then exists or may subsequently exist. No official, agent, employee or representative of County may waive any breach of any term or condition of a Contract unless expressly granted that specific authority by the Commissioners Court.
- b. All rights of County under a Contract are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right to County under it. Any right or remedy in a Contract shall not preclude the exercise of any other right or remedy under the Contract or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

20. TERMINATION FOR CAUSE: Failure by either County or Contractor to perform any provisions of a Contract shall constitute a breach of contract. Either party may require corrective action within ten (10) calendar days after date of receipt of written notice citing the exact nature of the other's breach. Failure to take corrective action or failure to provide a satisfactory written reply excusing such failure within the ten (10) calendar days shall

constitute a default. The defaulting party shall be given a twenty (20) calendar day period within which to show cause why the Contract shall not be terminated for default. All notices for corrective action, breach, default or show cause on behalf of County shall be issued by the Purchasing Agent or County legal representative only, and all replies to the same shall be made in writing to the County Purchasing Agent or County legal representative at the address provided herein. Notices issued by or to anyone other than the Purchasing Agent or County legal representative shall be null and void, and shall be considered as not having been issued or received. County reserves the right to enforce the performance of the Contract in any manner prescribed by law in case of default and may contract with another party with or without competition or further notification to the contractor. At a minimum, Contractor shall be required to pay any difference in the cost of securing the services covered by the Contract, or compensate for any loss or damage to the County derived hereunder if it becomes necessary to contract with another source because of a default, plus reasonable administrative costs and attorney's fees. In the event of termination for default, County, its agents or representatives, shall not be liable for loss of any profits anticipated under the Contract.

21. **TERMINATION FOR CONVENIENCE:** County reserves the right to terminate any Contract upon thirty (30) days written notice for any reason deemed by the Commissioners Court to serve the public interest, or resulting from any governmental law, ordinance, regulation, or court order. Termination for convenience shall not be exercised with the sole intention of awarding the same or similar contract requirements to another source. In the event of such termination, County shall pay Contractor those costs directly attributable to work done in preparation for compliance with the Contract prior to termination; provided, however, that no costs shall be paid which are recoverable in the normal course of the business in which Contractor is engaged, nor shall County pay any costs which can be mitigated through the sale of supplies or inventories. If County pays for the cost of supplies or materials obtained for use under this Contract those supplies or materials shall become the property of County and shall be delivered to the FOB point shown in this Contract, or as designated by the Purchasing Agent. County shall not be liable for loss of any profits anticipated under any Contract.
22. **DAVIS-BACON ACT – PREVAILING WAGE RATES:** All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction of development of the project) 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 determinations 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 29 CFR 5.5 (a) (1) (iv); 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 regular weekly period, Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5 (a) (4). Laborers or mechanics may perform work in more than one classification for the time actually worked therein, provided that Contractor'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 29 CFR 5.5 (a)(1)(11) 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. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.
23. **CONTRACT WORK HOURS AND SAFETY STANDARDS:** If, in the course of fulfilling the terms of this Agreement, Contractor employs mechanics or laborers to perform work, Contractor recognizes that it must comply with 40

U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Contractor shall 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. Contractor further recognizes that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

24. CLEAN AIR – CLEAN WATER: The Contractor under any contract/subcontract agrees as follows:
- a. To comply with all the requirements of section 114 of the Clean Air Act as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the signing of the contract by the Contracting Local Organization.
  - b. That no portion of the work required by a contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when the contract was signed by the Contracting Local Organization unless and until the EPA eliminates the name of such facility or facilities from such listing.
  - c. To use their best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed.
  - d. To insert the substance of the provisions of this article in any nonexempt subcontract, including this subparagraph.
25. BYRD ANTI-LOBBYING CERTIFICATION: Contractor certifies, to the best of its knowledge and belief, that:
- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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 From to Report Lobbying", in accordance with its instructions.
  - c. Contractor shall require that the language of this certification be included in the award documents for all subcontractors at all tiers and that all subcontractors shall certify and disclose accordingly.
  - d. 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 section 1352, title 31, U.S. Code.
26. PROCUREMENT OF RECOVERED MATERIALS: The County seeks to comply with Section 6002 of the Solid Waste Disposal Act including "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 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." Contractor agrees to ensure the County's compliance with the above-stated Section 6002, if and when applicable to this Agreement. For the purposes of this Section, "Recovered Materials" means waste materials and byproducts

which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

27. GRATUITIES: Contractor shall not provide any gratuity in any form, including entertainment, gifts, or otherwise, to any employee, buyer, agent, or representative of County with a view to securing a contract, or securing favorable treatment with respect to the award or amendment, or the making of any determination with respect to the performance of a Contract. County may terminate any Contract if it is found that gratuities of any kind including entertainment, or gifts were offered or given by the Contractor or any agent or representative of the Contractor, to any County Official or employee with a view toward securing favorable treatment with respect of the contract. If the Contract is terminated by the County pursuant to this provision, County shall be entitled, in addition to any other rights and remedies, to recover from the Contractor at least three times the cost incurred by Contractor in providing the gratuities.
28. COVENANT AGAINST CONTINGENT FEES: Contractor represents and warrants that no persons or selling agency has been retained to solicit any Contract upon an understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies maintained by the Contractor to secure business. For breach or violation of this warranty, County shall have the right to terminate a Contract without liability, or in its discretion to, as applicable, add to or deduct from the Contract price for consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
29. COUNTY ACCESS: Contractor shall maintain and make available for inspection, audit or reproduction by any authorized representative of County all books, documents, and other evidence pertinent to the costs and expenses of a Contract, including but not limited to both direct and indirect costs, cost of labor, material, equipment, supplies, and services, and all other costs and expenses of whatever nature for which reimbursement is claimed under the Contract. All required records shall be maintained until an audit is completed and all required questions arising therefrom are resolved, or three (3) years after completion of the contract term, whichever occurs first; provided, however, the records will be retained beyond the third year if an audit is in progress or the finding of a completed audit have not been resolved satisfactorily.
30. FORFEITURE OF CONTRACT:
  - a. The selected Offeror must forfeit all benefits of the contract and County must retain all performance by the selected Offeror Contractor and recover all consideration or the value of all consideration paid to the selected Offeror pursuant to the contract if:
  - b. The selected Offeror was doing business at the time of submitting its proposal offer or had done business during the 365- day period immediately prior to the date on which its proposal offer was due with one or more Key Contracting Persons if the selected Offeror failed to disclose the name of any such Key Contracting Person in its offer; or
  - c. The selected Offeror does business with a Key Contracting Person after the date on which the offer that resulted in the contract is submitted and prior to full performance of the contract.
31. CONTRACTOR CLAIMS NOTIFICATION:
  - a. If any claim, or other action, that relates to Contractor's performance under a Contract, including proceedings before an administrative agency, is made or brought by any person, firm, corporation, or other entity against Contractor, Contractor shall give written notice to County of the following information within ten (10) working days after being notified of it:
    - i. The existence of the claim, or other action;
    - ii. The name and address of the person, firm, corporation or their entity that made a claim or that instituted any type of action or proceeding;
    - iii. The alleged basis of the claim, action or proceeding;

- iv. The court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and
  - v. The name or names of any person against whom this claim is being made.
- b. Except as otherwise directed, Contractor shall furnish to County copies of all pertinent papers received by Contractor with respect to making these claims or actions and all court pleadings related to the defense of these claims or actions.

32. **CERTIFICATION OF ELIGIBILITY:** This provision applies if the anticipated Contract exceeds \$100,000. By submitting a bid or proposal in response to this solicitation, the bidder/respondent certifies that at the time of submission, he/she is not on the Federal Government's Excluded Parties List System ([www.epls.gov](http://www.epls.gov)), which details a listing of suspended, ineligible, or debarred contractors. In the event of placement on the list between the time of bid/proposal submission and time of award, the bidder/respondent will notify the Caldwell County Purchasing Agent. Failure to do so may result in terminating the Contract for default.

33. **CONTRACTOR LIABILITY, INDEMNIFICATION AND CLAIMS NOTIFICATION:** Contractor shall indemnify County, its officers, agents, and employees, from and against any and all third party claims, losses, damages, causes of action, suits, and liability of every kind whether meritorious or not and, including all expenses of litigation, court costs, and reasonable attorney's fees, arising in connection with the services provided by Contractor under the Contract. It is the expressed intention of the Parties to the Contract, both Contractor and County, that the indemnity provided for in this paragraph is indemnity by Contractor to indemnify and protect County from the consequences of Contractor's actions.

34. **CONSTRUCTION OF CONTRACT:**

- a. A Contract is governed by the laws of the United States of America and the State of Texas and all obligations under the Contract are performable in Caldwell County, Texas. Venue for any dispute arising out of the Contract will lie in the appropriate court of Caldwell County, Texas.
- b. If any portion of a Contract is ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remainder of it shall remain valid and binding.
- c. Headings and titles at the beginning of the various provisions of any Contract have been included only to make it easier to locate the subject matter covered by that part, section or subsection and are not to be used in construing the Contract.
- d. When any period of time is stated in a Contract, the time shall be computed to exclude the first day and include the last day of period. If the last day of any period falls on a Saturday, Sunday, or a day that Caldwell County has declared a holiday for its employees, these days shall be omitted from the computation. All hours in a Contract are stated in Central Standard Time from 2:00 o'clock a.m. on the first Sunday of November until 2:00 o'clock a.m. on the second Sunday of March and in Central Daylight Saving Time from 2:00 o'clock a.m. on the second Sunday of March until 2:00 o'clock a.m. on the first Sunday of November or such other dates as may be adopted for the activation of Daylight Savings Time in the United States in future years.
- e. Words of any gender in a Contract shall be construed to include any other gender and words in either number shall be construed to include the other unless the context clearly requires otherwise.
- f. Provisions, Words, Phrases, and Statutes, whether incorporated by actual use or by reference, shall be applied to a Contract in accordance with Texas Government Code, §§ 312.002 and 312.003.

35. **ADDITIONAL GENERAL PROVISIONS:**

- a. Contractor must comply with all Federal and State laws and regulations, City and County ordinances, orders, and regulations, relating in any way to a Contract.
- b. Contractor must secure all permits and licenses, pay all charges and fees, and give all notices necessary for lawful operations.
- c. Contractor must pay all taxes and license fees imposed by the Federal and the State Governments and their agencies and political subdivisions upon the property and business of Contractor.

- d. Despite anything to the contrary in a Contract, if the Contractor is delinquent in payment of property taxes at the time of providing services, Contractor assigns the amount of any payment to be made for services provided under the Contract equal to the amount Contractor is delinquent in property tax payments to the Caldwell County Tax Assessor-Collector for the payment of the delinquent taxes.
- e. In this subsection, "County Building" means any County-owned buildings and does not include buildings leased by County. Contractor must not execute any mortgage, or issue any bonds, shares of stock, or other evidence of interest in County Buildings.

36. INTERPRETATION OF CONTRACT:

- a. This document contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any prior agreements or representations not expressly set forth in this agreement are of no force. Any oral representations or modifications concerning this agreement shall be of no force except a subsequent modification in writing signed by the Purchasing Agent. No official, representative, employee, or agent of the County has any authority to modify or amend a contract except pursuant to specific authority to do so granted by the Commissioners Court.
- b. If inconsistency exists between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following ascending order of precedence:
  - i. The Schedule of Items/Services
  - ii. Terms and Conditions of Request for Qualifications;
  - iii. General Provisions;
  - iv. Other provisions, whether incorporated by reference or otherwise; and
  - v. The specifications.
- c. If any contract provision shall for any reason be held invalid, illegal, or unenforceable in any respect, invalidity, illegality, or unenforceability shall not affect any other provision, and the contract shall be construed as if invalid, illegal or unenforceable provision had never been contained.
- d. Any contract shall be governed by the laws of Texas and all obligations are performable in Caldwell County, Texas.
- e. If a word is used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in that particular field.
- f. Words in the present or past tense include the future tense. The singular includes the plural and the plural includes the singular. The masculine gender includes the feminine and neuter genders.
- g. The headings in a contract have been included only to make it easier to locate the subject covered by each provision and are not to be used in construing the contract.
- h. Provisions, words, phrases, and statutes, whether incorporated by actual use or by reference, shall be applied to any contract in accordance with TEX. GOV'T CODE ANN., SEC 312.002, 312.003 (Vernon 1991).

37. MODIFICATIONS:

- a. The County Purchasing Agent may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of a contract in any one of the following:
  - i. Drawings, designs or specifications when the supplies to be furnished are to be specifically manufactured for the County in accordance with the drawings, designs, or specifications.
  - ii. Method of shipment or packing.
  - iii. Place of deliveries.
  - iv. Correction of errors of a general administrative nature or other mistakes, the correction of which does not affect the scope of the contract, or does not result in expense to the Contractor.
  - v. Description of items to be provided.
  - vi. Time of performance (i.e. hours of day, days of week, etc.)
- b. If any such change causes an increase or decrease in the cost of, or time required for, performance of any part of the work under a contract whether, or not changed by the order, the Commissioners Court shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract. The Contractor must submit any "proposal for adjustment" under this clause

within thirty (30) calendar days from the date of receipt of the written order. However, if the County Purchasing Agent decides that the facts justify it, the County Purchasing Agent may receive and act upon a proposal submitted before final payment of the contract. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the County shall have the right to prescribe the manner of disposition of the property. Failure to agree to any adjustment shall be a dispute under the Disputes and Appeals clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

38. PRICE CHANGES: The prices offered shall remain firm for the period of the contract. The prices offered shall also remain firm for the option years should the County choose to exercise the option to renew, except for changes that are industry wide and beyond the control of the contractor. If such changes do occur, it will be the responsibility of the contractor to provide documentation to Caldwell County substantiating the changes to the bid prices. Any price changes must be approved by Caldwell County.

39. INSURANCE AND LIABILITY: During the period of any contract, contractor shall maintain at his expense, insurance with limits not less than those prescribed below. With respect to required insurance, Contractor shall;
- a. Name County as additional insured as its interests may appear.
  - b. Provide County a waiver of subrogation.
  - c. Provide County with a thirty (30) calendar day advance written notice of cancellation or material change to said insurance.
  - d. Provide the County Purchasing Agent at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) calendar days after receipt of Notice of Award. Also, assure your certificate contains the contract number as indicated on the Contract Award form when issued by Caldwell County.
  - e. Submit an original certificate of insurance reflecting coverage as follows:

<b>Automobile Liability:</b>	
Bodily Injury (Each person)	\$1,000,000.00
Bodily Injury (Each accident)	\$1,000,000.00
Property Damage	\$1,000,000.00
<b>Commercial General Liability (Including Contractual Liability):</b>	
General Aggregate	\$2,000,000.00
Product completed operations aggregate	\$2,000,000.00
Bodily Injury (Each accident)	\$2,000,000.00
Property Damage	\$2,000,000.00
<b>Employers Liability:</b>	
Each accident	\$1,000,000.00
Each employee for disease	\$1,000,000.00
Policy limit for disease	\$1,000,000.00
<b>Excess Liability:</b>	
Umbrella Form	Not Required
<b>Labor Liability:</b>	
Worker's Compensation	Meeting Statutory Requirements

## II. Vendor Reference Form

List three (3) references of current customers who can verify the quality of service your company provides. The County prefers customers of similar size and scope of work to this proposal/bid. **This form must be returned with your bid/proposal.**

REFERENCE ONE
---------------

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

REFERENCE TWO
---------------

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

REFERENCE THREE
-----------------

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

### III. Certificate of Interested Parties

In 2015, the Texas Legislature adopted House Bill 1295, which added 2252.908 to the Texas Government Code and applies to all contracts entered into on or after January 1, 2016. Section 2252.908 (b)(1)(2) applies only to a contract of a governmental entity or state agency that requires an action or vote by the governing body of the entity or agency before the contract may be signed or that has a value of at least \$1 million. In addition, pursuant to Section 2252.908 (d), a governmental entity or state agency may not enter into a contract described by Subsection (b) with a business entity unless the business entity, in accordance with this section and rules adopted under this section, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

With regard to Caldwell County purchases, a vendor or other person who is awarded a contract or purchase approved by Caldwell County Commissioners Court is required to electronically complete a Form 1295 through the Texas Ethics Commission website at [https://ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and submit a signed copy of the form to the Caldwell County Purchasing office. A contract, including County issued purchase order (if applicable), will not be enforceable or legally binding until the County received and acknowledges receipt of the properly completed Form 1295 from the awarded vendor.

Failure to return this document may disqualify your response from consideration.

If you do not have access to the link provided above or if you have any questions, contact Purchasing at 512-644-1502.

IV. Conflict of Interest Questionnaire

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b> For vendor doing business with local governmental entity		<b>FORM CIQ</b>
<p><b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b></p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<b>OFFICE USE ONLY</b>  Date Received	
<p><b>1 Name of vendor who has a business relationship with local governmental entity.</b></p>		
<p><b>2</b> <input type="checkbox"/> <b>Check this box if you are filing an update to a previously filed questionnaire.</b> (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p><b>3 Name of local government officer about whom the information is being disclosed.</b></p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p>		
<p><b>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.</b></p> <p style="margin-left: 40px;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="margin-left: 80px;"> <input type="checkbox"/> Yes      <input type="checkbox"/> No                 </p> <p style="margin-left: 40px;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="margin-left: 80px;"> <input type="checkbox"/> Yes      <input type="checkbox"/> No                 </p>		
<p><b>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.</b></p>		
<p><b>6</b> <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>		
<p><b>7</b></p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Signature of vendor doing business with the governmental entity      Date</p>		

**CONFLICT OF INTEREST QUESTIONNAIRE**  
**For vendor doing business with local governmental entity**

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

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

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

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

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

\*\*\*

(2) the vendor:

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

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

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

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

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

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

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

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

(1) the date that the vendor:

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

(2) the date the vendor becomes aware:

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

## V. CODE OF ETHICS FOR CALDWELL COUNTY

Public employment is a public trust. It is the policy of Caldwell County to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by Caldwell County. Such a policy implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public services.

Public servants must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the Caldwell County procurement organization.

To achieve the purpose of this article, it is essential that those doing business with Caldwell County also observe the ethical standards prescribed here.

It shall be a breach of ethics to attempt to influence any public employee, elected official or department head to breach the standards of ethical conduct set forth in this code.

It shall be a breach of ethics for any employee of Caldwell County or a vendor doing business with the county to participate directly or indirectly in a procurement when the employee or vendor knows that:

The employee or any member of the employee's immediate family, or household has a substantial financial interest pertaining to the procurement. This means ownership of 10% or more of the company involved and/or ownership of stock or other interest or such valued at \$2500.00 or more.

A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement.

Gratuities: It shall be a breach of ethics to offer, give or agree to give any employee of Caldwell County or for any employee to solicit, demand, accept or agree to accept from a vendor, a gratuity of consequence or any offer of employment in connection with any decision approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or controversy, any particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government.

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

Contract Clause: The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation therefore.

Any effort to influence any employee, elected official, or department head to violate the standards of the code is grounds to void the contract. Please certify, by your signature below, that you understand the ethics policy of Caldwell County and in no way will attempt to violate the code.

SIGNATURE: \_\_\_\_\_

PRINT NAME & TITLE: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

## VI. Caldwell County Practices Related to Historically Underutilized Businesses

### 1. STATEMENT OF PRACTICES

Caldwell County will strive to ensure that all businesses, regardless of size, economic, social or ethnic status have an equal opportunity to participate in the County's procurement processes. The County is committed to promote full and equal business opportunity for all businesses to supply the goods and services needed to support the mission and operations of county government, and seeks to encourage the use of certified historically underutilized businesses (HUB's) through the use of race, ethnic and gender neutral means. It is the practice of Caldwell County to involve certified HUBs to the greatest extent feasible in the County's procurement of goods, equipment, services and construction projects while maintaining competition and quality of work standards. The County affirms the good faith efforts who recognize and practice similar business standards.

### 2. DEFINITIONS

Historically underutilized businesses (HUBs), also known as a disadvantaged business enterprise (DBE), are generally business enterprises at least 51% of which is owned and the management and daily business operations are controlled by one or more persons who is/are socially and economically disadvantaged because of his/her identification as a member of certain groups, including women, Black Americans, Mexican Americans, and other Americans of Hispanic origin, Asian Americans and American Indians.

Businesses include firms, corporations, sole proprietorships, vendors, suppliers, contractors, subcontractors, professionals and other similar references when referring to a business that provides goods and/or services regardless of the commodity category.

Certified HUB's include business enterprises that meet the definition of a HUB and who meet the certification requirements of certification agencies recognized by Caldwell County, as expressed below.

Statutory bid limit refers to the Texas Local Government Code provision that requires competitive bidding for many items valued at greater than \$50,000.

### 3. GUIDELINES

- a. Caldwell County, its contractors, their subcontractors and suppliers, as well as all vendors of goods, equipment and services, shall not discriminate on the basis of race, color, creed, gender, age, religion, national origin, citizenship, mental or physical disability, veteran's status or political affiliation in the award and/or performance of contracts. All entities doing business or anticipating doing business with the County shall support, encourage and implement affirmative steps toward a common goal of establishing equal opportunity for all citizens and businesses of the County.
- b. Vendors and/or contractors desiring to participate in the HUB program must successfully complete the certification process with the State of Texas or Texas Unified Certification Program. The vendor or contractor is also required to hold a current valid certification (title) from either of these entities.
- c. Vendors and/or contractors must be registered with the State Comptroller's web-based HUB directory and with the Comptroller's Centralized Master Bidder's List (CMBL).

4. Caldwell County will encourage HUBs to participate in all facets of the procurement process.

5. As prescribed by law, the purchase of one or more items costing in excess of the statutory bid limit must comply with the competitive bid process. Where possible, those bids will be structured to include and encourage the participation of HUB firms.
6. Nothing in this practice statement shall be construed to require the County to award a contract other than to the lowest responsive bidder as required by law. This practice is narrowly tailored in accordance with applicable law.

Please sign for acknowledgement of the Caldwell County HUB Practices:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

VII. Caldwell County House Bill 89 Verification

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, after being duly sworn by the undersigned notary, do hereby depose and verify under oath that the company named above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:

- 1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.

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.

Signature of Company Representative

Date

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally appeared \_\_\_\_\_, the above-named person, who after by me being duly sworn, did swear and confirm that the above is true and correct.

NOTARY SEAL

Notary Public in and for the State of Texas

Date

### VIII. Caldwell County Purchasing Department Senate Bill 252 Certification

On this day, I, \_\_\_\_\_, the Purchasing Representative for Caldwell County in Lockhart, Texas, pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that I did review the website of the Comptroller of the State of Texas concerning the listing of companies that is identified under Section 806.051, Section 807.051 or Section 2253.253 and I have ascertained that the below-named company is not contained on said listing of companies which do business with Iran, Sudan or any Foreign Terrorist Organization.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
RFQ or Vendor number

CERTIFICATION CHECK PERFORMED BY:

\_\_\_\_\_  
Purchasing Representative

\_\_\_\_\_  
Date

IX. Debarment and Licensing Certification

STATE OF TEXAS §
COUNTY OF Caldwell §

I, the undersigned, being duly sworn or under penalty of perjury under the laws of the United States and the State of Texas, certifies that Firm named herein below and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
c. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state or local governmental entity with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;
d. Have not within a three-year period preceding this application/proposal had one or more public (federal, state or local) transactions terminated for cause or default;
e. Are registered and licensed in the State of Texas to perform the professional services which are necessary for the project; and
f. Have not been disciplined or issued a formal reprimand by any State agency for professional accreditation within the past three years.

Contractor understands and agrees that, if it is unable to certify any of the above terms, or provide an acceptable explanation related to its inability to make such certification, that the County shall have cause to terminate this Agreement for cause. Contractor agrees to require compliance with the terms of this Section, and certification thereof, in any subcontract for performance of work under this Agreement.

Name of Firm

Signature of Certifying Official

Title of Certifying Official

Printed Name of Certifying Official

Date

Where the Firm is unable to certify to any of the statements in this certification, such Firm shall attach an explanation to this certification.

SUBSCRIBED and sworn to before me the undersigned authority by \_\_\_\_\_ on this the day of \_\_\_\_\_, 20\_\_\_\_, on behalf of said Firm.

Notary Public in and for the State of Texas

My commission expires: \_\_\_\_\_

X. Vendor/Bidder's Affirmation

- Vendor/Bidder affirms that they are duly authorized to execute a Contract, that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other bidder, and that the contents of this bid as to price, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engages in this type of business prior to the official opening of this bid.
- Vendor/Bidder hereby assigns to Purchaser any and all claims for overcharges associated with any Contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.
- Pursuant to 262.0276 (a) of the Texas Local Government Code, Vendor/Bidder, hereby affirms that

Vendor/Bidder:

\_\_\_\_\_ Does not own taxable property in Caldwell County, or;

\_\_\_\_\_ Does not owe any ad valorem taxes to Caldwell County or is not otherwise indebted to Caldwell County

\_\_\_\_\_  
Name of Contracting Company

If taxable property is owned in Caldwell County, list property ID numbers:

\_\_\_\_\_

\_\_\_\_\_  
Signature of Company Official Authorizing Bid/Offer

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Phone

## XI. FEDERAL AFFIRMATIONS AND SOLICITATION ACCEPTANCE

In the event federal funds are used for payment of part or all of the consideration due under any contract resulting from this Solicitation Response, Respondent must execute this **Federal Affirmation and Solicitation Acceptance**, which shall constitute an agreement, without exception, to the following affirmations:

### 1. **Debarment and Suspension**

Respondent certifies, by signing this Attachment, that neither it nor any of its principals or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

### 2. **Americans with Disabilities Act**

Respondent and any potential subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

### 3. **Discrimination**

Respondent and any potential subcontractors shall comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to:

- a Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin;
- b Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;
- c Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps;
- d The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101- 6107), which prohibits discrimination on the basis of age;
- e The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
- f The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- g Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- h Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
- i Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and
- j The requirements of any other nondiscrimination statute(s) that may apply to the application.

### 4. **Wages**

Respondent and any potential subcontractors have a duty to and shall pay the prevailing wage rate under the Davis Bacon Act, 40 U.S.C. 276a – 276a-5, as amended, and the regulations adopted thereunder contained in 29 C.F.R. pt. 1 and 5.

### 5. **Lobbying**

If Respondent, in connection with any resulting contract from this Solicitation, is a recipient of a Federal contract, grant, or cooperative agreement exceeding \$100,000 or a Federal loan or loan guarantee exceeding \$150,000, the Contractor shall comply with the requirements of the new restrictions on lobbying contained in

Section 1352, Title 31 of the U.S. Code, which are implemented in 15 CFR Part 28. Respondent shall require that the certification language of Section 1352, Title 31 of the U.S. Code be included in the award documents for all subcontracts and require that all subcontractors submit certification and disclosure forms accordingly.

**6. Minority and Women’s Businesses**

Respondent and any potential subcontractors shall take affirmative steps to assure that minority and women's businesses are utilized when possible as sources of supplies, equipment, construction, and services, as detailed in the federal requirements relating to minority and women’s business enterprises: Executive Order 11625 of October 13, 1971, 36 Fed. Reg. 19967, as amended by Executive Order No. 12007 of August 22, 1977, 42 Fed. Reg. 42839; Executive Order No. 12432 of July 14, 1983, 48 Fed. Reg., 32551; and Executive Order No. 12138 of May 18, 1979, 44 Fed. Reg. 29637.

**7. Environmental Standards**

Respondent and any potential subcontractors shall comply with environmental standards that may be prescribed pursuant to the following:

- a. Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
- b. Notification of violating facilities pursuant to EO 11738;
- c. Protection of wetlands pursuant to EO 11990;
- d. Evaluation of flood hazards in floodplains in accordance with EO 11988;
- e. Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- f. Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
- g. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
- h. Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

**8. Historic Properties**

Respondent and any potential subcontractors shall assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

**9. All Other Federal Laws**

Respondent and any potential subcontractors shall comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the Solicitation.

I have read, understand, and agree to comply with the Federal Affirmations specified above. Checking “YES” indicates acceptance, while checking “NO” denotes non-acceptance.

YES \_\_\_\_\_ NO \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

Respondent’s Tax ID: \_\_\_\_\_

Telephone: \_\_\_\_\_

If Respondent is a Corporation or other legal entity, please attach a corporate resolution or other appropriate official documentation that states that the person signing this Solicitation Response is an authorized person to sign for and legally bind the corporation or entity.

**XII. FHWA 1273 CERTIFICATION**

I have read, understand, and agree to comply with the FHWA 1273 presented in Attachment C. Checking "YES" indicates acceptance, while checking "NO" denotes non-acceptance.

YES \_\_\_\_\_ NO \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

Respondent's Tax ID: \_\_\_\_\_

Telephone: \_

If Respondent is a Corporation or other legal entity, please attach a corporate resolution or other appropriate official documentation that states that the person signing this Solicitation Response is an authorized person to sign for and legally bind the corporation or entity.

### XIII. Related Party Disclosure Form



Caldwell County strives to provide financial transparency to its taxpayers. Completion of this form will allow for added transparency into the procurement process by disclosing Vendor relationships with current or former Caldwell County employees. The existence of a relationship may not present a legal or ethical conflict for a Vendor. However, disclosure will allow for consideration of potential conflicts and/or ways to eliminate conflicts.

A Vendor who Employs any of the following is required to disclose the relationship on this form:

- Current Caldwell County employee (including elected or appointed official) (Complete Section A)
- Former Caldwell County employee who has been separated from the County for no less than four (4) years (including elected or appointed official) (Complete Section B)
- Person related within the 2<sup>nd</sup> degree of consanguinity or affinity to either of the above<sup>(1)</sup> (Complete Section C)

If no known relationships exist, complete Section D.

**This form is required to be completed in full and submitted with the proposal package.** A submitted proposal package that does not include this completed form will be considered non-responsive and will not be eligible for an award.

<u>Section A: Current Caldwell County Employee</u>		
Employee Name	Title	
<u>Section B: Former Caldwell County Employee</u>		
Employee Name	Title	Date of Separation from County
<u>Section C: Person Related to Current or Former Caldwell County Employee</u>		
Caldwell Employee/Former Caldwell Employee Name	Title	
Name of Person Related	Title	Relationship
<u>Section D: No Known Relationships</u>		
If no relationships in accordance with the above exist or are known to exist, you may provide a written explanation below:		

Attach additional pages if necessary.

I, the undersigned, hereby certify that the information provided is true and complete to the best of my knowledge.

\_\_\_\_\_  
Name of Vendor

\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Title of Certifying Official

\_\_\_\_\_  
Printed Name of Certifying Official

\_\_\_\_\_  
Date

<sup>(1)</sup>A degree of relationship is determined under Texas Government Code Chapter 573. (as outlined below)

Relationship of Consanguinity				
	1st Degree	2nd Degree	3rd Degree*	4th Degree*
<b>Person</b>	child or parent	grandchild, sister, brother or grandparent	great-grandchild, niece, nephew, aunt,* uncle* or great-grandparent	great-great-grandchild, grandniece, grandnephew, first cousin, great aunt,* great uncle* or great-great-grandparent
* An aunt, uncle, great aunt or great uncle is related to a person by consanguinity only if he or she is the sibling of the person's parent or grandparent.				

Relationship of Affinity		
	1st Degree	2nd Degree
<b>Person</b>	spouse, mother-in-law, father-in-law, son-in-law, daughter-in-law, stepson, stepdaughter, stepmother or stepfather	brother-in-law, sister-in-law, spouse's grandparent, spouse's grandchild, grandchild's spouse or spouse of grandparent

“Vendor” shall mean any individuals or entity that seeks to enter into a contract with Caldwell County.

“Employs” shall mean any relationship wherein Vendor has made arrangements to compensate an individual, directly or by way of a business organization in which the individual has a share-hold or ownership interest, even if that arrangement is contractual and/or on an hourly-charge basis.

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

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

**ATTACHMENTS**

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

**I. GENERAL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### III. NONSEGREGATED FACILITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2. Withholding (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## Disadvantaged Business Enterprise (DBE) Program Commitment Agreement Form

Form SMS.4901  
TxDOT 06/08  
Caldwell 04/23  
Page 1 of 1

**This commitment is subject to the award and receipt of a signed contract from  
Caldwell County for the subject project.**

<b>Project #:</b>		<b>County:</b>		<b>Contract-CSJ:</b>	
<b>Items of work to be performed (attach a list of work items if more room is required):</b>					
Bid Item #	Item Description	Unit of Measure	Unit Price	Quantity	Total Per Item
<b>Total</b>					

The contractor certifies by signature on this agreement that subcontracts will be executed between the prime contractor and the DBE subcontractors as listed on the agreement form. If a DBE Subcontractor is unable to perform the work as listed on this agreement form, the prime contractor will follow the substitution/replacement approval process as outlined in the Contract DBE Special Provision.

**IMPORTANT: The signatures of the prime contractor and the DBE,  
and the total commitment amount must always be on the same page.**

<b>Prime Contractor:</b>		Name/Title (please print):	
Address:		Signature:	
Phone:	Fax:		
E-mail:		Date:	
<b>DBE:</b>		Name/Title (please print):	
Vendor No.:		Signature:	
Address:			
Phone:	Fax:	Date:	
E-mail:			
<b>Subcontractor (if the DBE will be a second tier sub):</b>		Name/Title (please print):	
Address:		Signature:	
Phone:	Fax:		
E-mail:		Date:	

Caldwell County maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

To ensure prompt and efficient handling of your project file we are requesting that all commitments to be presented to the Office of Civil Rights, using this basic format.

