



Purchasing Department

Policies and Procedures

County of El Paso, Texas

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INTRODUCTION

The El Paso County Purchasing Department is part of the statutory requirement of financial checks and balances for the County of El Paso. The County Purchasing Agent is charged with the responsibility of assuring fair and equitable treatment to all vendors without regard to political pressure or discrimination on the basis of race, color, religion, national origin, handicap, or sex.

It is the duty of this department to furnish supplies, equipment, and services to the various departments and elected officials in the required quality and quantity, at the best possible price. El Paso County Purchasing also holds the responsibility of providing County taxpayers with concise information in regard to methods by which their money is expended.

These tasks are accomplished by standardization and competitive bidding on the basis of adequate specifications, whenever practicable.

To assist the Purchasing Agent, an assistant and a professional staff that includes a Formal Bid Supervisor, Formal Bid Buyer, Procurement Data Analysts, Buyers, Inventory specialists, Supply specialists, and clerical staff have been assembled.

In addition to solicitation of formal sealed bids, requests for proposals, requests for qualifications, quotations, and other procurement methods as allowed by statute; this team is responsible for:

1. Auctions of Surplus Property
2. Cooperative Purchasing
3. Single and Sole Source Purchasing
4. Physical Inventory of Fixed Assets
5. Maintaining Surplus Property Warehouse

This manual contains the authorized procedures for purchasing by County officials and employees. These procedures are adopted by the El Paso County Commissioners Court, and material changes in the contents of this manual shall be made only by the Commissioners Court.

County purchasing procedures are governed by Chapter 262 of the Local Government Code, and these statutes, including interpretations of them made by Texas Attorney General, are the ultimate authority on the validity of purchasing procedures.

Since this manual cannot address every situation and, when an unusual situation occurs or a difficult legal problem arises, the exact statutory language must be reviewed and analyzed. In every situation, the final authority for County purchasing procedures is the Commissioners Court.

Because the procedures described in this manual are based on state law, this manual, in many instances, contains language taken directly from statutes; and paraphrases of and broad generalizations about Texas statutory law have been included where appropriate to assist in applying the law in routine situations.

The Purchasing Department is committed to promoting effective, professional, and consistent procurement in El Paso County, as well as supporting the public precept that tax dollars be wisely spent.

A purchasing manual should not be viewed as static, since purchasing procedures in El Paso County will change as needed, particularly in regard to paper processes and new legislation.

DEFINITIONS OF TERMS

Advertisement or Advertise – A public legal notice put in a newspaper of general circulation containing information about formal solicitations (those purchases anticipated to exceed \$50,000) such as Invitation for Bid, Request for Proposal, Request for Qualifications and other types of purchases as mandated.

Amendment – A document used to change the terms and/or conditions of a Solicitation.

Annual Term Contract – A recurring contract for goods or services, usually in effect for a 12-month period.

Auditor – El Paso County Auditor and the designated representatives.

BAFO – Best and Final Offer

Bidders List – A computerized database of vendors who have signified in writing an interest in submitting bids for particular categories of goods and services.

BONDS Bid Bond – A guarantee that promises the bid will not be withdrawn prior to contract award. Normally it is five percent (5%) of the highest amount bid and is in the form of a financial guarantee provided by a surety; however, it can be cashiers or certified checks, or U.S. currency. Bonds of unsuccessful bids are returned after award. Bond of successful bidder is retained until the contract is executed and any necessary payment/performance bonds are submitted and accepted. If the successful bidder refuses to execute the contract or submit proper payment and performance bonds, then the bid bond is “called” for the difference between their bid and that of the next low responsive responsible bidder, up to the penal amount of 5% of the bond.

Payment Bond – A guarantee that promises payment to subcontractors and suppliers on a contract during performance. It must be submitted prior to any work. It is normally one hundred percent (100%) of the contract price and is in the form of a financial guarantee provided by a surety, but can be cashier’s or certified checks, or U.S. currency. It is normally maintained until expiration of any required warranty. If the contractor fails to pay subcontractors and suppliers, then the payment bond is “called” for the amount of non-payment.

Performance Bond – A guarantee that promises that the contract will be performed as required. It must be submitted prior to any work. Normally it is one hundred percent (100%) of the contract price and is in the form of a financial guarantee provided by a surety, but can be cashier’s or certified checks, or U.S. currency. It is normally maintained until expiration of any required warranty. If the contractor fails to perform and complete the contract as required, then the performance bond is “called” for the amount required to complete the contract. A surety that provides a bond may be permitted to “take over” a failed or defaulted contract.

Change Order – A document used in construction contracts that changes the contract by increasing or decreasing the cost or time for performance, or changes the goods/services to be delivered.

Commissioners Court – El Paso County Commissioners Court.

Competitive Bidding – Process by which available vendors compete with each other to provide goods/services.

Competitive Proposal Process – Process by which available vendors compete with each other to provide goods/services in compliance with Local Government Code Chapter 262.

Component Purchases- Purchasing a series of component parts of goods that normally would have been purchased as a whole to avoid quote or bid thresholds. *A county officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements. An offense under this subsection is a Class B misdemeanor.* (Local Government Code §262.034)

Contract – A written agreement executed by the County and a vendor, containing the terms and conditions under which goods/services are to be furnished to the County. A contract, when properly signed by the authorized County representatives, is a commitment for County funds.

County – El Paso County, Texas.

County Attorney – El Paso County Attorney’s Office or their designated representatives.

County Clerk – El Paso County Clerk or their designated representatives.

Customers – The County departments, employees, or elected officials.

Department – All County and precinct offices and subdivisions of them, as well as district offices and subdivisions when the purchase is even partially funded by County money.

Designee – Individual Purchasing Department employee given the authority as an additional agent to the Purchasing Agent to perform County business.

Disadvantaged Business Enterprise (DBE) – A business in which at least 51% ownership is represented by one or more persons who have been historically underutilized (socially disadvantaged) because of their identification as being African American, Hispanic American, Asian-Pacific American, Native American, or Women.

Emergency Purchase – A purchase needed because of public calamity as described in Local Government Code §262.024(a) (1).

Employee – Any County or precinct elected official, appointed official, or employee and any district elected official, appointed official, or employee when the purchase will be partially funded with County money.

Executive Manager – Any executive manager and any person authorized to act on their behalf.

Formal Competitive Bidding – The bidding process in compliance with Local Government Code §262.023 that requires approval by the Commissioners Court.

Goods – Includes any personal property to be purchased by the County, including equipment, supplies, material, and component or repair parts.

Invitation for Bid (IFB) – Specifications and formal bidding documents requesting pricing for a specified good/service that has been advertised for bid in a newspaper.

Item- Any service, equipment, good, or other tangible or intangible personal property, including insurance and high technology items. The term does not include professional services as defined by Texas Government Code Section 2254.002.

Items Less Than \$50,000 – Purchases of goods/services that are accounted for in the County Commodity Code Inquiry listing, and purchases of goods/services from a single vendor in a single purchase as defined in the County Purchasing Act.

Lease – A contract to rent personal property for a period of time at specified compensation.

Lowest Responsible Bid- The offer from a vendor meeting all requirements of the specifications, terms, and conditions of the Invitation for bid and determined to be lowest and best response. In accordance with Local Government Code Chapter 262, “lowest and best” means a bid or offer providing the best value considering associated direct and indirect costs, including transport, maintenance, reliability, and life cycle, warranties, and customer service after a sale. The term “responsible” refers to the practical and financial ability of the bidder to perform the contract, and takes into consideration the past performance of the vendor.

Material Group – A means of classifying goods/services with a unique group number assigned to each description.

Modification – A document used to change the terms/conditions of a contract.

Normal Purchasing Practice - In accordance with Local Government Code Chapter 262, normal purchasing practices means (A) an accepted custom, practice, or standard for government procurement in the state; or B) a practice recognized by a national purchasing association regarding the purchase of a particular good or service.

Occupant Department - The department that will use the goods/services when the purchase or construction is completed, which may be different from the user department.

Official - Any elected or appointed official and any person authorized to act on their behalf.

Pre-Bid/Proposal Conference - A meeting between vendors and the County conducted by the Purchasing Department for the benefit of those wishing to submit a bid or proposal for services/supplies required by the County. The conference is held so bidders/proposers may ask questions about the proposed contract and specifications.

Professional Services Procurement Act - There are three (3) kinds of professional Services specified and allowable in this Act:

1. Professional services specified in the Professional Services Procurement Act (Texas Government Code Chapter 2254) that require an individual with specified skills.
2. Professional services not specified in the Professional Services Procurement Act. These services include a wide variety of individuals with specialized skills. The Purchasing Agent must rely on the Attorney General and specific court cases.
3. Attorneys that are approved by the El Paso County Attorney.

Prompt Payment Act - Texas Government Code 2251.021(B) TIME FOR PAYMENT BY GOVERNMENTAL ENTITY, states a payment by a governmental entity under a contract executed on or after September 1, 1987, is overdue on the 31st day after the later of:

- (1) the date the governmental entity receives the goods under the contract;
- (2) the date the performance of the services under the contract is completed; or
- (3) the date the governmental entity receives an invoice for the goods or services.

Proprietary Information - Information in bids or proposals to which the vendor claims ownership or exclusive rights and is protected from disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552).

Purchase Order - An order by the Purchasing Department for the purchase of goods/services written on the El Paso County standard Purchase Order form and, when accepted by the vendor without qualifications within the specified time limit, becomes a contract. It is the vendor's authority to deliver and invoice for goods/services specified, and the County's commitment to accept the goods/services for an agreed upon price.

Purchase Requisition - A request by a department to the Purchasing Department authorizing Purchasing to enter into a contract with a vendor to purchase goods/services and charge the expenditure to the appropriate department budget. This automated form is for internal use and cannot be used by a department to order material directly from a vendor.

Purchase - Any kind of acquisition, including by a lease or revenue contract; the act, function, and responsibility for the acquisition of goods/services, including lease, construction and professional services.

Purchasing Act - Local Government Code Chapter 262, Subchapter C of the Texas Government Code Chapter that governs the conduct of purchasing activity for counties.

Purchasing Agent - The authorized purchaser for the County who reports to the Purchasing Board and the designated representatives.

Purchasing Board - A board comprised of three (3) district judges and two (2) County Commissioners who are responsible for appointing the Purchasing Agent and approving the department's budget.

Purchasing Department - El Paso County Purchasing Department and its staff.

Request for Services (RFS)– A document that requests information about qualifications and details of service to be provided, and costs for services that the Commissioners Court orders exempt in compliance with Texas Government Code Chapter, §262.024(a)(4).

Request for Offer or RFO – A process for soliciting offers from three (3) catalog vendors authorized by the State of Texas Department of Information Services (DIR) pursuant to Texas Government Code, Section 2157, and negotiating with them for the best value and purchase in the best interests of El Paso County.

Request for Proposal (or RFP) – A document requesting an offer be made by a vendor, which allows for negotiation after a proposal has been received, but before award of the contract for goods/services procured in compliance with Texas Government Code §262.0295 or §262.030.

Request for Qualifications (RFQ) – A document that requests details about the qualifications of professionals whose services must be obtained in compliance with the Professional Services Procurement Act.

Munis – El Paso County’s Enterprise Management System which includes the Purchasing module.

Sealed Bids – Competitive bids required to be advertised in a newspaper and submitted to the Purchasing Department in a sealed envelope.

Separate Purchases- “Purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase”. *A county officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements. **An offense under this subsection is a Class B misdemeanor.*** (Local Government Code §262.034)

Sequential Purchases-“Purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase”. *A county officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements. **An offense under this subsection is a Class B misdemeanor.*** (Local Government Code §262.034)

Services – Includes all work or labor performed for the County on an independent contractor basis, including maintenance, construction, manual, clerical, personal, or professional services.

Sole Source or Single Source Good or Service – A good or service that can be obtained from only one source that is purchased in compliance with Local Government Code §262.024(c), Discretionary Exemptions.

Solicitation – A document such as an invitation to bid, request for proposal, request for offers, or request for qualifications issued by the Purchasing Department. This document contains terms and conditions for a contract, and it seeks (solicits) a bid or proposal for goods/services needed by the County.

Specifications – A concise description of a good or service that an entity seeks to buy, and the requirements the vendor must meet in order to be considered for the award. A specification may include requirements for testing, inspection, preparing any goods or services for delivery, and preparation or installation for it to be used. The specification is the total description of the goods or services to be purchased.

User Department – The department from whose budget line item the contract will be paid.

Vendor – One who sells something; a “seller.”

Section 1 STATEMENT OF GENERAL POLICY

It is the policy of El Paso County that all purchasing shall be conducted strictly on the basis of economic and business merit in accordance with both state and federal law. In addition to price, the County will:

1. Provide the best service possible to all County departments in a fair and equitable manner;
2. Ensure an atmosphere of equality to all vendors without regard to undue influence or political pressure;
3. Protect the interests of the El Paso County taxpayers in all expenditures.

El Paso County intends to maintain a cost-effective purchasing system conforming to good management practices. To be successful, the system must be backed by proper attitudes and cooperation of not only every department head and official, but also every supervisor and employee of El Paso County. The establishment and maintenance of a good purchasing system is possible only through cooperative effort.

The responsibility of purchasing ultimately rests with the Commissioners Court. The Purchasing Agent, as an agent of the Commissioners Court, aids in the purchasing process at all dollar levels and is directly responsible for purchases under \$50,000. Awards greater than \$50,000 must be approved by the Commissioners Court and may be subject to the Court's direction as to reasonable specifications and maximum prices on the items to be purchased.

The Purchasing Agent, as authorized by the Commissioners Court, shall instruct departments and agencies as to the various rules and procedures needed to fulfill the Purchasing Agent's duties.

The purchasing process is not instantaneous. Time is required to complete the steps required by State law. In order to accomplish timely purchasing of products and services at the least cost to El Paso County, all departments must cooperate fully. Prior planning and the timely submission of requisitions are essential to expedite the purchasing process and to ensure that the process is orderly and lawful.

Section 2 PURCHASING CODE OF ETHICS POLICY

It is the policy of the County that the following ethical principles will govern the conduct of every employee involved directly or indirectly in the County procurement process. All County Employees shall complete the County of El Paso Ethics Training per requirements of the County of El Paso Ethics Commission.

RESPONSIBILITY TO COUNTY

Employees will avoid any activities that would compromise or give the perception of compromising the best interests of El Paso County. Employees will not use confidential proprietary information for actual or anticipated personal gain.

CONFLICT OF INTEREST

Employees will avoid any activity that would create a conflict between personal interests and the interests of El Paso County. Conflicts exist in any relationship where an employee is not acting in the County's best interest and may be acting in their own best interests or the interests of someone associated with them. Such conflicts of interest would include being involved in any procurement activity in which:

1. The employee or any member of the employee's family has any financial interest pertaining to the El Paso County procurement process;
2. A business or organization in which the employee, or any member of the employee's family, has a financial interest pertaining to the El Paso County procurement process;
3. Any other person, business, or organization with whom the employee or a member of the employee's family is negotiating or has any business or employment arrangement;
4. Any El Paso County employee bids or attempts to purchase El Paso County surplus materials or equipment through the surplus auction process.

If any such conflicts of interest exist, the employee will immediately notify the Purchasing Agent in writing and will remove themselves from the El Paso County procurement process.

PERCEPTION

Employees will avoid any appearance of unethical or compromising practices in all relationships, actions, and communications.

GRATUITIES

Employees will never solicit or accept money, loans, gifts, favors, or anything of value, from present or potential vendors which might influence or appear to influence any purchasing decision. Generally edible goods with a value of \$50.00 or less are acceptable if shared with the entire staff and will not offend this prohibition unless it appears to influence a purchasing decision. If anyone is in doubt whether a transaction complies with this policy, the individual should disclose the transaction to the Purchasing Agent for interpretation.

Vendors or bidders who offer gifts, entertainment, or other gratuities may be declared an irresponsible bidder and may be debarred from bidding for a period of one year after the violation of the gratuities policy.

CONFIDENTIAL INFORMATION

To the extent allowed by state and federal law, employees will keep all proponents' and vendors' proprietary information confidential, and El Paso County procurement information obtained from an IFB, RFP, RFQ, or RFO confidential as long as that vendor information is retained by El Paso County.

COMMUNICATION WITH VENDORS DURING THE SOLICITATION PROCESS

(Per County Code of Ethics regulations).

Once the bidding process has begun by the Purchasing Department, County employees shall not communicate with the vendors in any way. All communication via phone, e-mail, fax, or in person shall be through the Purchasing Department staff. If the employee receives any communication from the vendor, immediately contact the Purchasing department or forward the e-mail to the appropriate Buyer. The intent is to prevent vendors from bypassing Purchasing in an attempt to influence employees or to gather additional information that is not shared with all prospective bidders.

EL PASO COUNTY EMPLOYEE RESPONSIBILITIES IN DEALING WITH VENDORS

The ability to make purchases on behalf of the County does not entitle the purchaser to any kind of special personal privileges from the vendor and no professional buying for the County should be, in any way, tied to any personal purchases at any time.

- Deal with vendors fairly and courteously.
- Do not use “meet or beat” pricing tactics.
- Provide equal assistance to all current suppliers and potential vendors.
- Ensure that public procurement records are open and available to anyone requesting information. *This excludes information that is proprietary or confidential pursuant to law.*
- Ensure that solicitation activities are truly competitive.
- Clearly state any award criteria in the terms of the solicitation. Do not change any award criteria unless done through a formal addendum during the solicitation process.
- No preference should be given to brand names.
- Goods or services should not be identified as proprietary or sole source unless it is determined by research and verification by the Purchasing Agent that the goods or services truly meet the criteria for the discretionary exemption.
- No subjective favoritism is permitted. For example, a statement such as “*We have always bought from that vendor,*” is reasoning that does not encourage or allow for competition.

ETHICS TRAINING FOR BIDDERS

Vendors shall be required to read, sign, and return the County of El Paso Ethics Training Affidavit form that is part of each bid submission, to include the availability of online submission as allowed and verified by County Human Resources. A sample of the Ethics Training Affidavit **[Exhibit K]** is included in this policy.

CONFLICT OF INTEREST QUESTIONNAIRE (CIQ) FOR BIDDERS

Chapter 176 of the Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Conflict of Interest Questionnaire (CIQ Form), the vendor or person’s affiliation or business relationship that might cause a conflict of interest with a local government entity. With every bid, the County lists the County employees and officials that will make recommendations for award or award the bid. By law, this questionnaire must be filed with the County Clerk of County of El Paso, Texas. If no conflict of interest exists, write “N/A” or “None” in Box 3 of the CIQ Form. For Bidder’s convenience, a blank CIQ Form is enclosed with each bid. Blank CIQ Forms may also be obtained by visiting the Purchasing Department website at: <http://epcounty.com/purchasing/bids/default.htm>.

DISCLOSURE OF INTERESTED PARTIES

Prior to entering into a contract that is voted on by Commissioners Court, the prospective business must submit a “Disclosure of interested parties” Form. Within 30 days of receipt of the form, the County must submit a copy to the Texas Ethics Commission. The Disclosure of Interested Parties (Form 1295) is available on the County website. (H.B. 1295)

Section 3 PURCHASING AUTHORITY AND POLICY

PURCHASING LAWS

It is the policy of El Paso County, acting through its duly appointed Purchasing Agent, to comply fully with all purchasing laws and amendments passed by the Texas State Legislature

PURCHASING POLICY

The Commissioners Court has directed the Purchasing Agent to provide a centralized purchasing structure.

The Purchasing Department, as well as officials, managers, and employees, will provide to all responsible vendors an equitable and competitive access to the County procurement process. Furthermore, all County purchasing will be conducted in a manner that will promote and foster public confidence in the integrity of the County procurement process.

The County of El Paso's Procurement Policy is designed to:

1. Seek the best quality, lowest priced goods and services available that meet the needs and delivery requirements of El Paso County personnel;
2. Provide all responsible vendors and contractors, with equitable access to servicing the needs of El Paso County and its personnel through the competitive bidding of goods and services;
3. Comply with all federal and state laws that apply to county purchasing and with the policies and procedures in this manual;
4. Manage all County assets and inventory so that replacement costs are minimized and El Paso County can account for those assets; and
5. Dispose of all surplus, salvage, seized, and abandoned property in a manner that provides the most benefit to the taxpayers of the County and complies with the law.

APPLICATION

The Purchasing Act applies to all departments: all district, County, precinct officials, employees, and subdivisions of all district, County, and precinct offices.

The Purchasing Agent must purchase or lease all goods and services, including maintenance and repair, for all departments.

The Purchasing Agent must do all of the purchasing for all officials, County managers, and employees, including the purchasing for all precinct employees.

AUTHORITY

These policies and procedures are adopted by the County Purchasing Agent and approved by the Commissioners Court acting in its capacity as the governing body of El Paso County, Texas.

El Paso County adopts these policies and procedures under the authority of Local Government Code Chapter 262.

EFFECTIVE DATE

These policies and procedures will become effective upon approval by the Commissioners Court.

Section 4 AUTHORITY AND RESPONSIBILITIES OF THE PURCHASING AGENT

APPOINTMENT

Pursuant to statute, the Purchasing Board oversees a centralized purchasing structure and has given the Purchasing Department that mission. The Purchasing Board is composed of three (3) District Judges and two (2) County Commissioners. The Purchasing Board appoints the Purchasing Agent for El Paso County for a two-year term and has the authority to approve the budget for this office.

AUTHORITY

The Purchasing Agent shall purchase all goods required or used, and contract for all repairs to property used by the County or a department or employee, except purchases and contracts required by law to be made on competitive bid. Authority to make County purchases required by law to be competitively bid resides in the Commissioners Court. The Purchasing Agent merely facilitates that process and makes a recommendation to the Commissioners Court for actual award and purchase.

A person other than the Purchasing Agent or designee may *not* make the purchase of the goods or make the contract for repairs except as specifically authorized by state law.

The Purchasing Agent shall supervise all purchases made on competitive bid and shall see that all purchased goods are delivered to the proper department in accordance with that contract.

A purchase made by the Purchasing Agent shall be paid by a warrant drawn by the Auditor on funds in the County Treasury provided by law. The Auditor may not draw and the County Treasury may not honor a warrant for purchase unless the purchase is made by the Purchasing Agent or on competitive bid as provided by law.

INVENTORY

On July 1 of each year, the Purchasing Agent shall file an inventory of all property on hand belonging to the County and in use by each department and employee. The Auditor shall examine the inventory and make an accounting for all property purchased or previously inventoried and not appearing on the inventory.

TRANSFER OF ASSETS

Subject to the Commissioners Court approval, to prevent unnecessary purchases, the Purchasing Agent shall recommend the transfer of County property or goods that are not needed from a department or employee, to another department or employee requiring the goods or use of them.

VIOLATION AND PENALTY

Pursuant to Local Government Code §262.011(m) A person, including an officer, agent, or employee of a county or of a subdivision or department of a county, commits an offense if the person violates this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$10 or more than \$100. Each act in violation of this section is a separate offense.

Pursuant to Local Government Code §262.034, A county officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements. An offense under this subsection is a Class B misdemeanor.

ADDITIONAL RESPONSIBILITIES

In addition, the responsibilities of the Purchasing Agent shall be to:

1. Develop, implement, and maintain a Fixed Asset Management System;
2. Encourage and support compliance with Texas purchasing laws;
3. Work in conjunction with the Auditor and other County officials in the development of efficient financial processes;
4. Promote local business participation in El Paso County procurement processes; and
5. Provide the business community a central professional link to County business.

Section 5 GENERAL PURCHASING POLICY

GENERAL INFORMATION

El Paso County will not be obligated to purchase goods that are delivered for use on a trial basis or not purchased by the Purchasing Department.

The following strategies employed with the intention of avoiding informal or formal competitive bidding are in violation of Local Government Code §262.023 and any county officer or employee intentionally or knowingly making or authorizing these strategies commit an offense that is considered a Class B misdemeanor. (Local Government Code §262.034)

Component Purchases- Purchasing a series of component parts of goods that normally would have been purchased as a whole to avoid quote or bid thresholds.

Separate Purchases- "Purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase".

Sequential Purchases- "Purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase".

Any commitment to acquire goods or services without an authorized purchase order or signed contract is prohibited.

Anyone obligating an expenditure of funds for goods or services prior to securing a purchase order may be held personally responsible for the payment. All such purchases may be considered a *donation* to El Paso County.

Employees must never purchase goods or services for their own personal benefit.

ADDITIONAL RESPONSIBILITIES

Departments must be aware and mindful of budget balances and refrain from trying to process requisitions in excess of their balances unless the proper transfer of funds has been accomplished.

Purchase requisitions for which there is not adequate funding will not be processed.

Departments should plan purchases in order to keep emergency purchase requisitions to a minimum. El Paso County seldom realizes any economic benefits from hastily processed requisitions. In most cases, vendors attempt to charge premium prices for goods or services when the Purchasing Department is not allowed the proper time to explore all sources.

The Purchasing Department is committed to processing all purchase requisitions within a reasonable time frame; however:

Departments must plan their purchases and provide the Purchasing Department ample time to process any requests:

1. On all purchases that are \$50,000 or less, departments should allow a two to three (2-3) week time frame;
2. On all purchases that are over \$50,000, departments should allow a nine to twelve (10-15) week time frame from request to award.

Departments must assure that all employees involved in making departmental purchase requests have read and understand the procedures in this manual.

The Purchasing Department must review all purchase requests and ensure they are descriptive and specific, but do not prevent competitive bidding for comparable goods.

Since there is no central receiving location in the County, each department is responsible for receiving goods and services, although the Purchasing Department does receive some office supplies and smaller items of furniture for subsequent delivery, if determined to be in the best interest of the County.

Departments should make Purchasing aware of any shortage, damaged merchandise, late delivery, or any other problem relating to the vendor's performance. A simple written explanation, if possible, can be placed in the bid file for

future consideration at the time future awards are made or recommendations brought before Commissioners Court for award.

It is hoped that departments understand and appreciate that the nature of public purchasing is to review and consider all purchase requests in order to promote competitive bidding.

CONSIDERATION OF SAFETY RECORDS

In accordance with Local Government Code §262.0275, the Commissioners Court may take into account the safety record of the bidder, of the firm, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution. This consideration can only occur if:

1. the Commissioners Court has adopted a written definition and criteria for accurately determining the safety record of a bidder;
2. the governing body has given notice to prospective bidders in bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder; and
3. the determinations are not arbitrary and capricious.

REVIEW OF DATA PROCESSING EQUIPMENT BY INFORMATION TECHNOLOGY DEPARTMENT

The Information Technology Department will review all purchase requests made by departments for software and hardware data processing equipment. This procedure is followed to ensure compatibility and standardization. To purchase any other data processing goods or services, the user department must obtain approval from the Information Technology Department.

VENDOR LIST

The Purchasing Department will maintain a list of vendors that have requested they be sent notices of solicitations that have been advertised. This list of vendors will be categorized by commodity codes for the goods or services that the vendor has indicated they are capable of providing.

As a courtesy to vendors and as a means of encouraging competition, the Purchasing Department will send a notice of each solicitation to each appropriate vendor. Notices of solicitation and the actual bid documents are posted on the Purchasing web page: www.epcounty.com/Purchasing

RISK MANAGEMENT ISSUES

When departments sustain loss or damage to goods or buildings, and funding for replacement or repair is coordinated through Risk Management, the actual purchase must still be processed by the Purchasing Department. Additionally, an inventory transfer form must be completed by the department and forwarded to the Fixed Asset Coordinator, so the appropriate inventory files may be updated.

AFTER-HOURS EMERGENCY PURCHASES

When an emergency situation exists, the Purchasing Agent must be contacted to ensure compliance with the Purchasing Act.

In a declaration of a local state of disaster, the County Judge would be the authority to approve purchases. *Emergency*, as used in the Purchasing Act and this section, is different from *emergency* as used in the El Paso County Policies and Procedures Manual, which defines a local state of disaster.

If an emergency need arises after regular work hours, and the dollar amount does not exceed \$50,000, each department should have written internal procedures that have been approved by the Purchasing Agent for emergency purchases.

The internal procedures should require that department employees contact the appropriate supervisor/manager/director and then the Purchasing Agent for approval.

On the first working day after the purchase, the department must enter a purchase requisition into Munis and provide written documentation to the Purchasing Agent. If no procedures have been approved by the Purchasing Agent, the department must wait until the next working day to make the purchase.

Even in an emergency situation, if the amount exceeds \$50,000, the Commissioners Court must approve the purchase.

INTERLOCAL AGREEMENTS

All interlocal agreements that involve the purchase of goods, repairs, or maintenance agreements greater than \$50,000 must be placed by the Purchasing Department on the Commissioners Court agenda for approval. These interlocal agreements will then be kept on active file status in the Purchasing Department.

BONDING REQUIREMENTS

Bonds are required in certain instances to protect the County in a contracting process. The Purchasing Agent will determine whether a bond of any type is required pursuant to Local Government Code. For Counties, §262.032 and §2253.021 provides requirements for the bond situations. A bond executed for a public work contract with another governmental entity must be payable to and its form must be approved by the awarding governmental entity. A governmental entity may not require a contractor for any public building or other construction contract to obtain a surety bond from any specific insurance or surety company, agent, or broker.

BID BOND

The bid bond is a submitting vendor's guarantee that the submitted solicitation response will be honored. Pursuant to Local Government Code §262.032 If the contract is for the construction of public works or is under a contract exceeding \$100,000, the bid specifications or request for proposals may require the bidder to furnish a good and sufficient bid bond in the amount of five percent [5%] of the total contract price. A bid bond must be executed with a surety company authorized to do business in this state.

Within 30 days after the date of the signing of a contract or issuance of a purchase order following the acceptance of a bid or proposal and prior to commencement of the actual work, the bidder or proposal offeror shall furnish a performance bond to the county, if required by the county, for the full amount of the contract if that contract exceeds \$50,000.

If the contract is for \$50,000 or less, the county may provide in the bid notice or request for proposals that no money will be paid to the contractor until completion and acceptance of the work or the fulfillment of the purchase obligation to the county.

A bidder or proposal offeror whose rates are subject to regulation by a state agency may not be required to furnish a performance bond or a bid bond under this section.

NOTE: In a contract for the purchase of earthmoving, material-handling, road maintenance, or construction equipment, the Commissioners Court may require the contractor to furnish a bond to the County to cover the repurchase costs of the equipment. (Local Government Code §262.0255)

PERFORMANCE BOND

The performance bond is solely for the protection of the state or governmental entity awarding the public work contract, in the amount of the contract and conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.

Texas Government Code §2253.021 states that a governmental entity that makes a public work contract with a prime contractor shall require the contractor, **before beginning the work, to execute to the governmental entity a performance bond** if the contract is in excess of \$100,000. A bond required by this section must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

PAYMENT BOND

The payment bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material, and in the amount of the contract. A bond required by this section must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

Texas Government Code §2253.021 states that a governmental entity that makes a public work contract with a prime contractor shall require the contractor, **before beginning the work, to execute to the governmental entity**, if the contract is in excess of \$25,000.

Section 6 SPECIFICATIONS

DEFINITION

A concise description of a good or service that an entity seeks to buy, and the requirements the vendor must meet in order to be considered for the award. A specification may include requirements for testing, inspection, preparing any goods or services for delivery, and preparation or installation for it to be used. The specification is the total description of the goods or services to be purchased.

PURPOSE

The purpose of any specification is to provide Purchasing with clear guidelines from which to purchase, and to provide vendors with firm criteria of a minimum standard acceptable for goods or services. A good specification has four characteristics:

1. it establishes the minimum acceptability of the goods or services;
2. it promotes competitive bidding;
3. it contains provisions for reasonable tests and inspections for acceptability of the goods or services; and
4. it provides for an equitable award to the lowest and best bid from a responsible bidder.

PREPARATION

Specifications may be proposed by the user department, occupant department, or an outside agency. **THE FINAL ACCEPTANCE OF THE SPECIFICATIONS, OTHER THAN THOSE FOR CONSTRUCTION PROJECTS, WILL REST WITH THE PURCHASING DEPARTMENT FOR COMPLIANCE WITH LEGAL REQUIREMENTS.**

This will ensure proper quality control and avoid the proliferation of conflicting specifications in the different departments of El Paso County.

The Auditor and Budget Office will verify for Purchasing that the goods or services were considered and approved in the budget process.

Any purchases that were not approved in the budget process will be submitted to Commissioners Court to seek their permission to accept bids/RFPs.

TYPES

There are a number of specification types that will be used by the Purchasing Department. They include:

1. DESIGN

A detailed description of goods or services, including such things as details of construction or production, dimensions, chemical composition, physical properties, materials, ingredients, and all other details needed for the provider to produce goods and services of minimum acceptability. Design specifications are usually required for construction projects, certain produced goods, and for many services.

2. PERFORMANCE

Where the goods or services are described in terms of required performance. They may include such details as required power, strength of material, test methods and standards of acceptability, and recommended practices. This type of specification is used most often for capital equipment.

3. BRAND NAME OR EQUAL

Lists of goods or services by brand name, model, and other identifying specifics. Products equal to the characteristics of the named brand are specified as acceptable. Usually the composition of a brand name good and service is provided through labeling, but broader tolerances and less consistency from item to item may be expected as compared with standard goods. Other manufacturers may provide a nearly identical good under their own brand name. **THIS METHOD WILL BE EMPLOYED BY THE EL PASO COUNTY PURCHASING DEPARTMENT ONLY IF THERE IS SOUND JUSTIFICATION. THE BURDEN OF JUSTIFICATION WILL REST WITH THE USER DEPARTMENT.**

4. INDUSTRY STANDARD

This is one of the simplest specifications available. All goods made to an industry standard are identical, regardless of manufacturer, and will result in acquisition of goods of uniform requirements.

Section 7 REQUISITIONING PROCESS

DEFINITION

Requisitioning is the formal request for a purchase to be made. It is the first step after the need for goods or services is recognized.

A department's purchase requisition authorizes the Purchasing Department to enter into a contract with a vendor to purchase goods or services. The automated requisition is for internal use and cannot be used by a department to order materials from a vendor. **A requisition number is not a purchase order number.**

POLICY

Local Government Code §113.901 requires the use of requisitions. The County of El Paso utilizes an automated requisitioning system and therefore pursuant to Local Government Code, §113.901c, El Paso County has waived the requirement of the County Judge's approval on requisitions and all claims are required to be approved by the Commissioners Court in open court.

The automated requisition system is called Munis. Based on established budget line items, purchase requisitions are entered into Munis by the user department.

Adequate budget funds must be available in the departmental line items and approved by both the Auditor and Budget Office before the Purchasing Department can proceed with the purchase of the requested goods and services. After the Purchasing Department receives an Auditor-approved purchase requisition, it determines the appropriate procedures based on the cost of the purchase, the goods and services to be purchased, the existing contracts for goods and services, and other relevant factors.

Upon determining the appropriate procurement process, the Purchasing Agent or assigned representative (buyer) acting on their behalf will issue a purchase order to the vendor(s) for the desired goods or services. The Purchasing Agent or assigned representative is the only individual authorized to generate a printed/electronic copy of a purchase order. No other County personnel will have access or authorization to print a purchase order.

Specific instructions on entering requisitions into the purchasing software are not covered in this manual. The user department should refer to the County's training website or manual or contact the Help Desk for further information and to check for periodic training session opportunities.

The Purchasing Office classifies purchase requisitions according to the type of action and the time required for the purchase. There are four types: contract, routine, expedited, and emergency.

TYPES OF PURCHASE REQUISITIONS

CONTRACT- Normal Purchases made from a pre-approved, in-place contract with a cycle time of three to five (3-5) working days.

ROUTINE – Normal purchases have a cycle time of three to ten (3-10) working days.

EXPEDITED – Purchases where the goods or services are needed sooner than the routine cycle time. Expedited purchases do not qualify as emergency purchases and are subject to all applicable bidding requirements. Cycle time for expedited purchase requisitions is one to three (1-3) working days.

Note: Expedited purchases are NOT emergency purchases. They are goods or services needed quickly to prevent costly delays or work stoppage. Expedited purchases probably warrant the additional cost and effort caused by the interruption of the normal work routine. They should not be used unless absolutely necessary.

The user department should always telephone the appropriate buyer and make them aware of any such problem, as well as put the appropriate information in the requisition text section.

EMERGENCY – Purchase of any goods or services needed because of an emergency condition that the Commissioners Court has ordered exempt, in compliance with the County Purchasing Act [Local Government Code §262.024(a)(1)]. All emergency exemption orders must be processed through the Purchasing Department. The Purchasing Agent will submit these as an agenda item for the Commissioners Court approval.

- 1) Emergency items \$50,000 or less will be handled in the same manner as an expedited purchase requisition.
- 2) Emergency items greater than \$50,000 must be placed on the Commissioners Court agenda.

NOTE: “Cycle time” refers to the time between when a purchase requisition is assigned to a buyer for action and when the actual purchase order is placed with a vendor. **Cycle time does not include the time required for delivery, or the time it takes for the approval process from the Auditor and Budget Office.**

For services, a contract put into place by the County Attorney’s Office may be required prior to the finalization of the requisition to purchase order. **All construction projects will be let by County Attorney-created contracts**, which may then, at the discretion of the Purchasing Agent or request of the user Department, have a back-up Purchase Order (PO) issued.

PURCHASES PROCESSED VIA CHECK REQUEST

If Local Government Code §262.011(d) does not require the Purchasing Agent to purchase a given request, or if §262.023 does not require the purchase to be made by competitive bid, then a check request may be submitted to the Auditor’s Office for processing.

Examples of purchases that may be submitted on a check request include:

1. Bonds (notary, liability, etc.)
2. Contract Labor
3. Dues or Memberships
4. Licenses and Permits
5. Postage
6. Travel Expense (including registrations)
7. Training/Seminars
8. Vehicle Inspections
9. Damages to Non-County Property (self-insurance)
10. Subscriptions (newspapers and magazines)
11. Photo Processing
12. Utilities (water, gas, cellular phones)
13. Court Appointed Attorney Payments
14. Interpreting
15. Food/Catering for Meetings
16. Clothing Vouchers

If there are any questions as to whether an item should be on a check request or purchase order, the Purchasing Department should be contacted for that determination.

CHECK REQUEST PROCEDURES

Check requests submitted to the Auditor’s Office for processing should include the following information:

1. To whom the check is to be made payable, the mailing address, general ledger account number, and amount.
2. Signature of authorized individual.
3. Supporting documentation; i.e., invoice, receipts, travel itineraries, seminar agenda, settlement papers, the Commissioners Court Order.
4. The following items also require an executed contract and the Commissioners Court approval:
 - a) Professional Services
 - b) Real Property Rentals or Leases
 - c) Insurance (including employee benefits)
 - d) Interlocal Agreements
 - e) Depository Agreement

Section 8 PROCEDURES FOR PURCHASES UNDER \$50,000

POLICY

For purchases of goods and services totaling less than \$50,000, as defined in §262.011(d) of the Local Government Code, the Purchasing Agent is authorized to select the exact goods or services to meet the requirements of the departments. The Purchasing Agent is authorized to select the vendor and to follow all necessary actions to conclude a contract for the purchase of the goods and services, without specific approval of the Commissioners Court.

CONSIDERATIONS

In selecting the exact goods or services requested by the departments, the Purchasing Agent must consider the following:

1. the stated needs of the department and whether the selected goods or services meet those needs;
2. available information about sources and prices of the goods and services;
3. the delivery requirements of the vendor and department; and
4. any other information that should be considered involving circumstances of the purchase.

PROCEDURES

Whenever reasonable and practical, the Purchasing Agent or staff will be:

1. On purchases of less than \$1,000.00 required to obtain/solicit a verified price from at least one qualified vendor, written or verbal.
2. On purchases from \$1,000.00 to \$49,999.99 required to obtain/solicit a minimum of three (3) written quotations. More responses are preferred, but the good faith effort to obtain the minimum is required. "No Bid" responses count as an attempt to solicit a quotation.

Then, if quality and delivery terms meet County needs, the vendor who provides the lowest price will be selected.

If the vendor offering the lowest price is not used, a notation will be made to indicate the reason another vendor was selected.

The Purchasing Agent has the authority to deviate from the policy for purchases under \$50,000 if it is in the best interests of El Paso County and if it will facilitate specific County operations.

If cumulative purchases for a single commodity code are anticipated to exceed \$50,000 in a fiscal year, then formal competitive bidding is required, and an annual term contract will be established. Cumulative purchases include County-wide purchases and are not limited to departmental requirements (i.e., office supplies, computer paper, uniforms, furniture, etc.)

Intentionally or knowingly separating or manipulating purchases to avoid formal competitive bidding is a violation of Local Government Code §262.023, the Purchasing Act. The final conviction of a County officer or employee results in the immediate removal from office or employment of that person. Pursuant to Local Government Code §271.030(b) for four years after the date of the final conviction, the removed officer or employee is ineligible:

- (1) to be a candidate for or to be appointed or elected to a public office in this state;
- (2) to be employed by the governmental entity with which the person served when the offense occurred; and
- (3) to receive any compensation through a contract with that governmental entity.

MODIFICATIONS

The Purchasing Agent may modify contracts for goods and services that are for less than \$50,000 if the modification is in writing and the aggregate cost of the purchases under the contract will not exceed \$50,000.

Section 9 COMPETITIVE BIDDING REQUIREMENTS FOR PURCHASES EXCEEDING \$50,000

DEFINITIONS

Competitive bidding is the process by which available vendors compete with each other to provide goods and/or services.

The Texas Supreme Court described it as follows: “Competitive bidding requires due advertisement, giving opportunity to bid, and contemplates a bidding on the same undertaking upon each of the same material items and services covered by the contract, upon the same thing. It requires that all bidders be placed on the same plane of equality and that they each bid upon the same terms and conditions involved in all the items and services and parts of the contract, and the proposals specify as to all bids the same, or substantially similar specifications.”

The term, “*formal competitive bidding*” will be used in this manual, and is generally used in public purchasing, when the bidding process is in compliance with Local Government Code §262.023 and requires approval by a governing board, such as the Commissioners Court.

“*Sealed*” bids (Invitation for Bid, also called IFB) will be used for contracts exceeding or anticipated to exceed \$50,000. The IFB will be used to solicit bids from vendors in response to El Paso County specifications and contractual terms and conditions. The issuance of a Purchase Order will form the contract between El Paso County and the vendor. In some cases returned, signed Notice of Award letter and County Attorney created contract will be used.

Formal competitive bidding procedures do not apply to purchases that are made in compliance with the procedures in Sections 8 and 10 through 13.

PURPOSE OF COMPETITIVE BIDDING

The first purpose of competitive bidding is to ensure that public monies are spent properly, legally, and for the least cost. (This is, in fact, the primary goal of public procurement, even when purchases do not require the formal approval of the governing board.)

The second purpose is to give those qualified and responsible vendors who desire to do business with the County, a fair and equitable opportunity to do so. The use of a standard and consistent procurement process provides the public with an assurance that their tax dollars are being spent properly. The Texas Supreme Court states, “*Its purpose is to stimulate competition, prevent favoritism, and secure the best work and materials at the lowest practicable price for the best interest of the taxpayer and property owners.*”

PROCEDURES

Formal competitive bidding—which calls for formal award approval by the Commissioners Court due to a required expenditure in excess of \$50,000—will in El Paso County, with few exceptions, be accomplished by the following:

PURCHASE REQUISITION (RQ) REQUIREMENT: Generally, the requisition is required to begin the purchasing process. However, the RQ requirement is satisfied by submitting a filled-out and signed *Bid & Award Request Form*, *LGC Section 176 Disclosure Form*, and *Suggested Vendors Form* (**Exhibits A, B, and C**). Submittal of these forms will begin the formal solicitation process. The form must be signed by the Official, Department Head, or designated manager. The form will include all justification, budget line items from which the purchase will be funded, or any another explanation that is acceptable to the Purchasing Department about how funding will be attained. No Sealed Bid (IFB) process can begin until the signed forms are received in the Purchasing Department. Purchasing should be provided a minimum of five (5) business days for review of the specifications. Required requisitions, if applicable, will be entered into Munis after completion of the solicitation process.

Note: The Commissioners Court must approve advertising for any competitive bid for which there is not adequate funding approved in the budget and/or funds not verified by the Auditor or Budget Office.

BIDDING NOTICE: After development of specifications and preparation of the IFB, a notice of the intended purchase will be published by the Purchasing Department in accordance with Local Government Code §262.025.

A notice of the intended purchase must be published once a week for two consecutive weeks in a newspaper of general circulation in the County, with the first day of publication occurring at least 14 days before the date of the bid opening. To ensure sufficient time to complete and return proposals to the Purchasing Department, the event may be extended

by the Purchasing Agent, but will never advertise less than fourteen (14) days, because to do so would be a violation of Local Government Code §262.025, the Purchasing Act.

The notice must include the following:

1. Specifications describing the item to be purchased or a statement of where the specifications may be obtained;
2. Time and place for receiving and opening bids and the name and position of the county official or employee to whom the bids are to be sent;
3. Whether the bidder should use lump-sum or unit pricing;
4. Method of payment by the county; and
5. Type of bond required by the bidder.

AMENDMENT TO IFB: The Commissioners Court, by law, authorizes the Purchasing Agent to extend the bid opening date on the notice of an Invitation for Bids if an error is discovered or if the nature of the goods and services requires an extension.

The Purchasing Agent may amend an IFB to clarify the original intent or to correct clerical errors if inquiries about the meaning of the IFB indicate the need for an amendment; if the changes are so insignificant that they are not likely to matter to the vendor in determining the price or the ability to respond; if there is no change to the quantity or delivery requirements; **and if the amendment does not change the scope of the IFB.**

There should be at least three (3) days between the date of the amendment and the opening date specified in the legal advertisement.

RECEIPT OF COMPETITIVE BIDS: The following procedures will be adhered to when receiving bids:

1. All bids will be received by the Purchasing Agent.
2. All bids will be stamped with the time and date received. The "Date Stamp Clock" in the Purchasing Department will serve as the official time clock for the purpose of identifying the date and time bids were received in the Purchasing Department.
3. **No bids will be accepted after the opening time on the date of the bid opening.** All bids received after the opening time will be returned unopened to the bidder with a letter from the Purchasing Agent notifying the bidder that the submitted bid was received after the due date and time. **No exceptions will be made for inclement weather or third-party carrier failures.**
4. The Purchasing Department will record the name of the vendor's representative submitting the bid, as well as the time and date the bid was submitted. If a bid is received by mail, express mail, or courier, the delivery method will be reflected in the record.
5. After bids are received, a secure place will be provided by the Purchasing Department for holding the bids until the opening date. The bids are to be received sealed and shall remain sealed until opened on the advertised date and time by the Purchasing Department in a public forum.
6. On occasion, bids that are received in the mail, or by some other independent carrier, may be inadvertently opened. If this situation occurs, another Purchasing Department staff member will be called immediately to act as a witness that the details of the bid, particularly the price, were not reviewed and that the bid was again sealed by an employee of the Purchasing Department.

The above process will be followed in order to preclude any perception of favoritism or revealing bid prices or information.

Having sealed bids publicly received and recording the submission of requested bids is intended to inhibit any perception that the Purchasing Department is manipulating the receipt of bids.

PUBLIC OPENING OF BIDS: Sealed bids will be opened publicly by the Purchasing Department and will be documented. Preliminary bid tabulations will be provided to the public upon request. Copies of bids may be obtained from the Purchasing Department in accordance with all Public Information Act guidelines.

The Purchasing Agent will open the bids on the date, time, and place specified in the legal notice.

EVALUATION: The Purchasing Department will evaluate all bids, with assistance from the user department, and a recommendation concerning the lowest responsible bid will be made to the Commissioners Court. The Purchasing Department will evaluate bids based on:

1. the relative price;
2. the cost of repair and maintenance, if heavy equipment is the subject;
3. the cost of delivery and handling, if road construction materials are the subject;
4. the compliance of goods and services with specifications; and
5. the responsibility of the vendor, including the vendor's financial stability and ability to perform the contract, the vendor's safety record, if stated in the IFB, and the past performance of that vendor.

The Purchasing Department will provide a copy of the bid/proposal results to the user department.

A signed memo from the Official, Department Head, or Executive Manager of that user department acknowledging agreement with the proposed award recommendation will be included in the presentation to the Commissioners Court.

Whenever the lowest bid received is not the best bid, clear justification for not selecting the low bid must be documented before being placed on the Commissioners Court agenda.

AWARD RECOMMENDATION: After certification of funds by the Auditor and CAO review of the process, the Purchasing Agent will recommend contract award to the Commissioners Court in session. The Court should:

1. Award the contract to the responsible bidder who submits the lowest and best bid; or
2. Reject all bids and publish a new notice.

If two (2) responsible bidders submit the lowest and best bid, the tie bid will be broken in accordance with the Procedure for Awarding Tie Bids:

- Accordingly, the Purchasing Agent, or designee, shall oversee the drawing of lots to determine the successful vendor.
- The drawing of lots shall be performed publicly with the date and time set by published notice
- The drawing of lots shall be recorded in the same manner as a bid opening.

A contract may not be awarded to a bidder who is not the lowest bidder meeting specifications unless, before the award, each lower bidder is given notice of the proposed award and is given the opportunity to appear before the Commissioners Court to present evidence to refute the award recommendation.

After an award is made, a notice of award will be processed, with copies sent to the appropriate vendor and user departments.

After the award recommendation is approved by Commissioners Court, the department is responsible to coordinate with legal to finalize any contracts and present the contract to the Court for the signature of the County Judge or designee, in accordance with County Administrator policies.

CONTRACT ADMINISTRATION: The user department will be responsible for monitoring and documenting contractor performance/compliance.

All documentation of non-compliance (performance reporting) should be shared with the Purchasing Department.

Documentation related to clarification of compliance with expected performance standards after formal notice does not need to be provided to the Purchasing Department.

If poor performance or non-compliance with the contract occurs, and the department has presented information, justification, and notice within this policy, the Purchasing Department will be responsible to initiate corrective action with the vendor.

The Purchasing Agent will take all steps related to obtaining contract compliance, but will consult with the County Attorney's Office before taking any steps towards contract suspension or termination.

Before any letters, notices, or other communications related to termination or suspension are sent to the vendor, the contents of these documents must be reviewed by the County Attorney's Office as the initial steps toward potential litigation.

This aspect of the procurement process is often overlooked and is perhaps one of the most important. **To enforce contractual terms, documentation of specific non-compliance must be available.** Specific dates, locations, examples, etc., must be documented.

CONTRACT MODIFICATIONS: Pursuant to Local Government Code Chapters §262.0305 and §262.031 The Commissioners Court delegates to the Purchasing Agent its authority to modify awarded contracts at any time in writing, with coordination of County Attorney's Office, if the changes are not more than 25% of the total contract pricing or decreased by 18% or more or cause the contract amount to exceed the amount of the next lowest bidder and are within the general scope of the contract, including change to any of the following:

1. Drawings, designs, or specifications when the goods to be furnished are to be specially manufactured for El Paso County in accordance with the drawings, designs, or specifications.
2. Method of shipment or packaging.
3. Place of delivery.
4. Correction of errors of a general administrative nature or other mistakes, the correction of which does not affect the price or scope of the contract, and does not result in additional expense to the contractor.

The total contract price may not be increased unless the cost of the change can be paid from current and available funds. Any change orders that result in a contract exceeding \$50,000 in the aggregate must be approved by the Commissioners Court.

REBIDDING ANNUAL CONTRACTS: *User departments should notify the Purchasing Department of an expiring contract at least one-hundred and twenty (120) days before contract expiration and verify whether the goods/services need to be rebid.* The user department will review the prior specifications to ensure the terms are still relevant and return the updated specifications/quantities to the Purchasing Department, with any additions, deletions, or corrections.

Important: While the County encourages the participation of small, minority, or disadvantaged businesses, it cannot be included in the selection criteria.

Section 10
COMPETITIVE PROPOSALS FOR INSURANCE, HIGH TECHNOLOGY GOODS, AND
SERVICES EXCEEDING \$50,000

DEFINITIONS

In this section, competitive proposals may be solicited through a Request for Proposals (RFP).

Local Government Code §262.030 Alternative Competitive Proposal Procedure for Certain Goods and Services authorizes a process other than competitive bidding in certain situations. Formal “sealed” Requests for Proposals (RFP) will be used to procure insurance, high technology goods/services, special services of landscape maintenance, recycling, and travel management that are expected to exceed \$50,000.

“High technology goods or services” means goods or services of a highly technical nature, including:

1. Data processing equipment, software, and hardware used in conjunction with data processing equipment;
2. Telecommunications, radio, and microwave systems;
3. Electronic distribution control systems, including building energy management systems; and
4. Technical services related to those goods and services.

The RFP will solicit proposals from vendors in response to the County’s requirements, along with contractual terms and conditions. The RFP must specify the relative importance of price and other evaluation factors. The award of the contract shall be made to the responsible offeror whose proposal is determined to be the lowest evaluated offer resulting from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in the request for proposals. The County of El Paso seeks the proposal(s) offering the overall best value.

Local Government Code §262.030(d) also states that the [RFP] method may be used to purchase other items when the county official who makes purchases for the county determines, with the consent of the commissioners court, that it is in the best interest of the county to make a request for proposals. The Purchasing Department presents the request for use of the process to Commissioners Court.

Use of other allowable options such as those specified in Local Government Code §262.0295 “Impractical Specifications” and §262.030(d) “Best Interest” shall be determined suitable for use by the Purchasing Agent and require the approval of Commissioners Court prior to advertisement.

After approved award, a formal contract, reviewed by the County Attorney’s Office, must be approved by the Commissioners Court. The department is responsible for ensuring the final contract is coordinated and presented for approval.

PROCEDURES

Competitive proposals for insurance, high technology goods/services, and special services will be accomplished by the following (see Section 11 for cooperative procedures that may be used when purchasing computer hardware, software, and related services).

PURCHASE REQUISITION (RQ) REQUIREMENT: Generally, the requisition is required to begin the purchasing process. However, the RQ requirement is satisfied by submitting a filled-out and signed *Bid & Award Request Form*, *LGC Section 176 Disclosure Form*, and *Suggested Vendors Form (Exhibits A, B, and C)*. Submittal of these forms will begin the formal solicitation process. The form must be signed by the Official, Department Head, or designated manager. The form will include all justification, budget line items from which the purchase will be funded, or any another explanation that is acceptable to the Purchasing Department about how funding will be attained. No RFP process can begin until the signed forms are received in the Purchasing Department. Purchasing should be provided a minimum of five (5) business days for review of the plans and specifications. Required requisitions, if applicable, will be entered into Munis after completion of the solicitation process.

BIDDING NOTICE: After receipt of required forms, the Purchasing Department will then place an item on the Commissioners Court agenda seeking permission to process that particular RFP, unless use of the RFP process is covered by statute, such as high technology or insurance.

The Commissioners Court must approve advertising for any RFP for which there is not adequate funding approved in the budget and/or funds not verified by the Auditor or Budget Office. If the RFP is for high technology goods/services, the Information Technology Department must be involved in this review process.

After development of specifications and preparation of the RFP document, a notice of the intended purchase will be published by the Purchasing Department in accordance with Local Government Code §262.025.

A notice of the intended purchase must be published once a week for two consecutive weeks in a newspaper of general circulation in the County, with the first day of publication occurring at least 14 days before the date of the bid opening. To ensure sufficient time to complete and return proposals to the Purchasing Department, the event may be extended by the Purchasing Agent, but will never advertise less than fourteen (14) days, because to do so would be a violation of Texas Local Government Code §262.025, the Purchasing Act.

The notice must include the following:

1. Specifications describing the item to be purchased or a statement of where the specifications may be obtained;
2. Time and place for receiving and opening bids and the name and position of the county official or employee to whom the bids are to be sent;
3. Whether the bidder should use lump-sum or unit pricing;
4. Method of payment by the county; and
5. Type of bond required by the bidder.

RECEIPT OF COMPETITIVE PROPOSALS: The following procedures will be followed when receiving proposals:

1. All proposals will be received by the Purchasing Agent.
2. All proposals will be stamped with the time and date received. The “Date Stamp Clock” in the Purchasing Department will serve as the official time clock for the purpose of identifying the date and time proposals were received in the Purchasing Department.
3. **No proposals will be accepted after the opening time on the date of proposal opening.** All proposals received after the opening time will be returned to the proposer with a letter from the Purchasing Agent notifying the proposer that the submitted proposal was received after the due date and time.
4. The Purchasing Department will record the name of the vendor’s representative submitting the proposal, as well as the time and date the proposal was submitted. If a proposal is received by mail, express mail, or courier, the delivery method will be reflected in the record.
5. After proposals are received, a secure place will be provided by the Purchasing Department for holding the proposals until the opening date. The proposals are to be received sealed and shall remain sealed until opened on the advertised date and time by the Purchasing Department.
6. On occasion, proposals that are received in the mail, or by some other independent carrier, may be inadvertently opened. If this situation occurs, another Purchasing Department staff member will be called immediately to act as a witness that the details of the proposal, particularly the evaluation criteria, were not reviewed and the proposal was again sealed by an employee of the Purchasing Department.

The above process will be followed in order to preclude any perception of favoritism or revealing any proposal information. Having sealed proposals publicly received, and recording the submission of requested proposals, is intended to inhibit any perception that the Purchasing Department is manipulating the receipt of proposals.

OPENING OF PROPOSALS: Sealed proposals will be opened by the Purchasing Department and will be documented. Proposals are not opened publicly. Only the names of vendors submitting proposals will be announced. The Purchasing Agent will open the proposals on the date specified in the legal notice. The date specified in the legal notice may be extended by the Purchasing Agent if an error is discovered in the original RFP.

Proposals will be opened so as to avoid disclosure of the contents to competing vendors and will be kept secret during any negotiations.

All proposals that have been submitted will be available and open for public inspection after the contract has been awarded. Trade secrets and confidential proprietary information contained in the proposals, and identified as such, will be kept closed pending a ruling by Texas Attorney General under the Public Information Act.

EVALUATION: The Purchasing Department will facilitate the evaluation of all proposals, with assistance from the user department, occupant department, Information Technology Department if applicable, or the appropriate committee. At the conclusion of the evaluation process, Purchasing will then request written confirmation in support of the recommended awardee and make a formal recommendation to the Commissioners Court for approval.

All requests for proposals (RFP) must specify the appropriate evaluation criteria necessary to make an unbiased award recommendation.

The County reserves the right to perform all due diligence in determining most advantageous offer or overall best value, to include additional interviews, presentations, and demonstrations as deemed necessary to determine proposal quality and applicability.

NEGOTIATION: All negotiations will be supervised by the Purchasing Department. Any conversations with vendors must be in coordination with the Purchasing Agent, and a member of the Purchasing Department should be present for all discussions with vendors. Departments contacting vendors without coordinating with the Purchasing Agent risk jeopardizing the integrity of the County procurement process.

All vendors must be accorded fair and equitable treatment with respect to any opportunity for discussion and revision of proposals and submittal of a “best and final” offer.

AWARD RECOMMENDATION: The award of the contract shall be made by the Commissioners Court to the responsible vendor whose proposal is determined to be the lowest evaluated offer resulting from negotiation, if necessary, and taking into consideration the relative importance of price and other evaluation factors set forth in the Request for Proposals (RFP).

After the award recommendation is approved by Commissioners Court, the department is responsible to coordinate with legal to finalize any contracts and present the contract to the Court for the signature of the County Judge or designee, in accordance with County Administrator policies.

CONTRACT ADMINISTRATION: The user department will be responsible for monitoring and documenting contractor performance/compliance.

All documentation of non-compliance (performance reporting) should be shared with the Purchasing Department.

Documentation related to clarification of compliance with expected performance standards after formal notice does not need to be provided to the Purchasing Department.

If poor performance or non-compliance with the contract occurs, and the department has presented information, justification, and notice within this policy, the Purchasing Department will be responsible to initiate corrective action with the vendor.

The Purchasing Agent will take all steps related to obtaining contract compliance, but will consult with the County Attorney's Office before taking any steps towards contract suspension or termination.

Before any letters, notices, or other communications related to termination or suspension are sent to the vendor, the contents of these documents must be reviewed by the County Attorney's Office as the initial steps toward potential litigation.

This aspect of the County procurement process is often overlooked and is perhaps one of the most important. To enforce contractual terms, documentation of specific non-compliance must be available. Specific non-compliance issues, dates, locations, examples, etc., must be documented.

CONTRACT MODIFICATIONS: Pursuant to Texas Government Code §262.0305 and §262.031 The Commissioners Court delegates to the Purchasing Agent its authority to modify awarded contracts at any time in writing, with coordination of County Attorney's Office, if the changes are not more than 25% of the total contract pricing or decreased by 18% or more or cause the contract amount to exceed the amount of the next lowest bidder and are within the general scope of the contract, including change to any of the following:

1. Drawings, designs, or specifications when the goods to be furnished are to be specially manufactured for El Paso County in accordance with the drawings, designs, or specifications.
2. Method of shipment or packaging.
3. Place of delivery.
4. Correction of errors of a general administrative nature or other mistakes, the correction of which does not affect the price or scope of the contract, and does not result in additional expense to the contractor.

The total contract price may not be increased unless the cost of the change can be paid from current and available funds. Any change orders that result in a contract exceeding \$50,000 in the aggregate must be approved by the Commissioners Court.

Important: While the County encourages the participation of small, minority, or disadvantaged businesses, it cannot be included in the selection criteria.

Section 11 STATE CONTRACT AND CATALOG PURCHASES

INTRODUCTION

There are two laws that describe the authority of local governments to purchase goods/services through Texas Procurement and Support Services (TPASS).

- The first allows purchasing from vendors with which the State has entered into contracts as a result of competitive bidding procedures. These are referred to as State Contract purchases.
- The second is the TXMAS Program. The Texas Procurement and Support Services (TPASS) established, as an alternative purchasing method, the use of Texas Multiple Award Schedule (TXMAS) contracts developed from contracts competitively awarded by the federal government or any other governmental entity of any state.

As the responsible federal entity, the General Services Administration (GSA) Federal Supply Service awards Federal Supply schedule contracts by competitive procurement procedures for more than 50 schedules that cover multiple commodities and services. These prices reflected on GSA schedule contracts are the Most Favored Customer (MFC) prices and the maximum price allowable.

TXMAS contracts take advantage of the MFC pricing and under certain circumstances, an agency or local government entity, may negotiate a lower price for goods or services offered on a schedule contract. A “best value” purchase can be made by following the TXMAS purchasing procedures.

PROCESSING STATE CONTRACT PURCHASES

AUTHORITY

§271.081 through §271.083 of the Local Government Code require the State Purchasing and Texas Procurement and Support Services (TPASS) to establish a local government purchasing program and authorizes El Paso County to participate in the program.

POLICY

El Paso County participates in the purchasing program of the State Purchasing and Texas Procurement and Support Services (TPASS) for local governments.

OFFICIAL REPRESENTATIVE

The Purchasing Agent is designated to act for El Paso County at the direction of the Commissioners Court in all matters relating to the purchasing program, including the purchase of goods/services from any vendor under contract. El Paso County is responsible for making direct payments to the vendor.

PROCEDURE

The Purchasing Agent is responsible for submitting requisitions to the commission under any contract or electronically sending purchase orders directly to the vendor, and reports to the commission on actual purchases in compliance with the commission’s regulations.

The Purchasing Agent is responsible for vendors’ compliance with all the conditions of delivery and quality of the purchased goods/services. The Purchasing Agent is authorized to sign and deliver all necessary documents for purchases under this program made on behalf of El Paso County.

AWARD RECOMMENDATION: The award of any contract from the State contracts catalog including the Department of Information Resources (DIR) as well as Purchasing Cooperatives including but not limited to, BuyBoard, and the Cooperative Purchasing Network (TCPN), shall be in writing, approved and signed by either the Purchasing Agent—if less than \$50,000—or the Commissioners Court—if more than \$50,000—prior to any services being rendered.

The Commissioners Court authorizes the Purchasing Agent to execute any contract for State contract purchases, the Department of Information Resources and Purchasing Cooperatives that are procured in compliance with this section if the cost of the contract does not exceed \$50,000. **All cooperative contract awards shall be worked through the County Attorney’s Office, to ensure primacy of County of El Paso needs.**

An exemption exists for purchases made as a result of Interlocal agreements with other governmental agencies. Regardless of cost involved, this type of purchase does not require presentation to and approval by the Commissioners Court.

After the award recommendation is approved by Commissioners Court, the department is responsible to coordinate with the County Attorney to finalize any contracts and present the contract to the Court for the signature of the County Judge or designee, in accordance with County Administrator policies.

CONTRACT MODIFICATIONS: Pursuant to Local Government Code §262.0305 and §262.031 The Commissioners Court delegates to the Purchasing Agent its authority to modify awarded contracts at any time in writing, with coordination of County Attorney's Office, if the changes are not more than 25% of the total contract pricing and are within the general scope of the specifications.

The total contract price may not be increased unless the cost of the change can be paid from current and available funds.

Any change orders that result in a contract exceeding \$50,000 in the aggregate must be approved by the Commissioners Court.

CONTRACT ADMINISTRATION: The user department will be responsible for monitoring and documenting contractor performance/compliance.

All documentation of non-compliance (performance reporting) should be shared with the Purchasing Department.

Documentation related to clarification of expected compliance with performance standards after formal notice does not need to be provided to the Purchasing Department.

If poor performance or non-compliance with the contract occurs, and the department has presented information, justification, and notice within this policy, the Purchasing Department will be responsible to initiate corrective action with the vendor.

The Purchasing Agent will take all steps related to obtaining contract compliance, but will consult with the County Attorney's Office before taking any steps towards contract suspension or termination.

Before any letters, notices, or other communications related to termination or suspension are sent to the vendor, the contents of these documents must be reviewed by the County Attorney's Office as the initial steps toward potential litigation.

This aspect of the County procurement process is often overlooked and is perhaps one of the most important. To enforce contractual terms, documentation of specific non-compliance must be available. Specific non-compliance issues, dates, locations, examples, etc., must be documented.

PROCESSING TEXAS PROCUREMENT AND SUPPORT SERVICES (TXMAS)

AUTHORITY

The Texas Procurement and Support Services (TPASS) has established, as an alternative purchasing method, the use of Texas Multiple Award Schedule (TXMAS) contracts that have been developed from contracts that have been competitively awarded by the federal government or any other governmental entity of any state.

As the responsible federal entity, the General Services Administration (GSA) Federal Supply Service awards Federal Supply schedule contracts by competitive procurement procedures for more than 50 schedules that cover multiple commodities and services. These prices reflected on GSA schedule contracts are the Most Favored Customer (MFC) prices and the maximum price allowable. TXMAS contracts take advantage of the MFC pricing and under certain circumstances, an agency or local government entity, may negotiate a lower price for goods or services offered on a schedule contract.

A "best value" purchase can be made by following the TXMAS purchasing procedures.

POLICY

El Paso County will purchase goods and services from the TXMAS in fulfillment of the competitive bidding requirements. The County will determine that all purchases or leases are based on the best available and are in the County's best interest.

PURCHASING PROCEDURE

TXMAS contract is a mechanism by which a State or Local Government may access GSA contracts. These contracts are used on a limited basis. When ordering via TXMAS:

1. Determine if ordering off TXMAS is a Best Value purchase and is in the best interests of the County.
2. Consider purchasing the product or service from the TIBH (Texas Industries for the Blind and Handicapped) or TCI (Texas Corrections Industries).
3. Request a numbered Bid Folder to record the RFO number and to maintain all documentation regarding the TXMAS purchase.
4. Request price quote(s) from as many TXMAS vendors as necessary to provide the best value to the County.
5. Document all price quotes in the bid folder.
6. Evaluate the quote(s) for best value.
7. TXMAS pricing is negotiable.
8. If the purchase exceeds fifty thousand dollars (\$50,000), court approval must be sought. **Use the appropriate TXMAS court document.**
9. If an annual contract exceeding fifty thousand dollars (\$50,000), with purchases made sequentially during the year, Commissioners Court approval must be sought at the beginning of the contract period. Use the appropriate TXMAS Commissioners Court document. **CONSENT ONLY!**
10. Prepare the PO.
 - a) Include the TXMAS contract number.
 - b) Include the NIGP code.
 - c) Include El Paso County's Contract Identifier C2202.
 - d) Send the PO directly to the TXMAS vendor.
 - e) Fax a copy of the PO to the State at 512-475-0708.

CONTRACT AWARD: The award of any contract from TXMAS should be in writing, approved and signed by either the Purchasing Agent—if less than \$50,000—or the Commissioners Court—if more than \$50,000—prior to any services being rendered. The Commissioners Court authorizes the Purchasing Agent to execute any contracts for TXMAS that are procured in compliance with this section if the cost of the contract does not exceed \$50,000. In either event the requisition process initiates the transaction.

CONTRACT MODIFICATIONS: Pursuant to Local Government Code Chapters §262.0305 and §262.031 The Commissioners Court delegates to the Purchasing Agent its authority to modify awarded contracts at any time in writing, with coordination of County Attorney's Office, if the changes are not more than 25% of the total contract pricing or decreased by 18% or more and are within the general scope of the specifications.

The total contract price may not be increased unless the cost of the change can be paid from current and available funds.

Any change orders that result in a contract exceeding \$50,000 in the aggregate must be approved by the Commissioners Court.

CONTRACT ADMINISTRATION: The user department will be responsible for monitoring and documenting contractor performance/compliance.

All documentation of non-compliance (performance reporting) should be shared with the Purchasing Department.

Documentation related to clarification of compliance with expected performance standards after formal notice does not need to be provided to the Purchasing Department.

If poor performance or non-compliance with the contract occurs, and the department has presented information, justification, and notice within this policy, the Purchasing Department will be responsible to initiate corrective action with the vendor.

The Purchasing Agent will take all steps related to obtaining contract compliance, but will consult with the County Attorney's Office before taking any steps towards contract suspension or termination.

Before any letters, notices, or other communications related to termination or suspension are sent to the vendor, the contents of these documents must be reviewed by the County Attorney's Office as the initial steps toward potential litigation.

This aspect of the County procurement process is often overlooked and is perhaps one of the most important. To enforce contractual terms, documentation of specific non-compliance must be available. Specific non-compliance issues, dates, locations, examples, etc., must be documented.

Section 12 COOPERATIVE PURCHASES

INTRODUCTION

County of El Paso may cooperate with other units of government to consolidate purchasing needs and utilize cooperative contracts. The County participates in the purchasing programs of the State of Texas, Texas Procurement and Support Services (TXMAS), and other governmental cooperatives as recognized in Texas and the United States.

STATE CONTRACT PURCHASES

AUTHORITY

Applicable State laws regarding Cooperative Purchasing including, §271.081 through §271.83 of the Local Government Code Chapter and other laws as may apply.

OFFICIAL REPRESENTATIVE

The Purchasing Agent is designated to act for County of El Paso at the direction of the Commissioners Court in all matters relating to the cooperative purchasing program, including the purchase of goods/services from any vendor under contract. County of El Paso is responsible for making direct payments to the vendor. If the cooperative is other than a State of Texas cooperative entity, the County must register as a participant in the cooperative as approved by Commissioners Court.

AWARD RECOMMENDATION

The award of any contract from the State contracts catalog, including the Department of Information Resources (DIR) as well as Purchasing Cooperatives including but not limited to, BuyBoard, and the Cooperative Purchasing Network (TCPN), shall be in writing, approved and signed by either the Purchasing Agent—if less than \$50,000—or the Commissioners Court—if more than \$ 50,000—prior to any services being rendered.

After the award recommendation is approved by Commissioners Court, the department is responsible to coordinate with legal to finalize any contracts and present the contract to the Court for the signature of the County Judge or designee, in accordance with County Administrator policies.

INTERLOCAL PURCHASES

The Interlocal Cooperation Act, Chapter 791 of the Local Government Code, and other applicable laws authorizes local governments to contract directly with other governments to increase their efficiency and effectiveness. A local government that purchases goods and any services reasonably required for the installation, operation, or maintenance of those goods under the Interlocal Cooperation Act satisfies the requirement of the local government to seek competitive bids for the purchase of goods and their services. The County has a variety of interlocal agreements with other public agencies.

All interlocal purchases of any dollar amount require approval by the Commissioners Court. These interlocal agreements will then be kept on active file status in the Purchasing Department.

Section 13 PURCHASING OF PROFESSIONAL SERVICES

INTRODUCTION

This is the most difficult section to explain due to the various laws which define (or do not define) professional services and which dictate how these services are to be purchased. In the award of professional services, price cannot be a determining factor.

The two (2) principal laws with which the Purchasing Agent must comply when procuring professional services are Texas Government Code 2254 (the Professional Services Procurement Act) and Local Government Code 262 (the County Purchasing Act). There are two (2) kinds of professional services:

1. Those professional services specifically defined under the Professional Services Procurement Act; and
2. Those “other” professional services that are not specifically defined under either the Professional Services Procurement Act or the County Purchasing Act and which must be obtained in compliance with the County Purchasing Act. The Purchasing Agent must rely on court cases and Attorney General opinions to determine what services are included in these “other” professional services.

PURPOSE

The Purchasing Department may contract for professional services only if funds are budgeted for that purpose and confirmed by the Auditor and Budget Office, or the unfunded solicitation is approved by the Commissioners Court.

PROFESSIONAL SERVICES PROCUREMENT ACT (Texas Government Code 2254)

DEFINITION: Professional services are defined in the Professional Services Act as:

1. Those within the scope of the practice of accounting, architecture, optometry, medicine, land surveying, or professional engineering as defined by the laws of the State of Texas;
2. Those performed by any licensed architect, optometrist, physician, surgeon, certified public accountant, land surveyor, or professional engineer in connection with their professional employment or practice.

The Act states that contracts for the purchasing of these professional services may not be awarded on the basis of bids. Instead, services must be awarded on the basis of demonstrated competence and qualifications. Price cannot be a factor in award.

REQUEST FOR QUALIFICATIONS (RFQ): To ensure vendors a fair and equal opportunity to do business with El Paso County, and to ensure that the services of the most qualified professional are obtained, the Commissioners Court has directed that professional services be purchased by using a Request for Qualifications (RFQ) process. When procuring professional services, El Paso County will use a two-step selection process in which pricing is submitted separately in a sealed envelope with the submitted qualifications.

First, the Purchasing Agent shall first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications as determined by the department; and then attempt to negotiate with that provider a contract at a fair and reasonable price.

If the County is unable to negotiate a satisfactory pricing and conditions with the most highly qualified vendor, negotiations will formally end with that person or firm. The next most highly qualified vendor will then be asked to negotiate. Negotiations are continued in this sequence until satisfactory pricing is reached. Because price cannot be a factor for award, once negotiations are formally closed, the County may not return to a firm in which prior negotiations were ended.

The Purchasing department will then prepare the agenda request for Commissioners Court approval to award the contract. Commissioners Court must approve any award greater than \$50,000.

PROCEDURE: The initial requisition requirement is satisfied by submitting a filled-out and signing the *Bid & Award Request Form*, *LGC Section 176 Disclosure Form*, and *Suggested Vendors Form* (**Exhibits A, B, and C**) which initiates the RFQ process. The form must be signed by the Official, Department Head, or designated manager. The form will

include all justification, budget line items from which the purchase will be funded, or any another explanation that is acceptable to the Purchasing Department about how funding will be attained. No RFQ process can begin until the signed form is received in the Purchasing Department.

Additionally, departments shall submit a memo identifying the following details:

1. Scope of Work
2. Qualifications/Experience requirements
3. Time Frames
4. Budgeted amount and budget line items
5. Suggested Professionals

Based on the information provided in the memo, applicable state laws, and all relevant facts, the Purchasing Agent will determine if the RFQ process is required, allowed, or whether a formal (advertised) RFQ or an informal procurement process will be implemented.

If, as a result of an RFQ, El Paso County enters into contracts with more than one (1) qualified professional so that there are several professionals under contract to provide services as needed, thereby creating a pool of professionals, then the user department must ensure that an RFQ is distributed at least once every four (4) years in order that newly qualified professionals may be added to the pool.

Unless specifically exempted by the Commissioners Court, all professional services anticipated to cost over \$50,000 will be procured using the formal RFQ process. **Any exemption situations will be determined by the Purchasing Agent and submitted to the Commissioners Court by the Purchasing Agent.** Unless there is an urgent need for the services, exemptions will be submitted to the Commissioners Court for approval before selecting and negotiating with any vendor.

Attorneys that are approved by the El Paso County Attorney are part of this exemption, as any resulting contract will be presented to Commissioners Court and discussed executive session in accordance with open meetings requirements.

ARCHITECTURAL AND ENGINEERING SERVICES: Pursuant to Government Code Section 2254, award must be based on qualifications and price cannot be a factor in the award. When procuring architectural or engineering services, El Paso County will use a two-step selection process in which pricing is submitted separately in a sealed envelope with the submitted qualifications.

First, the Purchasing Agent shall first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications as determined by the department; and then attempt to negotiate with that provider a contract at a fair and reasonable price.

If the County is unable to negotiate a satisfactory pricing and conditions with the most highly qualified vendor, negotiations will formally end with that person or firm. The next most highly qualified vendor will then be asked to negotiate. Negotiations are continued in this sequence until satisfactory pricing is reached. Because price cannot be a factor for award, once negotiations are formally closed, the County may not return to a firm in which prior negotiations were ended.

The Purchasing department will then prepare the agenda request for Commissioners Court approval to award the contract. Commissioners Court must approve any award greater than \$50,000.

Important: While the County encourages the participation of small, minority, or disadvantaged businesses, it cannot be included in the selection criteria.

If any contract is entered into with one of the above mentioned professionals on the basis of a competitive bid, it is contrary to State law and County policy, and is void.

CONTRACT MODIFICATIONS: Pursuant to Local Government Code Chapters §262.0305 and §262.031 The Commissioners Court delegates to the Purchasing Agent its authority to modify awarded contracts at any time in writing, with coordination of County Attorney's Office, if the changes are not more than 25% of the total contract pricing or decreased by 18% or more, and are within the general scope of the specifications, including change to any of the following:

1. Drawings, designs, or specifications when the goods to be furnished are to be specially manufactured for El Paso County in accordance with the drawings, designs, or specifications.
2. Method of shipment or packaging.
3. Place of delivery.
4. Correction of errors of a general administrative nature or other mistakes, the correction of which does not affect the price or scope of the contract, and does not result in additional expense to the contractor.

The total contract price may not be increased unless the cost of the change can be paid from current and available funds. Any change orders that result in a contract exceeding \$50,000 in the aggregate must be approved by the Commissioners Court.

PURCHASING ACT

“OTHER” DEFINED SERVICES: As defined in this manual “other” personal or professional services are those services usually referred to as a professional service, but not specifically defined or covered in the Professional Services Procurement Act. Examples include computer programmers, lawyers, facilitators, etc. Various court opinions have defined these “other” professional services as services requiring technical skill and expertise; labor and skill which is predominately mental or intellectual, rather than physical or manual; or, a special skill and experience. “Other” personal services have been defined as services that must be performed by a particular person and, by the terms of the contract, no substitutions are allowed.

REQUEST FOR QUALIFICATIONS (RFQ): To assure vendors a fair and equal opportunity to do business with El Paso County, and to ensure the services of the most qualified person or professional, “other” personal or professional services must be procured using the Request for Qualifications (RFQ) process, except when the contract will be for less than \$50,000 or unless the Commissioners Court approves another procedure.

PROCEDURE

Departments must forward a memo to the Purchasing Agent when “other” personal professional services are required. The memo will identify the following:

1. Scope of work
2. Qualifications/experience requirements
3. Project description
4. Time frames
5. Budgeted amount and budget line items
6. Suggested persons or professionals
7. Selection criteria

Based on the anticipated costs, information provided in the memo, applicable State law, and all relevant facts, the Purchasing Agent will make a determination as to whether a formal RFQ or an informal procurement process will be implemented or recommended to the Commissioners Court.

If, as a result of an RFQ, El Paso County enters into contracts so that there are several professionals under contract to provide services needed from a professional pool arrangement, the user department must ensure that an RFQ is distributed at least once every four (4) years so that newly qualified professionals may be added to the pool.

In selecting vendors to provide “other” personal or professional services, a department should base its choice on demonstrated competence, knowledge, qualifications, and on reasonableness of the proposed fee for services, as specified in the RFQ.

Unless specifically exempted by the Commissioners Court, all personal or professional services anticipated to cost over \$50,000 will be procured using the formal RFQ process. All exemption requests will be submitted to the Commissioners Court by the Purchasing Department. Unless there is an urgent need for the services, the exemption request will be submitted to the Commissioners Court for approval before selecting and negotiating with any vendors. Attorneys that are approved by the El Paso County Attorney are part of this exemption, as any resulting contract will be presented to Commissioners Court and discussed in executive session in accordance with open meetings requirements.

PURCHASE REQUISITION (RQ) REQUIREMENT: Generally, the requisition is required to begin the purchasing process. However, the RQ requirement is satisfied by submitting a filled-out and signed *Bid & Award Request Form*, *LGC Section 176 Disclosure Form*, and *Suggested Vendors Form (Exhibits A, B, and C)*. Submittal of these forms will begin the formal

solicitation process. The form must be signed by the Official, Department Head, or designated manager. The form will include all justification, budget line items from which the purchase will be funded, or any another explanation that is acceptable to the Purchasing Department about how funding will be attained. No RFQ process can begin until the signed forms are received in the Purchasing Department. Purchasing should be provided a minimum of five (5) business days for review of the plans and specifications. Required requisitions, if applicable, will be entered into Munis after completion of the solicitation process.

DISCLOSURE OF FORMER EMPLOYEES: A person who offers to provide personal or professional services to a department who has been employed by the County at any time during the two (2) years before the making of the offer shall disclose in the offer:

1. The nature of the previous employment in the department;
2. The date the employment was terminated; and
3. The annual rate of compensation at the time of termination.

WRITTEN CONTRACT OR CHANGE ORDERS: Any contract for "other" personal or professional services shall be in writing, approved and signed by the Commissioners Court or its authorized person prior to any services being rendered.

The Purchasing Agent will determine which person or professional is selected based on the user department recommendation.

The Commissioners Court authorizes the Purchasing Agent to execute any contracts for "other" personal or professional services that are procured in compliance with the Purchasing Act and in which the cost of services does not exceed \$50,000, if the Auditor and Budget Office verify that the goods and services sought have been approved by the Commissioners Court in the budget process and adequate funds are available, and if the County Attorney's Office has reviewed the contract.

CONTRACT MODIFICATIONS: Pursuant to Local Government Code Chapters §262.0305 and §262.031 The Commissioners Court delegates to the Purchasing Agent its authority to modify awarded contracts at any time in writing, with coordination of County Attorney's Office, if the changes are not more than 25% of the total contract pricing or decreased by 18% or more, and are within the general scope of the specifications, including change to any of the following:

1. Drawings, designs, or specifications when the goods to be furnished are to be specially manufactured for El Paso County in accordance with the drawings, designs, or specifications.
2. Method of shipment or packaging.
3. Place of delivery.
4. Correction of errors of a general administrative nature or other mistakes, the correction of which does not affect the price or scope of the contract, and does not result in additional expense to the contractor.

The total contract price may not be increased unless the cost of the change can be paid from current and available funds. Any change orders that result in a contract exceeding \$50,000 in the aggregate must be approved by the Commissioners Court.

RECEIPT OF FORMAL QUALIFICATIONS (RFQs): The following procedures will be followed when receiving RFQs:

1. All proposed qualifications will be received by the Purchasing Agent.
2. All submittals will be stamped with the time and date received. The "Date Stamp Clock" in the Purchasing Department will serve as the official time clock for the purpose of identifying the date and time submittals were received in the Purchasing Department.
3. **No submittal will be accepted after the opening time on the date of proposal opening.** All submittals received after the opening time will be returned to the proposer with a letter from the Purchasing Agent notifying the proposer that the submitted qualifications were received after the due date and time.
4. The Purchasing Department will record the name of the vendor's representative submitting the qualifications, as well as the time and date submitted. If a submittal is received by mail, express mail, or courier, the delivery method will be reflected in the record.

5. After submitted qualifications are received, a secure place will be provided by the Purchasing Department for holding the submittals until the opening date. The submitted qualifications are to be received sealed and shall remain sealed until opened on the advertised date and time by the Purchasing Department.
6. On occasion, proposals that are received in the mail, or by some other independent carrier, may be inadvertently opened. If this situation occurs, another Purchasing Department staff member will be called immediately to act as a witness that the details of the proposal, particularly the evaluation criteria, were not reviewed and the proposal was again sealed by an employee of the Purchasing Department.

Important: While the County encourages the participation of small, minority, or disadvantaged businesses, it cannot be included in the selection criteria.

Section 14 CONSTRUCTION PURCHASING

PURCHASING STATUTES: Section §262.011(e) of the Local Government Code states that the County Purchasing Agent shall supervise all purchases made on competitive bids. §271.024 states that “to award a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property on the basis of competitive bids, and if the contract requires the expenditure of more than \$50,000, bidding on the contract must be accomplished in the manner provided by this subchapter.”

PURCHASING SUPERVISION: Construction purchasing will be consistent with other procurement procedures as defined in this manual and in accordance with the pertinent statutes. The Purchasing Agent will supervise all construction purchases and all competitive bids.

PURCHASE REQUISITION (RQ) REQUIREMENT: Generally, the requisition is required to begin the purchasing process. However, the RQ requirement is satisfied by submitting a filled-out and signed *Bid & Award Request Form*, *LGC Section 176 Disclosure Form*, and *Suggested Vendors Form (Exhibits A, B, and C)*. Submittal of these forms will begin the formal solicitation process. The form must be signed by the Official, Department Head, or designated manager. The form will include all justification, budget line items from which the purchase will be funded, or any another explanation that is acceptable to the Purchasing Department about how funding will be attained. No construction bid process can begin until the signed forms are received in the Purchasing Department. Purchasing should be provided a minimum of five (5) business days for review of the plans and specifications. Required requisitions, if applicable, will be entered into Munis after completion of the solicitation process.

The specifications will include the statutory Worker’s Compensation provision in the appropriate format. A draft copy of the plans and specifications should also be submitted with the required request forms.

The specifications will be reviewed and approved by the Purchasing Department, for compliance with the Purchasing Act, and by members of the Purchasing Review Panel via a review process prior to release.

Purchasing should be provided a minimum of five (5) business days for review of the plans and specifications. During this time Purchasing will confer with the user department to establish dates and times for a pre-bid conference (mandatory or non-mandatory), bid opening, and pre-construction conference. An IFB number or contract number will be assigned to the project at this time by the Purchasing Department, if not already assigned.

BIDDING NOTICE: After development of specifications and preparation of the bid, a notice of the intended purchase will be published by the Purchasing Department in accordance with Local Government Code §262.025.

A notice of the intended purchase must be published once a week for two consecutive weeks in a newspaper of general circulation in the County, with the first day of publication occurring at least 14 days before the date of the bid opening. To ensure sufficient time to complete and return proposals to the Purchasing Department, the event may be extended by the Purchasing Agent, but will never advertise less than fourteen (14) days, because to do so would be a violation of Local Government Code §262.025, the Purchasing Act.

The notice must include the following:

1. Specifications describing the item to be purchased or a statement of where the specifications may be obtained;
2. Time and place for receiving and opening bids and the name and position of the county official or employee to whom the bids are to be sent;
3. Whether the bidder should use lump-sum or unit pricing;
4. Method of payment by the county; and
5. Type of bond required by the bidder.

CONSIDERATION OF SAFETY RECORD: In accordance with Local Government Code §262.0275, in determining who is a responsible bidder, the commissioners court may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution if the commissioners court has adopted a written definition and criteria for accurately determining the safety record of a bidder, the governing body has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder, and the determinations are not arbitrary and capricious.

With the approval of this policy, the definition and criteria for determining the safety record of a bidder for this consideration shall be the following:

1. If the bidder in response to questions in the safety record questionnaire reveals more than two (2) cases in which final orders have been entered by the Occupational Safety and Health Review Commission (OSHRC) against the bidder for serious violations of OSHA regulations within the last three (3) years, the County may determine whether to disqualify the bidder.
2. If the bidder in response to the questions in the safety record questionnaire reveals more than one (1) case in which the bidder has received citations for violations of environmental protection laws or regulations within the past three (3) years, the County may determine whether to disqualify the bidder. Environmental protection agencies include the Environmental Protection Agency (EPA), Texas Natural Resource Conservation Commission (TNRCC) and its past associated agencies, the Texas Water Commission, Texas Department of Health, Texas Control Board, and similar regulatory agencies of other states. Citations will include notice of violation, suspension/revocation of state or federal licenses or registrations, fines assessed pending criminal complaints, indictments or convictions, administrative orders, draft orders, final orders, and judicial final judgments.
3. If the bidder in response to the questions in the safety record questionnaire reveals that the bidder has been convicted of a criminal offense within the past ten (10) years which resulted in serious bodily harm or death, the County will determine whether to disqualify the bidder.

BONDING REQUIREMENTS

BID BONDS: The bid bond is a submitting vendor's guarantee that the submitted solicitation response will be honored. Pursuant to Local Government Code §262.032 If the contract is for the construction of public works or is under a contract exceeding \$100,000, the bid specifications or request for proposals may require the bidder to furnish a good and sufficient bid bond in the amount of five percent [5%] of the total contract price. A bid bond must be executed with a surety company authorized to do business in this state. The bond is payable to El Paso County, Texas and must be in a form approved by the Commissioners Court.

For a construction project on bid price over \$50,000, the contractor shall furnish, with the bid, a cashier's check or bidder's bond payable to El Paso County in an amount of not less than five percent (5%) of the largest possible total of the bid submitted, and is subject to forfeit in the event the successful bidder fails to execute the contract documents within thirty (30) days after the contract has been awarded.

PERFORMANCE BONDS: The performance bond is solely for the protection of the state or governmental entity awarding the public work contract, in the amount of the contract, and conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.

Texas Government Code §2253.021 states that a governmental entity that makes a public work contract with a prime contractor shall require the contractor, **before beginning the work, to execute to the governmental entity a performance bond** if the contract is in excess of \$100,000. A bond required by this section must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code). The bond is payable to El Paso County, Texas and must be in a form approved by the Commissioners Court.

Any performance bond that is furnished by a contractor in attempted compliance with the requirements of Chapter 2253, will be construed as in conformity with that chapter in relation to rights created, limitations on the bond, and remedies provided.

PAYMENT BONDS: The payment bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material, and in the amount of the contract. A bond required by this section must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

Texas Government Code §2253.021 states that a governmental entity that makes a public work contract with a prime contractor shall require a payment bond the contractor, **before beginning the work, to execute to the governmental entity**, if the contract is in excess of \$25,000.

Payment bonds must be effective from commencement of performance until the end of the fourth month after all items of work for the project are completed, unless releases are obtained from all subcontractors and materialmen.

Any performance bond that is furnished by a contractor in attempted compliance with the requirements of Texas Government Code Annotated, Chapter 2253, will be construed as in conformity with that chapter in relation to rights created, limitations on the bond, and remedies provided.

Power of Attorney: The attorney-in-fact who signs bid or contract bonds must file with each bond a certified and current copy of the power of attorney.

EXAMINATION OF EXISTING PREMISES: It is understood and agreed that the contractor has by careful examination satisfied himself as to the nature and location of the work, the character and quality of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this contract. No verbal agreement or conversation with any officer, agent, or employee of the County, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained. The bid shall be based only on the specifications, supplemented by the affecting conditions.

INSURANCE: The contractor shall take out, pay for, and maintain at all times during the prosecution of the work under the contract, the following forms of insurance, in carriers acceptable to and approved by El Paso County **[Exhibit J]**:

1. Worker's Compensation
 - a. Statutory limit
 - b. Each accident - \$1,000,000
 - c. Each Employee- \$1,000,000
 - d. Policy Limit - \$1,000,000
2. Employer's Liability - \$500,000.
3. Comprehensive Commercial General Liability:
Please refer to contract for specified limits (limits are established based on size of project)
4. Automobile Liability: \$1,000,000 combined single limit
5. Contractual Liability – same limits as above.

The County reserves the right to review the insurance requirements during the effective period of the contract and to require adjustment of insurance coverage and their limits when deemed necessary and prudent by the County based upon changes in statutory law, court decisions, or the claims history of the industry as well as the contractor.

Required Insurance Provisions:

1. Proof of Carriage of Insurance – All certificates of insurance will be required in duplicate and filed with the Purchasing Agent and Public Works Department located at 800 E. Overland, El Paso, Texas.
2. All certificates shall provide El Paso County with an unconditional thirty (30) days written notice in case of cancellation or any major change.
3. As to all applicable coverage, certificates shall name El Paso County and its officers, employees, and elected representatives as an additional insured.
4. All copies of certificates of insurance shall reference the project name and bid number for which the insurance is being supplied.
5. The contractor agrees to waive subrogation against El Paso County, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance.
6. The Contractor/Vendor is responsible for making sure any sub-contractor(s) performing work under this agreement has the required insurance coverage(s) and supplies El Paso County with the proper documents verifying the coverage.

INDEMNIFICATION: The contractor agrees to fully indemnify and save whole and harmless the County of El Paso from all costs or damage arising out of any real or asserted claim or cause of action against it of whatsoever kind of character and, in addition, from any and all costs or damages arising out of any wrongs, injuries, demands or suits for damages, either real or asserted, claimed against it that may be occasioned by any act, omission, neglect, or misconduct of the said contractor, his agents, servants, and employees.

PRE-BID CONFERENCE: The Purchasing Department will ensure that purchasing procedures are followed, and the user department will provide technical information and ensure that technical standards are upheld. Purchasing will schedule the pre-bid conference and will assist in conducting the conference to the following extent:

1. Have all representatives sign the attendance roster.
2. Provide a brief introduction describing the project title, magnitude, and performance period.
3. Indicate whether there have been any addenda issued and, if so, ensure all representatives have received a copy.
4. Discuss the role of Purchasing in the procurement and administration process.
5. Have the project engineer or architect discuss the specifics of the project to include review of the plans and specifications, allowing for a question and answer session.
6. Determine any issues discussed that require issuance of an addendum.

All addenda will be issued by the Purchasing Department and will only be issued if there are at least seven (7) days between the date of the addendum and the specified opening date.

Shorter time frames will automatically delay the bid opening by at least one (1) full week. The user department will provide Purchasing with the technical documentation (i.e., changes/additions to the plans or specifications).

Purchasing will be responsible for distributing the addendum to all applicable parties. In cases where the plans were developed and specifications were prepared and distributed by an out source—i.e., independent architect/engineering firm—the independent source will be responsible for distribution of the addendum.

RECEIPT OF COMPETITIVE BIDS: The following procedures will be followed when receiving bids:

1. All bids will be received by the Purchasing Agent.
2. All bids will be stamped with the time and date received. The “Date Stamp Clock” in the Purchasing Department will serve as the official time clock for the purpose of identifying the date and time bids were received in the Purchasing Department.
3. **No bids will be accepted after the opening time on the date of the bid opening.** All bids received after the opening time will be returned unopened to the bidder with a letter from the Purchasing Agent notifying the bidder that the submitted bid was received after the due date and time. **No exceptions will be made for inclement weather or third-party carrier failures.**
4. The Purchasing Department will record the name of the vendor’s representative submitting the bid, as well as the time and date the bid was submitted. If a bid is received by mail, express mail, or courier, the delivery method will be reflected in the record.
5. After bids are received, a secure place will be provided by the Purchasing Department for holding the bids until the opening date. The bids are to be received sealed and shall remain sealed until opened on the advertised date and time by the Purchasing Department in a public forum.
6. On occasion, bids that are received in the mail, or by some other independent carrier, may be inadvertently opened. If this situation occurs, another Purchasing Department staff member will be called immediately to act as a witness that the details of the bid, particularly the price, were not reviewed and that the bid was again sealed by an employee of the Purchasing Department.

The above process will be followed in order to preclude any perception of favoritism or revealing bid prices or information. Having sealed bids publicly received and recording the submission of requested bids is intended to inhibit any perception that the Purchasing Department is manipulating the receipt of bids.

PUBLIC BID OPENINGS: Sealed bids will be opened publicly by the Purchasing Department and will be documented. Preliminary bid tabulations will be provided to the public upon request. The Purchasing Department and the user department will determine who will be responsible for creating the tabulation and, if it is the user department, then the user department will provide a copy to the Purchasing Department for distribution to the general public.

For those bids that contain several line items, a tabulation that includes the total bid amount, excluding individual line items amounts, per bidder, can be provided immediately after the bid opening. Requests for an all-inclusive bid tabulation will be honored after it is completed and should require a minimum of five (5) business days.

The Purchasing Agent will open the bids on the date, time, and place specified in the notice. The date specified in the legal notice may be extended by the Purchasing Agent if an error is discovered in the original specifications and an addendum is issued to make the necessary corrections.

A bid that has been opened may not be changed for the purpose of correcting an error in the bid price.

BID EVALUATIONS: The department, who may also rely on the expertise of contracted third-party experts will evaluate all bids, with assistance from the Purchasing department, and a joint recommendation will be made to the Commissioners Court. Purchasing will include a signed memo from the user department stating bid acceptance and any other documentation as agenda backup material. The Purchasing Department will be responsible for placing the item on the agenda for the Commissioners Court.

Evaluation of bids will be based on the following factors:

1. the relative prices of the bids, including the cost of repair and the cost of delivery and hauling;
2. compliance of goods and services offered with the bid specifications; and
3. the responsibility of the vendor, including the vendor's safety record, if the Commissioners Court has adopted a definition of safety that is included in the bid, and the vendor's past performance.

When the lowest priced bid is not the best bid, clear justification for not selecting the lowest bidder must be documented to the Court. This recommendation will be support by clear and concise documentation from the user department that explains the rationale for awarding to other than the lowest bidder.

A joint review of the bid by the user department and the Purchasing Department is required.

AWARD RECOMMENDATION: The Purchasing Department will recommend the contract award to the Commissioners Court in session. The Court shall:

1. Award the contract to the responsive and responsible bidder who submits the lowest and best bid; or
2. Reject all bids and publish a new legal notice.

If two (2) responsive and responsible bidders submit the lowest and best bid, the Purchasing Agent will determine the award recommendation in accordance with the Procedure for Awarding Tie Bids, the drawing of lots. [Section 9].

A contract may not be awarded to a bidder who is not the lowest responsive and responsible bidder meeting specifications unless, before the award, each lower bidder is given notice of the proposed award and is given an opportunity to appear before the Commissioners Court and present evidence to dispute that recommendation.

After the award recommendation is approved by Commissioners Court, the department is responsible to coordinate with County Attorney to finalize any contracts and present the contract to the Court for the signature of the County Judge or designee, in accordance with County Administrator policies.

After an award, the County Judge will sign the contract on behalf of the County, and the Purchasing Agent or designee will return the bid bonds of any contractor not awarded a contract.

After an award is made, a contract will be processed; originals or copies of the contract will be sent to all appropriate parties, whether for public works or non-public works contracts; and an original will remain on file in the Purchasing Department.

CONTRACT ADMINISTRATION: Only the Public Works project manager, Public Works Director, or the Purchasing Agent has the authority to give directions to the contractor, but cannot change the contract terms without approval of Commissioners Court.

The Public Works Department will be responsible for monitoring and documenting contractor performance/compliance and will provide Purchasing with copies of this documentation to keep the Purchasing Department apprised of all performance/compliance issues. Discussions that explain the interpretation of the specifications may be dealt with orally by the user department.

If poor performance or non-compliance with the contract is experienced, the Public Works Department will take all preliminary steps related to correcting non-compliance with the contract, including initiating a written corrective action with the contractor. Purchasing will be provided an advance copy of any written correspondence directing correction of a discrepancy.

The user department will solicit Purchasing to initiate corrective action, in consultation with the user department, when the user department cannot resolve any conflict through correspondence. The Public Works and Purchasing departments must consult with the County Attorney's Office before taking any steps toward suspension or termination of the contract unless emergency, life safety, or property damage issues require immediate temporary work stoppage. Before any letters, notices, and other communications related to termination or suspension are issued, the contents of these must be reviewed by the County Attorney's Office, as the initial steps toward potential litigation.

The occupant department must not provide any instructions or requests for changes directly to the contractor. The occupant department must provide all information necessary for the contractor to meet its needs, either through the Public Works department responsible for constructing the facility or the Purchasing Department. Only the Public Works project manager or the Purchasing Agent has the authority to give directions to the contractor.

The Purchasing Agent will take all steps related to correcting non-compliance with the contract, but must consult with the County Attorney's Office before taking any steps toward suspension or termination of the contract unless emergency, life safety, or property damage issues require immediate temporary work stoppage. Before any letters, notices, and other communications related to termination or suspension are issued, the contents of these must be reviewed by the County Attorney's Office, as the initial steps toward potential litigation.

Documentation of contractor performance is often overlooked and is, perhaps, one of the most important. To enforce contractual terms, documentation of specific non-compliance must be available. Specific dates, examples, etc., must be documented. Contract administration duties are the responsibility of the Public Works Department, and for the purposes of construction contracting shall include, but are not be limited to, the following activities:

1. Schedule and assist in conducting the pre-construction conference
2. Maintain a comprehensive, neat, and orderly contract file that includes all documentation relative to the procurement process and includes pre-solicitation, solicitation, contract award, post award, and administration phases of the project.
3. Present the contractor's performance bond and payment bond to the Commissioners Court for approval within thirty (30) days of award and before the Notice-to-Proceed.
4. Monitoring the continued insurance coverage and obtaining updated certificates on a timely basis.
5. Receive and review a copy of the contractor's program schedule, ensuring that it is submitted within the period as specified in the contract specifications.
6. Receive and review copies of contractor payrolls to ensure payments made to contractor employees are in accordance with the prevailing wage rate classification by trade included in the contract.
7. Perform periodic site visits to the construction site to perform spot labor interviews to ensure contractor compliance with prevailing labor laws.
8. Review copies of contractor invoices for accuracy. Invoices are to be verified against progress reports, when applicable, with any discrepancies being reported to the contractor and user department for resolution.
9. Correspondence: Discussions that merely explain the interpretation of specifications may be dealt with orally by the user department. **All correspondence concerning major issues involving non-compliance, between the contractor and the County, should be directed to the Purchasing Department.** This will ensure that Purchasing is aware of any directives being issued to the contractor or any potential problems that may occur in regard to contract performance.

In emergency situations, correspondence regarding minor issues may be issued directly to the contractor by the user department. However, Purchasing should be provided with a copy immediately. It will be left to the professional judgment of the user department representative as to what constitutes an emergency and what is considered to be a minor issue.

If it appears that the level of non-compliance should result in a suspension or termination of the contract, the Purchasing Agent must seek the advice of the County Attorney's Office before sending a notice to show cause not to terminate or placing the contract on the agenda for the Commissioners Court to authorize termination.

CHANGE ORDERS: The Purchasing Agent on the recommendation of the Public Works Director may approve Change Orders to construction contracts for the following reasons:

1. To allow for an additional service request in an amount not to exceed \$50,000, subject to limitations stated in Local Government Code §271.060(h), if the Auditor and Budget Office verify that the funds are available for the change order and it does not change the scope of the contract.
2. To allow for contract time extension if the change order does not change the scope of the contract.

Any change orders that increase the cost or change the scope of the construction contract must be approved by the Commissioners Court. The Public Works Department will submit the agenda request to Commissioners Court for approval.

Negotiations of change orders, particularly those that result in an increase in contract price or performance period, or change the scope of the project, will require that Purchasing be notified on a timely basis so the appropriate action can be taken. **Purchasing shall always be provided with a copy of the proposed change order, with all available supporting documentation.**

No change order will be issued until it is determined that the necessary funds are budgeted and available, and the appropriate backup documentation has been reviewed. A record of any change order negotiations shall be made by the Public Works department, with a copy sent to Purchasing.

CLOSE OUT PROCEDURES: The user Department will ensure that all applicable warranty certificates are received and safeguarded throughout the warranty term. The Purchasing Department will provide copies of the warranty certificates to the appropriate departments.

Return of bonds will be administered by the Purchasing Department in cooperation with the user department to ensure that the contract is complete in all respects before these are returned.

WAGE RATE REQUIREMENTS [DAVIS-BACON ACT]

In accordance with OMB Compliance Supplement, non-federal entities shall include in their construction contracts subject to the Wage Rate Requirements (which still may be referenced as the Davis-Bacon Act) a provision that the contractor or subcontractor comply with those requirements and the Department of Labor regulations.

The construction wage rates are determined by job project and title. The Purchasing Department will ensure that all construction solicitations contain updated Prevailing Wage Rate Requirements or Davis Bacon Federal Wage Rate, as directed and approved by Commissioners Court.

Wage determinations for construction projects may be verified in accordance with the Davis Bacon Act at the following link: <http://www.wdol.gov/>. The County of El Paso also maintains a prevailing wage rate document for construction solicitations.

Section 15 EXEMPTIONS TO THE COMPETITIVE BID PROCESS

PURCHASING ACT: Many goods and services can be exempt from the competitive bid process if the Commissioners Court orders the purchase exempt. Local Government Code §262.024 lists in detail circumstances when exemptions are available for purchases made from current funds, bond funds, or through warrants. The following is a comprehensive list of these circumstances:

1. Goods and services that must be purchased in a case of public calamity, if it is necessary to make the purchase promptly to relieve the necessity of the citizens, or to preserve the property of the County.
2. Goods and services necessary to preserve or protect the public health or safety of the residents of the County.
3. Goods and services necessary because of unforeseen damage to public property.
4. Personal or professional service.
5. Work performed and paid by the day, as the work progresses.
6. Any land or right of way.
7. Goods and services that can only be obtained from one source, including:
 - a) Goods and services for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;
 - b) Films, manuscripts, or books;
 - c) Electric power, gas, water, and other utility services; and
 - d) Captive Replacement parts.
8. Food goods.
9. Personal property sold at auction by a state-licensed auctioneer, in a going-out-of-business sale held in compliance with the Business and Commerce Codes, or by a political subdivision, state agency, or federal government entity.
10. Work performed under a community and economic development contract under Local Government Code §381.004.
11. Renewal of a lease or equipment maintenance agreement under specified circumstances.
12. Vehicle and Equipment repairs under specified circumstances.

PURCHASING AT AUCTION:

Local Government Code §262.024, Exemption 9, as mentioned in the previous paragraph, addresses the sale of personal property sold at auction by a State-licensed auctioneer. The opportunity exists for potential savings to be realized by the County and Precincts if certain used cars, trucks, road/construction equipment are purchased at auction by the Purchasing Agent as allowed by law.

POLICY: All purchases at auction will be made by the Purchasing Agent after authorization from the departments/precincts to participate in this type of procurement process. Before such equipment is procured, determinations are to be made as to the appropriate sale value, whether the equipment has been maintained properly, the probable useful service life remaining, and whether a significant cost savings could result.

PROCEDURE: Written or verbal notification must be submitted to the Purchasing Agent before attendance at auction will occur. Used equipment to be purchased as requested by certain departments/precincts must have previous budget approval for each expenditure.

Local Government Code §271.056 Exemptions from Advertising Requirement lists the circumstances when exemptions are available for purchases made out of certificate of obligation funds. The provisions of this subchapter relating to the advertisement for competitive bids do not apply to:

- (1) a case of public calamity if it is necessary to act promptly to relieve the necessity of the residents or to preserve the property of the issuer;
- (2) a case in which it is necessary to preserve or protect the public health of the residents of the issuer;
- (3) a case of unforeseen damage to public machinery, equipment, or other property;
- (4) a contract for personal or professional services;

- (5) work done by employees of the issuer and paid for as the work progresses;
- (6) the purchase of any land, building, existing utility system, or right-of-way for authorized needs and purposes;
- (7) expenditures for or relating to improvements in municipal water systems, sewer systems, streets, or drainage, if at least one-third of the cost of the improvements is to be paid by special assessments levied against properties to be benefitted by the improvements;
- (8) a case in which the entire contractual obligation is to be paid from bond funds or current funds or in which an advertisement for bids has previously been published in accordance with this subchapter but the current funds or bond funds are not adequate to permit the awarding of the contract and certificates are to be awarded to provide for the deficiency;
- (9) the sale of a public security, as that term is defined by Government Code Section 1204.001;
- (10) a municipal procurement of a kind that, under Chapter 252, is not required to be made in accordance with competitive bidding procedures like those prescribed by this subchapter; or
- (11) **a county contract that, under the County Purchasing Act (Local Government Code Chapter 262), is not required to be made in accordance with competitive bidding procedures like those prescribed by this subchapter.**

POLICY: Exemption orders must be processed through the Purchasing Department. In all cases except the acquisition of interests in land for County roads, bridges, parks, and all purchases of real property, the Purchasing Agent will request the exemption order from the Commissioners Court.

PROCEDURE: The department must submit a memo to the Purchasing Agent requesting an exemption to the competitive bid process. The memo must state specific details and an explanation of why an exemption from the competitive bid process should be requested and granted. All departments requesting exemptions should include a copy of the contract, if available, the name of the contractor, the goods and services covered by the order, maximum cost, and other relevant particulars.

EMERGENCY

Emergency means circumstances where an immediate response is required to provide for the safety of persons or property, but does not include any situation which results in the County Judge declaring a local state of disaster in compliance with the El Paso County Policies, Procedures, and Regulations Manual.

Emergency purchases that exceed \$50,000 require a Court Order granted by the Commissioners Court before a purchase order can be issued.

PROFESSIONAL OR PERSONAL SERVICE

Please refer to Section 13 of this manual regarding this type of purchase.

SOLE SOURCE GOODS AND SERVICES:

Pursuant to Local Government Code §262.024(7), Discretionary Exemptions, sole source goods are exempt from competitive bidding requirements. However, the burden of proof required to validate a single/sole source situation requires a statement from the Purchasing Agent as to the existence of only one source, and specifically noting which type of listed sole source good or service is being purchased. The statement will be submitted with the award recommendation for acceptance by the Commissioners Court and must be reflected on the agenda of the meeting of the Commissioners Court. Sole source items include:

- A. Goods and services for which competition is precluded from bidding because of the existence of patents, copyrights, secret processes, or monopolies;
- B. Films, manuscripts, or books;
- C. Electric power, gas, water, and other utility sources; and
- D. Captive replacement parts or components for equipment.

For single and sole Source procurements, departments are required to fill out, sign, and submit a Single/Sole Source Justification Form [**Exhibit F**], which is also located on the Purchasing Department intranet.

FOOD

Pursuant to Local Government Code §262.024(d), Discretionary Exemptions, food is exempt from competitive bidding, but there are quotation requirements related to this specific exemption. These do not require Commissioners Court approval prior to award, but tracking an audit record retention are mandated.

Counties shall solicit at least three bids for purchases of food items by telephone or written quotation at intervals specified by the Commissioners court.

Counties shall award food purchase contracts to the responsible bidder who submits the lowest and best bid or shall reject all bids and repeat the bidding process, as provided by this subsection.

The purchasing officer taking telephone or written bids under this subsection shall maintain, on a form approved by the Commissioners court, a record of all bids solicited and the vendors contacted.

This record shall be kept in the purchasing office for a period of at least one year or until audited by the county auditor.

Section 16 GRIEVANCE AND PROTEST PROCEDURES

Procedure:

Any actual bidder or contractor who is aggrieved in connection with a bid invitation or award of a contract may protest to the County's Purchasing Agent.

Pursuant to Local Government Code §262.027(h), **before a contract is awarded, a bidder must give written notice to the Purchasing Agent that the bidder intends to protest an award of the contract.** The written protest shall be submitted in writing either during the bid process or when the aggrieved vendor knows or should have known, the factors giving rise to the protest, or within 5 business days after award, if the written notice of intent of protest was submitted in accordance with code, whichever is earlier.

Only written protests shall be considered. The written formal protest must contain a minimum of the following:

- a) Name, address, and telephone number of the protester;
- b) The bid/proposal or contract number;
- c) **A specific identification of the statutory or regulatory provision(s) that the purchasing staff member or department is alleged to have violated;**
- d) A specific description of each act alleged to have violated the statutory or regulatory provision(s) identified above.
- e) A precise statement of the relevant facts that include time lines and all involved parties.
- f) **An identification of the issue or issues that need to be resolved or that support the protest.**

The assigned purchasing staff member shall:

- Contact the requesting department and inform them of the vendor protest.
- Gather information and prepare documentation for the Purchasing Agent outlining the solicitation, evaluation and award of the bid/proposal.
- A decision shall be made by the Purchasing Agent to contact the County Attorney's office concerning the protest.
- Inform the requesting department on the progress and/or outcome of the vendor protest.

If the protest is not resolved by mutual agreement, the Purchasing Department shall promptly issue a decision in writing. The decision shall consist of the stated reason(s) for the action taken and send to the aggrieved vendor.

A copy of the decision shall be mailed, emailed, or otherwise furnished immediately to the vendor and any other party intervening.

A decision shall be final and conclusive, unless fraudulent, or the Purchasing Agent is directed by a court decision.

All vendor protest documentation shall be filed with the Purchasing Department in the bid file for reference.

If the bid or proposal referenced has not been opened, and there is a protest regarding overly restrictive specifications, omissions, ambiguous or indefinite evaluation factors, or other concerns, protesters are to contact the Purchasing Agent to explain any concerns, not later than five (5) business days before the bid or proposal is scheduled to be opened. If the protest is determined to have merit, the Purchasing Agent will make a reasonable effort to issue an addendum, extend the bid opening date, or resolve any issue prior to the bid opening or receipt of bids/proposals.

Section 17 RENEWAL OF EQUIPMENT LEASES AND MAINTENANCE CONTRACTS

POLICY

The vetting of all leases and equipment maintenance contracts will be handled through the Purchasing Department. All renewal or extension orders will be reviewed and handled by the Purchasing Department prior to contracting.

Any negotiations with bidders will be supervised by the Purchasing Agent. Purchasing will maintain the original documents and send the user department a copy when requested. Purchasing will monitor will treat lease and maintenance awards and renewals as annual term contracts.

Pursuant to Local Government Code 262.024(b) the renewal or extension of any lease or an equipment maintenance contract can be exempt from formal competitive bidding if the Commissioners Court grants the exemption, and if:

1. the lease or agreement has gone through formal competitive bidding within the preceding year;
2. the renewal or extension does not exceed one (1) year; and
3. the renewal or extension is the first renewal or extension of the lease or contract.

PROCEDURES

The user department will enter a requisition in the purchasing system, identifying the budget line item account.

The requisition should identify the

- Scope of Work or Coverage
- Identify the purchase as a lease or maintenance contract
- Invoice copies referenced in the requisition
- Serial number, model number, and physical location of the equipment
- The beginning and ending dates of coverage

If the requisition covers a renewal, the original contract number shall be identified in the requisition.

If the request is for a sole source lease or maintenance agreement, the user department must follow up the requisition with a filled and signed Single/Sole Source justification memo [available on the Purchasing Department intranet].

Section 18 RECEIPT OF GOODS

POLICY

The user department must immediately acknowledge its receipt and acceptance of delivered goods on the receiver copy of the Purchase Order form or by other electronic means as determined by the Purchasing Agent.

Departments should notify the Purchasing Department if goods are not received by the due date or if damaged freight is delivered.

ORDER VERIFICATION

User department employees receiving shipments must pay particular attention to the delivery ticket and be sure it matches the County of El Paso purchase order.

The individual receiving the goods must verify that all goods were shipped as stated on the delivery ticket, and sign IN HIS OR HER OWN NAME— **A FULL SIGNATURE IN INK on the receiving copy of the purchase order, with his/her name printed legibly below**

DAMAGED FREIGHT

When a shipment arrives, the user department must inspect the condition of all cartons. If freight is undamaged, the department/precinct receiving the shipment should sign the freight bill.

If the freight is visibly damaged, the receiving department must instruct the freight line driver to:

1. Note the damage on the freight bill; and then
2. Sign the freight bill.

If there is concealed damage, save the shipping cartons so the Purchasing Department can notify the freight line and request an "inspection and report of concealed damage." Any receiving report processed should always mention all damaged merchandise.

All boxes and packing materials should be kept in the event of visibly damaged or concealed damaged freight shipments.

When applicable, damaged freight must be reported to the freight line within fifteen (15) days after delivery. After fifteen (15) days the freight line is no longer liable for the damage. If corrective steps are not followed per contract or vendor requirements, return and/or refund may not happen.

All goods not received properly or not in compliance with the contract should be documented and reported to the Purchasing Department on the Vendor Performance form as soon as possible, so that the vendor can be notified and instructed to take corrective action.

When applicable, damaged goods should not be returned to the freight line or to the vendor, unless specifically requested to do so, and then only if a claim has been filed or authorization has been given by the vendor including a **RETURN NUMBER**, or by the Purchasing Department. If corrective steps are not followed per contract or vendor requirements, return and/or refund may not happen.

DOCUMENTATION

It is the policy of County of El Paso to have all vendor invoices sent directly to GL & Disbursement Reporting/Audit in The Auditor's Office. Any warranty information should be copied to the Purchasing Department.

Section 19 VENDOR PERFORMANCE

POLICY

Departments are responsible for monitoring vendor performance and submitting documentation to the Purchasing Department when the requirements of the contract or Purchase Order (PO) are not met. Two forms related to vendor performance are accessible on the intranet and attached as exhibits to this policy:

1. Vendor Performance Form- For Contracted Services [Exhibit D]
2. Vendor Performance Form- For Goods/Supplies [Exhibit E]

When a vendor is not performing to the contract requirements (non-delivery, poor quality, undelivered services, etc.) the department must complete and sign the appropriate form for the appropriate contract type and forward a copy to purchasing. Detailed information such as date of incident, time of incident, specific references or descriptions of the deficiency should be on any submitted form. There should be a form for each instance of non-performance.

The Purchasing Department can work with the vendor to cure the issue or, in the case of performance failure, work with the County Attorney's office to determine if the contract can or should continue. The performance forms become part of the bid file history and can help the department and the Court in future award decisions.

Curing deficient performance can take a number of forms, but must be coordinated through the Purchasing Agent. Steps available to the County include, but are not limited to:

- a) A phone call to the sales rep, manager, owner, or board member of the company discussing the problems.
- b) An e-mail to the sales rep, manager, owner, or board member of the company discussing the problems.
- c) A certified "Notice to Cure" letter to the sales rep, manager, owner, or board member of the company discussing the problems.
- d) Cancellation of the contract.
- e) Vendor barred from participating in future County of El Paso bids for the period of one (1) year.
- f) Vendor barred from participating in future County of El Paso bids for the period of two (2) years.
- g) Vendor barred from participating in future County of El Paso bids for the period of three (3) years.

Section 20 DEBARMENT AND SUSPENSION

Executive Order 12549

PURPOSE

In an effort to provide assurance to the Federal Government that the State of Texas and its sub-recipients comply with Federal Executive Order 12549, 44 CFR 13.25 (“Sub-awards to debarred and suspended parties”), and the Texas Uniform Grant Management Standards (UGMS), the Texas Department of Public Safety/Texas Homeland Security-State Administrative Agency requires all Homeland Security Grant Program sub-recipients (to include all programs administrated by the TXDPS/THS-SAA) check the debarment status of all venders before contracting with or making any purchases with funds from any federal or State of Texas grant. Debarment verification applies to all federal and State of Texas grant awards.

AUTHORITY

Executive Order 12549 – Debarment and Suspension

POLICY

Prior to procuring or entering into contract(s) for any goods/services, the sub-recipient must check debarment status of the vendor using the EPLS system (<https://www.SAM.Gov>) and document that verification has occurred. This policy applies to the procurement of all goods or services regardless of unit price or quantity.

OFFICIAL REPRESENTATIVE

The County Purchasing Agent shall verify the debarment status of all vendors prior to utilizing Homeland Security Grant Funds, using the EPLS system (SAM.gov).

PROCEDURE

The following debarment verifications procedure applies to all purchases funded by Homeland Security and State of Texas funded projects. No contract will be awarded to any vendor whose name appears on the debarment lists prior to notifying the Purchasing Agent.

FEDERAL

1. Go to the EPLS Website (<https://www.SAM.gov>);
2. The County Purchasing Agent or their agent will search the EPLS system for the vendor.
3. If the vendor is found to be debarred, the vendor may not be used for procurement utilizing Homeland Security Grant Funds.
4. If the vendor is found not to be debarred, print the screen page and retain with the procurement documentation.
5. A copy of the screen print indicating the vendor is not debarred, at the time of the procurement, must be included with the supporting documentation submitted to the Texas Homeland Security State Administrative Agency requesting reimbursement of advance.

STATE OF TEXAS

1. Prior to award, the State of Texas debarment list should also be checked as required by UGMS section III, Subpart C, .35 Sub awards to debarred and suspended parties, under the following website:
www.comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarredvendors.php
2. The County Purchasing Agent or their agent will search the State’s system for the vendor.
3. If the vendor is found to be debarred, the vendor may not be used for procurement utilizing State Grant Funds.

4. If the vendor is found not to be debarred, print the screen page and retain with the procurement documentation.
5. A copy of the screen print indicating the vendor is not debarred, at the time of the procurement, must be included with the supporting documentation submitted to the State of Texas granting agency requesting reimbursement of advance.

Additionally:

All formal purchasing competitive bid/proposals will contain a Certification of Eligibility and will require signature from the responding party. Failure to supply a signed document may result in rejection of bid/proposal.

The Certification of Eligibility is a statement from a vendor or service provider that their company and its principals have not been debarred, suspended, proposed for debarment, declared ineligible, are not in the process of being debarred, or voluntarily excluded from conducting business with a Federal department or agency of the Federal government.

The County shall follow all purchasing policies and procedures relating to formal and informal competitive purchases.

Status will be checked at <https://www.SAM.gov>

Section 21
Application of Local Bidder Preference

Per El Paso County OP 12-606, Local Bidder Preference may be reviewed and approved by Commissioners Court provided each requirement as listed in this policy is met and the justification meets sufficient definition of Economic Development Opportunities, to include completion of the required Local Business Preference Policy Application [Exhibit H] and the Affidavit of Contributions [Exhibit G], if applicable. [This consideration is prohibited for federally funded projects.]

FOR
CONSIDERATION OF LOCATION
OF BIDDER'S PRINCIPAL PLACE OF BUSINESS
(LOCAL BUSINESS PREFERENCE POLICY)

I. AUTHORIZATION

Section 271.905 of the Texas Local Government Code authorizes the County of El Paso to give consideration to the location of a bidder's principal place of business in awarding the bid ("Local Business Preference"). In order to do so, the County Commissioners Court must determine, in writing, that the local bidder offers the County the best combination of contract price and additional economic development opportunities for the County created by the contract award, including the employment of residents of the County and increased tax revenues to the County.

II. GENERAL PURPOSE AND INTENT

A. The purpose and intent of these Guidelines and Criteria is to set forth the parameters under which the County of El Paso may consider the location of a bidder's principal place of business in awarding the bid.

B. All applications for consideration will be considered on a case-by-case basis, and the decision to approve or deny consideration shall be at the discretion of the El Paso County Commissioners Court.

C. The County of El Paso reserves the right to reject all bids; award a contract to the lowest bidder; or to award the bidder whose principal place of business is in the local government if the governing body of the local government determines, in writing, that the local bidder offers the local government the best combination of contract price and additional economic development opportunities for the local government created by the contract award, including the employment of residents of the local government and increased tax revenues to the local government.

III. FACTORS THAT THE COUNTY MAY CONSIDER IN AWARDING A CONTRACT UNDER THE LOCAL PREFERENCE POLICY

A. The bids must be for any real property or personal property that is not affixed to real property.

B. The location of the bidder's principal place of business must be in the County, as evidenced by submission of the current and valid Franchise Tax Certificate and the Certificate of Account Status on file with the Texas Secretary of State, or other documents if applicable under the Texas Business Organizations Code.

C. The bidder's bid price must be within 3% of the lowest and best qualified bid.

D. The bidder must include in the bid a written application for the Local Business Preference providing objective information satisfactory to the Commissioners Court as to how the award of the bid will lead to additional economic development opportunities for the County created by the contract award, including (1) The employment of County residents, and (2) Increased tax

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revenues to the local government. Such information shall be as appropriate to the type of bid, but may include, but is not limited to:

- (i) bid amount as percentage of reported local annual sales/revenue;
- (ii) economic impact- number of employees added within past 12 months
- (iii) new job by salary category
- (iv) local annual property taxes paid

E. The bidder must not be tax-delinquent as to federal, state, or local taxes.

F. The bidder may not subcontract the award, or any part of the award.

G. The bidder must not be indebted to the County. "Debt" includes delinquent taxes, fines, fees, and delinquencies arising from written agreements with the County. (This provision will take effect immediately upon the action by Commissioners Court required under Texas Local Government Code section 262.0276).

H. In determining who is a responsible bidder, the commissioners court may take into consideration the safety record of the bidder, of the firm, corporation, partnership or institution represented by the bidder. (This provision will take effect immediately upon the action by Commissioners Court required under Texas Local Government Code section 262.0275).

I. All bidders, including owners, principals or officers if the bidder is a corporation or other legal entity, seeking Local Business Preference will be required to submit an affidavit of any and all political contributions to members of Commissioners Court for the previous 12 months.

J. A business in which a member of Commissioners Court has a substantial business interest as defined under Texas Local Government Code Chapter 171 is not eligible for consideration under the Local Business Preference Policy.

IV. APPLICATION

A. **Case By Case Basis.** If the Purchasing Agent and Procurement Review Panel determines that a proposed bid is appropriate for Local Business Preference, it will include in the bid the information required from the bidder. Only bids for real property or personal property that is not affixed to real property are eligible for the Local Business Preference.

B. **Written Application:** A bidder may request consideration for Local Business Preference by submitting the required information as part of the bid. There is no charge to submit the application.

C. **Contents of Application:** The application shall consist of a completed application form. The application must include objective, verifiable information from the bidder as to how the local bidder offers the County the best combination of contract price and additional economic development opportunities for the County created by the contract award, including the employment of County residents and increased tax revenues to the County. The application form may require such financial and other information, as the County deems appropriate for evaluating the financial capacity and other relevant factors of the applicant.

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V. ADMINISTRATION

A. Annual Assessment: Each September, the Purchasing Agent shall separately account for all bids awarded pursuant to the Local Preference Policy and the County Auditor shall annually determine the total value of contracts awarded pursuant to the Local Preference Policy.

B. Annual Reports: Each September, a company receiving a contract award pursuant to the Local Business Preference shall report to the County its annual revenues, annualized employment levels distributed by wage brackets, the addition or deletion of capital assets in excess of \$1,000,000.00, and any other pertinent information that would affect the ability of the local operation to maintain its status as a going concern.

C. "Buy Local" Provision: Each recipient of Local Business Preference shall additionally agree to give preference and priority to local manufacturers, suppliers, contractors and labor, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency. The Annual Report by the company shall include a summary of the action taken by the company pursuant to the "Buy Local" Provision.

VI. CONFIDENTIALITY

Information that is provided to the County in connection with an application or request for Local Business Preference under these Guidelines and Criteria shall be kept confidential and not be subjected to public disclosure except as required by law, the Texas Attorney General, or by an order of a court. Written information shall be released pursuant to a request under the Public Information Act, Chapter 552 of the Texas Government Code, as amended, by the officer for public information or his or her designee in accordance with the standards established under that act for confidentiality and closed records.

Adopted this 17th day of December, 2012 by the El Paso County Commissioners Court.

ATTEST

COUNTY OF EL PASO


County Clerk, Delia Briones


County Judge Veronica Escobar

Section 22 FEDERAL and STATE FUNDED PROJECTS

FEDERALLY FUNDED PROJECTS

POLICY

When federal funds are provided for the purchase of goods, services or construction, the County of El Paso will comply with all federal and state program requirements.

Texas Department of Transportation (TxDOT) - FUNDED PROJECTS

The County of El Paso will facilitate bids on federally-funded TxDOT projects in compliance with the federal procurement policies set forth in 23 CFR Part 635. The County shall follow the guidelines as discussed in Section 14 Construction Purchasing, with the following additional requirements:

1. TxDOT/federally funded bids will be awarded to the lowest responsive and responsible bidder.
2. The County shall comply with procedures in the Local Government Project Management Guide from TxDOT, as amended.

The County of El Paso 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 (HUBs). The County will encourage the good faith efforts of firms who recognize and practice similar business standards.

County of El Paso receives Federal financial assistance from the Department of Transportation and, as a condition of this assistance, the County signed an assurance confirming that compliance with 49 CFR Part 26 will be followed. For additional information, see: <http://www.fhwa.dot.gov/hep/49cfr26.htm>

The Disadvantaged Business Enterprise (DBE) Program was created to provide a level playing field for small, minority- and women-owned companies wanting to do business with TxDOT and other agencies receiving federal funds from the U.S. Department of Transportation (DOT). DBE firms 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 or 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.

The County will make a good faith effort to afford all opportunities for DBEs to participate in the County's bid process. Further, the County or its sub-recipients shall not discriminate against any DBEs or employees thereof in the performance of and federally funded contract.

All procurement of supplies, equipment and services utilizing Federal Funds (e.g., Federal Grant or Contract) shall be made in accordance with all applicable federal rules and regulations such as the Federal Acquisition Regulations (FAR), and Uniform Guidance 2 CFR 200 Subpart D –Procurement Standards (2 CFR 200.317 to 2 CFR 200.326). **CFR 200.215 – Never Contract with the Enemy and CFR 200.216 – Prohibition on certain telecommunications and video surveillance services or equipment.**

For additional Federal Funded information, visit the following website links:

- <http://www.whitehouse.gov/omb>
- <https://www.acquisition.gov//far/>

The County of El Paso as sub-recipient shall use our own procurement procedures that reflect applicable State and local laws and regulations, including requirements for competitive procurement, 49 CFR Part 18 and FTA C 4220.1E, "Third Party Contracting Requirements":

1. The County shall review procurement requests to avoid duplicative or unnecessary purchases.
2. The County will maintain records sufficient to detail the significant history of a procurement. These records will include a) rationale for the method of procurement, b) selection of contract type, c) contractor selection or rejection, d) and the basis for the contract price.
3. Federal procurements shall not have a geographic preference included in the bid or RFP, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

The County of El Paso will conduct federal purchases in compliance with the federal procurement policies set forth in 2 CFR 200. Details on the procurement requirements in CFR 200 can be found at <https://www.ecfr.gov/>

Note: The use of Local Business Preference is prohibited for federally funded projects.

STATE FUNDED PROJECTS

POLICY

When State of Texas funds are provided for the purchase of goods, services or construction, the County of El Paso will comply with all bidding requirements and required portions of the *State of Texas Uniform Grant Management Standards* (UGMS), to include the subsections on recording rationale for sole source and other exempt types of purchases.

Details on UGMS Standards can be found at <https://comptroller.texas.gov/purchasing/grant-management/>

Highways/Streets/Bridges:

For all projects with State or Federal funds, and/or all projects on the State Highway System regardless of funding source, a Local Government must either adopt the latest TxDOT Standard Specifications, Special Specifications, and required Special Provisions or request TxDOT written approval of alternate, equivalent specifications. TxDOT's "2014 Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges" are the latest TxDOT Standard Specifications.

These "General Requirements" along with additional requirements specified by the particular local government, are intended as a template for Item 1-9 in TxDOT's Standard Specifications on projects let by a local government that is on the State Highway System or includes reimbursement to the local government using FHWA or TxDOT funds. The County of El Paso will conduct all TxDOT and FHWA funded purchases in accordance with the TxDOT requirements and use the most recent standard specifications and special provisions as identified on the TxDOT web link listed below:

<https://www.TxDOT.gov/inside-TxDOT/division/construction/TxDOT-specifications/local-government.html>

NOTE: TxDOT items 1L through 9L are attached to this manual as Exhibit L.

TxDOT Special Provisions (*Federal-Aid Construction Contracts, State Construction Contracts, and Bid Items*) are detailed in the TxDOT provided web link and shall be part of the County's solicitations as applicable.

DEBARMENT VERIFICATION FOR FEDERAL AND STATE FUNDED PROJECTS

Departments are required to provide a copy of any grant award paperwork to the Purchasing Agent upon request. This is a failsafe review to ensure that the proper procurement is occurring under any given grant, whether Federal or State. Details for debarment verification are found in Section 20 of this manual.

Section 23
CREDIT-PROCUREMENT CARD PROCEDURES

PURPOSE

To establish a methodology for the limited use of credit cards issued to the Purchasing Department to make purchases of goods from companies that will not accept Purchase Orders.

GENERAL

The Purchasing Department may determine that an internet website offers the lowest price for items, or the lowest price can be obtained from a local store that will not accept purchase orders. In these cases, the Purchasing Department has been issued 1-2 credit cards for the exclusive use of internet website buying or local store buying.

A. PROCEDURES

1. All Purchasing Department staff who have access to, utilize, or check out the credit card shall read and sign the Credit Card User's Agreement form [**Exhibit I**].
2. The department submits their requisition. Funds are verified by the Auditor's office.
3. Buyers will follow established purchasing procedure for purchases below \$1,000; Buyers will obtain 3 informal bids for purchases \$1000.01 – 5,000.
4. The Purchasing Department will keep 1-2 credit cards secured in the Purchasing Department. The credit cards have the name "County of El Paso" on the card. No name is on the card.
5. Requests for a credit card purchase in excess of \$5,000 shall receive permission from the Purchasing Agent provided availability of funds is certified by the County Auditor.
6. If the Buyer determines the lowest bidder is an internet website or a local store that will not accept purchase orders, the Buyer will "check out" the credit card by signing it out in the log book. The purchase will be made in one of three ways:
 - a) The Buyer will directly make the credit card purchase with the vendor on the phone or on the website;
 - b) The Buyer will give the credit card to a member of the Purchasing Department Supply division staff. The Supply staff member will go to the local store or be accompanied by the department to buy the items with the credit card. (The Purchasing Supply staff member must show County ID to the vendor); or
 - c) The Buyer will give the credit card to the employee who will shop on behalf of the using department. The user will sign the Credit Card User's Agreement form. The user will go shopping at the local store to buy the authorized items. Upon return, the user, must:
 - Sign and print their name on the receipt and give the receipt to the Purchasing Department Buyer.
 - The Buyer will verify the receipt has the correct items and will complete the purchase order as appropriate.
7. Use of the procurement card shall be limited to the following conditions:
 - i. The total value of a transaction shall not exceed the County single purchase of \$1,000.00 with one bid obtained; \$5,000 with three bids obtained.
 - ii. All items purchased shall be available immediately at time of procurement card use, with no backorders allowable.

- iii. Payment for a purchase will not be split into multiple transactions to stay within the single purchase limit.
- iv. Procurement card purchases for meals, travel, or hotel expenses generally will not be allowed on the Procurement Card. Users should refer to the County travel policy. Any other situations for transactions will be handled on an individual basis and must be approved by the Purchasing Agent provided sufficient availability of funds is certified by the County Auditor.
- v. Cardholder shall inform the vendor that goods/services are on a tax-exempt status.

B. UNAUTHORIZED PROCUREMENT CARD USE

1. The procurement card SHALL NOT BE USED for the following:
 - a) Personal purchases.
 - b) A purchase that exceeds the purchase limit established by the Commissioners Court.
 - c) Entertainment expense.
 - d) Cash advances.
 - e) Telephone calls/monthly service.
2. A cardholder who makes unauthorized purchases, carelessly uses the procurement card, or fails to turn in the appropriate documentation shall be liable for the total dollar amount of such unauthorized purchases, plus any administrative fee charged by the bank in connection with the misuse. The cardholder will also be subject to disciplinary action and potential termination from his/her job.
3. A Buyer that repeatedly forgets or does not sufficiently complete the credit card check out log will have their access to the credit card revoked.

TRAVEL CARD PROGRAM

PURPOSE

On October 15, 2001, the Commissioners Court approved the use of a County credit card to purchase the booking of official County travel expenses only (airfare, hotel accommodations, and car rentals).

GENERAL

Use of the credit card for travel is not intended to circumvent the existing County travel policy and all County travel must be approved by Commissioners Court prior to booking travel arrangements.

In any instance where pre-approval was not obtained from the Commissioners Court, the County official/employee shall submit incurred travel expenses at the next available meeting of the Commissioners Court after the County official/employee returns.

Travel cards are issued in the official/employee's name, along with the County's name, which shall be clearly marked on the card.

Eligibility is determined based on the following conditions:

- The cardholder must be a full time employee of the County of El Paso County.
- The cardholder must be authorized in writing by their department head to hold a County credit card.
- The cardholder must sign the County Travel Card Policy in the presence of the card program administrator, attesting to understanding the policy and prohibitions.

Details on cardholder requirements and penalties for credit card misuse are in the *Travel Card Policy*, as approved by Commissioners Court. A copy of the policy is available on the Purchasing Department intranet under *Policies*.

Section 24 DISCLOSURE OF INTERESTED PARTIES

House Bill 1295

INTRODUCTION

Section 2252.908 of the Government Code states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity 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.

The law applies only to a contract of a governmental entity, or state agency that either (1) requires an action, or vote by the governing body of the entity, or agency before the contract may be signed, or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

POLICY

Prior to award by Commissioners Court, vendor must complete Certificate of Interested Parties (Form 1295) and submit a signed and notarized copy to the County Contract Manager's Office.

OFFICIAL REPRESENTATIVE

The Contract Manager's Office shall verify that Certificate of Interested Parties (Form 1295), is on file prior to any award requiring Commissioners Court action and is filled out in accordance with The Texas Ethics Commission adopted rules.

PROCEDURE

Prior to entering into a contract that is voted on by Commissioners Court, the prospective business must submit a "Disclosure of interested parties" Form. Within 30 days of receipt of the form, the County must submit a copy to the Texas Ethics Commission. **The Disclosure of Interested Parties form 1295 is available on the County purchasing website.**

1. Unsuccessful bidders are not required to complete Form 1295.
2. The Awardee must place the El Paso County IFB, RFP, RFQ, or other identification number on Form 1295, in line #3. Therefore, Sole Source Contracts will need a number assigned. Numbers will be provided by the Purchasing Department.
3. When another entity uses an El Paso County contract, they may request a copy of Form 1295. When El Paso County utilizes another entity's contract, that vendor is not required to complete another Form 1295.
4. If a cooperatives' quote is included with other quotes, the awardee must supply a Form 1295. This includes DIR, Go Direct Vendors.
5. Contracts may require reference to Form 1295. Since contracts are handled through the Contract Manager's Office, verification will fall with the Contract Manager.

NO AWARD WILL BE MADE PRIOR TO COMPLIANCE WITH THESE PROCEDURES.

All other policy and procedures regarding contract award, contract modifications and contract administration remain the same.

County of El Paso - Bid & Award Request Form

Complete Part 1 to request review of specifications, cooperatives, or sole source procurements
Complete Part 2 for change orders, price increase, or contract amendment.

Department Information
Date of Request:
Department:
Department contact and phone number:
Summarize the proposed Goods or Services requested:

Part 1: Request for Bid/RFP/RFQ/RFI or Cooperative Award
<p>1. Type of Procurement Procedure –select one:</p> <p><input type="checkbox"/> Bid: (Examples: vehicle, equipment, uniforms, construction)</p> <p><input type="checkbox"/> Request for Proposals: Services</p> <p><input type="checkbox"/> Request for Qualifications: Professional Services for Architecture, Financial, Engineering etc.</p> <p><input type="checkbox"/> State Contract- DIR/Inter-local/Purchasing Cooperative/Federal Contract (GSA)</p> <p><input type="checkbox"/> Grant</p> <p><input type="checkbox"/> Other/not sure Describe: _____ State Contract No. _____</p>
<p>2. Prior Commissioners Court Action (if any), please indicate references to the Commissioners Court minutes (date of meeting, agenda item number)</p>

Funding Verification
<i>The Department is responsible for identifying sufficient funding sources for the project. Contact: County Auditor</i>

1. Estimated Cost of this procurement:			
2. Indicate Funding Source(s): <i>(Projects that are not funded will not be approved)</i> Include MUNIS SHORT Account & LONG Account Numbers			
	Index and Sub-Obj.	Total Amount	Auditor Verification
	1.		
	2.		
	3.		
	4.		

Budget Transfer Needed? Transfer funds from: _____ to: _____ Notes:

3. Is this a Capital Improvement Plan Project? Date <input type="checkbox"/> Yes <input type="checkbox"/> No of CIP approval _____. Is this funded by bond proceeds or certificates of obligation? <input type="checkbox"/> Yes <input type="checkbox"/> No
--

4. Is this procurement funded by a grant? If so, <u>in addition</u> to the other items required, also include copies of the grant application and award or hyperlink.

What happens next? You will be notified by the Purchasing Department that your bid request and specifications have been approved, and your project has been placed on the solicitation calendar. The Purchasing Department will obtain any necessary process approvals (ex.: Use of RFP, etc.) prior to issuing the solicitation. If specifications require modifications, departments are responsible for finalizing them to use.

Part 2: Bid Award Review or Change Order/Price Increase/Contract Amendment

1. Prior Commissioners Court Action – (Ex. Date specifications were approved for bid; Date Construction was awarded; Date original contract or amendments were approved by Commissioners Court)

2. Date of Request:

3. Bid Number and Bid Title:

4. Final Cost of Purchase (if applicable):

5. Type of Procurement Procedure –select one:

Bid Award Review

Change order/Price Increase/Contract Amendment to an original procurement item that was in excess of \$50,000.00

Enter Contract Number

Other/not sure

Describe:

Vendor dba:

Vendor Address:

Vendor DUNS #: (More Info: visit www.sam.gov)

What happens next?

AWARDS:

The Purchasing Department will obtain all necessary award approvals. Departments will be notified of the intended Court agenda date and are responsible for attending to answer specific project-related questions from the Commissioners, if any.

CHANGE ORDERS / PRICE INCREASE / CONTRACT AMMENDMENT:

Departments will coordinate with Purchasing to ensure no other procurement steps are required. Departments must coordinate with County Attorney to ensure all forms and changes are to format/requirement. The Department writes the communication and places contract data on the Commissioners Court agenda. **The contract recommendation must have the following:** “The Purchasing Department approved this item on [insert date].”

Questions about this form? Need assistance with the solicitation process?
Contact the Formal Bid Division at (915) 273-3349

County of El Paso Purchasing Policies and Procedures
Exhibit B

EL PASO COUNTY PURCHASING DEPARTMENT

LOCAL GOVERNMENT CODE SECTION 176 INFORMATION FORM

ALL ELECTED OFFICIALS/DEPARTMENT HEADS SUBMITTING A PURCHASING REQUEST FOR THE PURCHASE OR SALE OF ANY PROPERTY (INCLUDING LEASES), GOODS OR SERVICES MUST SUBMIT THE SPECIFICATIONS TO PURCHASING ALONG WITH THIS FORM COMPLETED AND ATTACHED.

To: Debra Carrejo, Purchasing Agent, CPPO, CPPB

Date: _____ Department: _____

Elected Official/Department Head: _____

General Description of Purchasing Request _____

Texas Local Government Code Section 176 requires Vendors to file a Conflict of Interest Questionnaire (Form CIQ) that discloses each affiliation or business relationship with an employee or contractor of the County who makes recommendations to the County Commissioners Court with respect to the expenditure of money.

For this contract, the Vendor will be required to disclose its business relationships with the County Judge, the County Commissioners, the above-named Elected Official/Department Head and the following persons who will review the Vendor submissions and make recommendations regarding the award of the bid/RFP/RFQ (if more than 6 persons, use additional pages):

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

Elected Official/Department Head Signature

Date:

CURRENT & SUGGESTED VENDORS FOR BID FORM

TO: COUNTY OF EL PASO PURCHASING DEPARTMENT

ALL ELECTED OFFICIALS/DEPARTMENT HEADS MUST SUBMIT THE FOLLOWING:

1. SUGGESTED VENDOR(S) FOR THE SOLICITATION OF A **BID, RFP, RFQ, OR RFI** FOR THE PURCHASE OF MERCHANDISE OR TO PROVIDE SERVICES.
2. THE NAME(S) OF INCUMBENT VENDOR(S) WHO CURRENTLY OR PREVIOUSLY PROVIDED MERCHANDISE OR SERVICES.

	Name of Vendor / Contact Name	Mailing Address	Phone No.	Email
1				
2				
3				
4				
5				
6				
7				
8				

- Check box if no previous vendor exists.
- If you choose not to add/use the current or previous successful vendor for cause, you must state the reason in writing on an attached form.

ELECTED OFFICIAL/DEPARTMENT HEAD

DATE

NAME OF PROJECT or BID

County of El Paso Purchasing Policies and Procedures
Exhibit D
Vendor Performance Quality Report (Contracted Services)

**El Paso County
Purchasing Department**

**Vendor Performance Quality Report
for Contracted Services Vendors**

Complete this form to report unsatisfactory performance by vendors of goods or services purchased by El Paso County departments. Be sure to furnish all necessary details. Verify all information to ensure accuracy. Vendor Performance Quality reports become a permanent record of the vendor and must be accurate to guarantee an informed and equitable resolution and to serve as a reference for possible future action regarding a vendor's performance.

DEPARTMENT INFORMATION

Dept Name: _____ This Report Completion Date: _____
Address: _____ City/State/Zip: _____
Phone: _____ FAX: _____

Individual who initiated complaint and others with knowledge of the unsatisfactory performance (all or part) - Names: _____ Email: _____

VENDOR INFORMATION

Name: _____ FEI or SSN: _____
Contact: _____ Address: _____
Phone: _____ FAX: _____ City/State/Zip: _____

CONTRACT INFORMATION

Contract #: _____ Effective Date: _____

Description of services: _____

UNSATISFACTORY PERFORMANCE (check ALL that apply)

- Failure to meet specs/performance requirements Partial Delivery/Non-Delivery
 Unauthorized substitution Quality of goods or services
 Other (please explain) _____

Describe _____

UNSATISFACTORY PERFORMANCE CAUSED THE FOLLOWING (check ALL that apply)

- Delay/late performance Failure/Accident/Injury
Work had to be redone
Other (please explain) _____

Describe: _____
Comments: _____

DESIRED RESOLUTION: _____

Additional supporting data attached (e.g., pictures, sample, text, etc.) YES NO

When completed, send this completed form and any corresponding information to the Purchasing Department (bidquestions@epcounty.com) Attn: Vendor Performance Quality

County of El Paso Purchasing Policies and Procedures
Exhibit E
Vendor Performance Quality Report (Supplies and Materials)

El Paso County
Purchasing Department

Vendor Performance Quality
Report for Supplies and Materials Vendors

Complete this form to report complaints against vendors for goods or services purchased by El Paso County departments. Be sure to furnish all necessary details so that a satisfactory resolution of the complaint can be made. Please verify all information to insure accuracy. Complaint reports become a permanent record of the vendor and must be accurate to guarantee an informed and equitable resolution and to serve as a reference for possible future action regarding a vendor's performance.

DEPARTMENT INFORMATION

Dept Name: _____ This Report Completion Date: _____
Address: _____ City/State/Zip: _____
Phone: _____ FAX: _____

Individual who initiated complaint - Name: _____ Email: _____

VENDOR INFORMATION

Name: _____ FEI or SSN: _____
Contact: _____ Address: _____
Phone: _____ FAX: _____ City/State/Zip: _____

ORDER INFORMATION

Req. #: _____ PO#: _____

Item # or description of services: _____

COMPLAINT (check ALL that apply)

- Failure to meet specs/performance Partial Delivery/Non-Delivery
 Unauthorized substitution Quality
 Other (please explain) _____

Goods or Services that are unsatisfactory: _____

Comments: _____

Desired Resolution: _____

Additional supporting data attached (e.g., pictures, sample, text, etc.) YES NO

When completed, send this completed form and any corresponding information to the Purchasing Department (bidquestions@epcounty.com) Attn: *Vendor Performance Quality*

County of El Paso Purchasing Policies and Procedures
Exhibit F
SINGLE / SOLE SOURCE JUSTIFICATION

Preparation Instructions:

The appropriate department representative must complete the single source form below and forward to their Department Head, or his designee, for approval. Upon approval, forward the sole source justification to the Purchasing Agent for review and final approval. Use additional sheets if necessary.

1. What unique features or capabilities does the product or service offer the County?

2. Why are these unique features or characteristics essential and necessary to meet the County's needs?

3. What research has been performed to ensure that no other source is capable of fulfilling the requirement? For instance, list other products or services tested our used and indicate why they are not acceptable.

4. What steps are being taken to foster competition in future purchases of this product or service?

Approved:

Department Head or designee

Date

Purchasing Agent or designee

Date

County of El Paso Purchasing Policies and Procedures
Exhibit G
LOCAL BUSINESS PREFERENCE POLICY APPLICATION for
BID NO. _____

For additional information, see the Local Business Preference Policy (attached).

A. Qualification as a Local Business. Where is your principal place of business?

Are you tax delinquent as to federal, state, or local taxes? _____

Are you registered to do business with the Texas Secretary of State? _____

___ Attach a copy of your current Franchise Tax Certificate on file with the Texas Secretary of State.

___ Attach a copy of your current Certificate of Account Status on file with the Texas Secretary of State.

If the above documents do not apply, explain why and provide the equivalent documents required by the Texas Secretary of State and/or Texas Business Organizations Code for your type of business entity.

B. Economic Development Opportunities.

How will the bid award lead to additional economic development opportunities for the County? *This information includes, but is not limited to, (1) The employment of County residents, and (2) Increased tax revenues to the local government. Such information shall be as appropriate to the type of bid, but may include, but is not limited to:*

- (i) bid amount as percentage of reported local annual sales/revenue, or total commodity sales;
- (ii) economic impact- number of employees added within past 12 months
- (iii) new jobs by salary category
- (iv) local annual property taxes paid

(You may attach your answer on a separate page, if you prefer).

C. No Subcontracting of Award.

The bidder may not subcontract the award, or any part of the award. Doing so will be grounds for termination of the contract and penalties. Agreed _____ Yes _____ No

D. Affidavit of Contributions to members of Commissioners Court.

Any and all political contributions by the bidder to members of Commissioners Court for the previous 12 months by the bidder, must be disclosed. This includes owners, principals or officers if the bidder is a corporation or other legal entity, must be disclosed. **Complete and sign the attached affidavit.**

E. Annual Report. If you are awarded the bid, you must provide the County, every September, a report of your revenues for the most recent year end, annual employment levels by wage brackets, the addition or deletion of capital assets in excess of \$1,000,000.00, and any other pertinent information that would affect the ability of your business to maintain its status as a going concern.

F. Agreement to "Buy Local."

If you are awarded the bid, you agree to give preference and priority to County manufacturers, suppliers, contractors and labor, except where not reasonably possible to do so without added expense, substantial

inconvenience, or sacrifice in operating efficiency. Your Annual Report (see Section E) must include a summary of the action taken by the company pursuant to the "Buy Local" Provision.

G. Confidentiality.

Information that is provided to the County in connection with an application or request for Local Business Preference shall be kept confidential and not be subjected to public disclosure except as required by law, the Texas Attorney General, or by an order of a court. Written information shall be released pursuant to a request under the Public Information Act, Chapter 552 of the Texas Government Code, as amended, by the officer for public information or his or her designee in accordance with the standards established under that act for confidentiality and closed records.

Name of Business _____

Name of Authorized Representative _____

Title of Authorized Representative _____

Signature of Authorized Representative _____

Date _____

County of El Paso Purchasing Policies and Procedures

Exhibit H

AFFIDAVIT OF CONTRIBUTIONS

To be completed by all vendors as described in section D of the local business preference application- By owner, if vendor is a sole proprietorship or all principals and officers if the vendor is a corporation or other legal entity

THE STATE OF _____) AFFIDAVIT

COUNTY OF _____)

BEFORE ME, the undersigned authority, on this day personally appeared _____, who, first upon oath being duly sworn, deposed and stated:

I am fully competent to make this affidavit, and the information contained herein is based upon my personal knowledge.

- 1. My name is_____. My title and principal place of business is_____.
2. For the period from January 1, _____ to the present, I made the following campaign contributions, gifts or any transfers of cash, checks or anything of value to any member of the County of El Paso Commissioners Court, any person related by marriage or birth to the County Commissioners or County Judge or any member of the County of El Paso administrative staff: (Provide Date, Amount or Cash Value of Gift, and Recipient's Name and Title): _____

[Add any additional information you think necessary or appropriate]

Affiant

The foregoing Affidavit was acknowledged before me on the _____ day of _____, 20____ by _____, (Name), _____(Title), both in his/her individual capacity and on behalf of _____ (Company).

Notary Public, State of _____

County of El Paso Purchasing Policies and Procedures

Exhibit I

CREDIT CARD USER'S AGREEMENT FORM

I, _____, from _____ Department request permission to:

- Use the El Paso County Purchasing Department credit card to make purchases on behalf of my department; or
- Check out/utilize the El Paso County Purchasing Department credit card to make purchases in my capacity as a designated buyer in the Purchasing Department.

As a temporary Cardholder, I agree to comply with the following terms and conditions related to use of the credit card.

I understand that El Paso County is ultimately liable to the credit card bank for all charges made on the credit card.

I acknowledge that I am liable for all charges for purchases that are made that are not in compliance with this Agreement or not in compliance with the El Paso County Purchasing Credit Card Policies and Procedures:

1. The procurement card SHALL NOT BE USED for the following:
 - a) Personal purchases.
 - b) A purchase that exceeds the purchase limit established by the Commissioners Court.
 - c) Entertainment expense.
 - d) Cash advances.
 - e) Telephone calls/monthly service.
2. A cardholder who makes unauthorized purchases, carelessly uses the credit card, or fails to turn in the appropriate documentation shall be liable for the total dollar amount of such unauthorized purchases, plus any administrative fee charged by the bank in connection with the misuse. The cardholder will also be subject to disciplinary action and potential termination from his/her job.
3. A Buyer that repeatedly forgets or does not sufficiently complete the credit card check out log will have their access to the credit card revoked.

If the Credit card is used in a manner not authorized by the Policies, I agree to notify the Purchasing Agent immediately. I understand that it is my responsibility to safeguard the Credit card and account number and that I am personally liable for any charges resulting from my failure to safeguard the Credit card and account number. If the Credit card is lost or stolen, I shall notify the Purchasing Agent and Credit card Issuer immediately.

I agree to return the Credit Card to the Purchasing Department immediately at the conclusion of the transaction.

I authorize the County Auditor to deduct the total dollar amount of all unauthorized purchases and other costs charged to the Credit Card that are made not in compliance with this Agreement or with the El Paso County Purchasing Credit Card Policies and Procedures from my paycheck.

Pursuant to Local Government Code Section 154.045, the Undersigned County Official or Employee acknowledges that the failure of the El Paso County Commissioners Court to approve any credit card expenditures of the Undersigned County Official or Employee constitutes a debt to the County of El Paso and authorizes the County of El Paso to withhold payment of the Undersigned County Official's or Employee's salary compensation to the extent of the above debt.

Employee Signature

Employee ID#

Date

Department

--	--	--	--

County of El Paso Purchasing Policies and Procedures

Exhibit: J

INSURANCE REQUIREMENTS

PROOF OF INSURANCE

Successful bidder agrees to keep in full force and effect, a policy of public liability and property damage insurance issued by a casualty company authorized to do business in the State of Texas, and in standard form approved by the Board of Insurance Commissioners' of the State of Texas, with coverage provision insuring the public from any loss or damage that may arise to any person or property by reason of services limits of not less than the following sums:

INSURANCE REQUIREMENTS FOR CONSTRUCTION AND OTHER SERVICES PROVIDED TO THE COUNTY OF EL PASO

GENERAL LIABILITY:

- \$1,000,000 – Each Occurrence
- \$1,000,000 – General Aggregate
- \$1,000,000 – Personal & Advertising Injury
- \$1,000,000 – Products/Completed Operations – Aggregate
- \$5,000 – Premises Medical Expense
- \$500,000 – Damage to Rented Premises (each occurrence)

County named as “Additional Insured”
Waiver of Subrogation

AUTOMOBILE:

- \$1,000,000 – Each Occurrence

County named as “Additional Insured”
Waiver of Subrogation

WORKERS COMPENSATION:

- \$1,000,000 – Employers Liability – Each Accident
- \$1,000,000 – Employers Liability – Each Employee
- \$1,000,000 – Employers Liability – Disease – Policy Limit

Statutory Limits
Waiver of Subrogation

CONSTRUCTION PROJECTS

The contractor shall take out, pay for, and maintain at all times during the prosecution of the work under the contract, the following forms of insurance, in carriers acceptable to and approved by El Paso County:

1. Worker’s Compensation
 - a. Statutory limit
 - b. Each accident - \$1,000,000
 - c. Each Employee- \$1,000,000
 - d. Policy Limit - \$1,000,000
 2. Employer’s Liability - \$500,000.
 3. Comprehensive Commercial General Liability:
Please refer to contract for specified limits (limits are established based on size of project)
 4. Automobile Liability: \$1,000,000 combined single limit
 5. Contractual Liability – same limits as above.
-

The County reserves the right to review the insurance requirements during the effective period of the contract and to require adjustment of insurance coverage and their limits when deemed necessary and prudent by the County based upon changes in statutory law, court decisions, or the claims history of the industry as well as the contractor.

CONSTRUCTION additional requirements: Builders Risk Policy for total amount of completed project Bid Bond, Performance and Payment Bond

The Contractor/Vendor is responsible for making sure any sub-contractor(s) performing work under this agreement has the required insurance coverage(s) and supplies County of El Paso with the proper documents verifying the coverage.

Any large project or one involving a higher hazard, an additional "follow form" umbrella limit may be required.

Endorsement CG 2294 not acceptable. Vendor must specifically and affirmatively state in their bid response that the Endorsement CG 2294 is not included in Vendor's insurance policy.

PROFESSIONAL SERVICES additional requirements: Limit of \$1,000,000 for E&O/Professional Insurance.

CERTIFICATE OF LIABILITY INSURANCE

In the remarks section should include job description or project name and/or number. Successful bidder shall carry in full force Workers' Compensation Insurance Policy (ies), if there is more than one employee, for all employees, including but not limited to full time, part time, and emergency employees employed by the successful bidder. Current insurance Certificates certifying that such policies as specified above are in full force and effect shall be furnished by successful bidder to the County. Insurance is to be placed with insurers having a best rating of no less than A. The Bidder shall furnish the County with certificates of insurance and original endorsements affecting coverage required by these insurance clauses within ten (10) business days of execution of this contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The Bidder shall be required to submit annual renewals for the term of this contract prior to expiration of any policy.

In addition to the remedies stated herein, the County has the right to pursue other remedies permitted by law or in equity. The County agrees to provide Bidder with reasonable and timely notice of any claim, demand, or cause of action made or brought against the County arising out of or related to utilization of the property.

Proposer shall have the right to defend any such claim, demand or cause of action at its sole cost and expense and within its sole and exclusive discretion. The County agrees not to compromise or settle any claim or cause of action arising out of or related to the utilization of the property without the prior written consent of the Bidder.

In no event shall the County be liable for any damage to or destruction of any property belonging to the Bidder.

County of El Paso shall be listed as the additional insured on policy certificates and shall be notified of changes to the policy during the contractual period.

El Paso County Code of Ethics Training Affidavit

(This form must be signed by an officer, principal, or individual authorized to bind the company under a contract with the County.)

IN COMPLIANCE WITH CHAPTER 161 OF THE TEXAS LOCAL GOVERNMENT CODE, ANY VENDOR INVOLVED IN A SINGLE PROCUREMENT EXCEEDING \$50,000 MUST COMPLETE THE ENCLOSED ETHICS TRAINING BEFORE SUBMITTING A BID OR PROPOSAL WITH THE COUNTY OF EL PASO.

Purpose: The stability of democracy depends upon the continuing consent of the governed, which in turn depends upon the trust the electorate holds for its government. The Ethics Commission of the County of El Paso, Texas, in concert with elected county officials, as well as leaders of the various county departments, recognizes the need to maintain the public trust and confidence in the workings of county government and thus adopts this Code of Ethics.

What is a vendor?

Any person or their representative or employee whose goods and services are purchased under the terms of a purchase order or contractual agreement with the county; and any other persons doing business with the County.

Procurement: In advising upon, discussing, recommending, and/or granting any County purchases, bids or contracts, County public servants shall inform themselves about their financial interests, and shall make a reasonable effort to inform themselves about the financial interest of their family members.

County public servants shall excuse themselves from exercising influence, participating in, discussing, recommending, and/or granting of any County purchases, bids, or contracts if they or a family member have a substantial financial interest.

Private Communication: No member of the El Paso County Commissioners Court, County Elected Officials/Department Heads or the El Paso County Hospital District Board of Managers shall permit any vendor, its lobbyists, representative, or employee to communicate with him privately regarding any procurement of items by the County or the Hospital District from the date that the bid, RFP, or RFQ is authorized or released, whichever is first. No private communication regarding the purchase shall be permitted by a member of the Commissioners Court, a county elected official/department head, or hospital district board of managers until the procurement process is complete and a purchase order is granted or a contract is entered into.

Members of the Commissioners Court, county elected officials/department heads and the board of managers shall make a reasonable effort to inform themselves regarding procurements and shall have a duty to inquire of vendors, their lobbyists,

El Paso County Code of Ethics Training Affidavit (continued)

representatives, or employees, the nature of the private communication being sought prior to engaging in any communication

This prohibition against private communication with vendors, their lobbyists, representatives, or employees shall apply to Commissioners Court approval of hospital district purchases.

I _____ am an officer, principal, or individual
(Full Name)

authorized to bind the company, known as

(Company name)

By reading and signing this document, I confirm that I have been trained in the County of El Paso's Code of Ethics. I understand that any contact by myself or any representative of the company with a County of El Paso official or county employee, other than those shown on the RFP or bid documents shall cause the bid or proposal to be immediately disqualified from consideration of award.

Name_____

Title_____

Company Name_____

Address_____

Signature_____

Date_____

**TXDOT Standard Specifications for Construction and
Maintenance of Highways, Streets, and Bridges
2014 Modified Items**

1L-9L modifies Item 1-9 to meet all local, state, and federal statutory requirements for projects Let by Local Governments [As this Document modifies TxDOT publication “Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges 2014”]. In general, the Owner” or the “Engineer” references the El Paso County or their representatives (Consulting Engineers, etc.) Reference to “Department” or “Engineer” in the construction and maintenance specifications refers to the El Paso County except when it is referencing a TxDOT Application, manual, material specification, Material Producers List or test method.

Foreword

OUTLINE OF SPECIFICATIONS

Each specification is outlined by articles and sections. The basic articles required for a specification are:

1. DESCRIPTION
2. MATERIALS
3. EQUIPMENT
4. CONSTRUCTION OR WORK METHODS
5. MEASUREMENT
6. PAYMENT

Some articles are not used in every item. Measurement and Payment articles are combined when the work described is subsidiary to bid items of the Contract.

HIERARCHY OF ORGANIZATIONAL ELEMENTS

Here “XXX” represents the item number. The hierarchy of organizational elements available below the item level is as follows:

- XXX.1., Article
- XXX.1.1., Section
- XXX.1.1.1., Section
- XXX.1.1.1.1., Section
- XXX.1.1.1.1.1., Section
- XXX.1.1.1.1.1.1., Section

The term section is used for all breaks below the article.

Items 1L-9L

Local Government General Requirements and
Covenants

Introduction

Local Government General Requirements

For all projects with State or Federal funds, and/or all projects on the State Highway System regardless of funding source, a Local Government must either adopt the latest TxDOT Standard Specifications, Special Specifications, and required Special Provisions or request TxDOT written approval of alternate, equivalent specifications. TxDOT's *"2014 Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges"* are the latest TxDOT Standard Specifications. These "General Requirements" along with additional requirements specified by the particular local government, are intended as a template for Item 1-9 in TxDOT's Standard Specifications on projects let by a local government that is on the State Highway System or includes reimbursement to the local government using FHWA or TxDOT funds.

This document is intended to be used as a template that allows the local government to modify Item 1-9 to meet their particular needs while assuring that all local, state, and federal statutory requirements are addressed. As this document modifies a TxDOT publication, there may be a question about terminology. In general, the "Owner" or the "Engineer" references the local government or their representatives (Consulting Engineers, etc.) Reference to "Department" or "Engineer" in the construction and maintenance specifications refers to the local government except when it is referencing a TxDOT specification, manual, material specification, Material Producers List or test method.

Foreword

OUTLINE OF SPECIFICATIONS

Each specification is outlined by articles and sections. The basic articles required for a specification are:

1. DESCRIPTION
2. MATERIALS
3. EQUIPMENT
4. CONSTRUCTION OR WORK METHODS
5. MEASUREMENT
6. PAYMENT

Some articles are not used in every item. Measurement and Payment articles are combined when the work described is subsidiary to bid items of the Contract.

HIERARCHY OF ORGANIZATIONAL ELEMENTS

Here "XXX" represents the item number. The hierarchy of organizational elements available below the item level is as follows:

XXX.1., Article

XXX.1.1., Section

XXX.1.1.1., Section

XXX.1.1.1.1., Section

XXX.1.1.1.1.1., Section

XXX.1.1.1.1.1.1., Section

The term section is used for all breaks below the article.

Items 1L-9L

Local Government General Requirements and
Covenants

Item 1L

Abbreviations and Definitions

1. APPLICABILITY

Wherever the following terms are used in these specifications or other Contract documents, the intent and meaning will be interpreted as shown below.

2. ABBREVIATIONS

AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ACPA	American Concrete Pipe Association
AI	Asphalt Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
ALSC	American Lumber Standard Committee, Inc.
AMRL	AASHTO Materials Reference Laboratory
ANLA	American Nursery and Landscape Association
ANSI	American National Standards Institute
APA	The Engineered Wood Association
API	American Petroleum Institute
APWA	American Public Works Association
AREMA	American Railway Engineering and Maintenance-of-Way Association
ASBI	American Segmental Bridge Institute
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASNT	American Society for Nondestructive Testing
ASTM	American Society for Testing and Materials
AWC	American Wood Council
AWG	American Wire Gage
AWPA	American Wood Protection Association
AWPI	American Wood Preservers Institute
AWS	American Welding Society
AWWA	American Water Works Association
BMP	Best Management Practices
CFR	Code of Federal Regulations
CMP	Corrugated Metal Pipe
COE	U.S. Army Corps of Engineers
CRSI	Concrete Reinforcing Steel Institute
DBE	Disadvantaged Business Enterprise
DMS	Departmental Material Specification
EIA	Electronic Industries Alliance
EPA	United States Environmental Protection Agency
FHWA	Federal Highway Administration, U.S. Department of Transportation
FSS	Federal Specifications and Standards (General Services Administration)
GSA	United States General Services Administration
HUB	Historically Underutilized Business
ICEA	Insulated Cable Engineers Association
IEEE	Institute of Electrical and Electronics Engineers
IESNA	Illuminating Engineering Society of North America

IMSA	International Municipal Signal Association
ISO	International Organization for Standardization
ITS	Intelligent Transportation System
ITE	Institute of Transportation Engineers
LG	Local Government
LRFD	Load and Resistance Factor Design
MASH	Manual for Assessing Safety Hardware
MPL	Material Producer List (TxDOT document)
NCHRP	National Cooperative Highway Research Program
NCR	Nonconformance Report (TxDOT form)
NEC	National Electrical Code (Published by NFPA)
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act
NESC	National Electrical Safety Code
NFPA	National Fire Protection Association
NIST	National Institute of Standards and Technology
NRM	Nonhazardous Recyclable Material
NRMCA	National Ready Mixed Concrete Association
NSBA	National Steel Bridge Alliance
NTPEP	National Transportation Product Evaluation Program
OSHA	Occupational Safety & Health Administration, U.S. Department of Labor
PCA	Portland Cement Association
PCI	Precast/Prestressed Concrete Institute
PE	Professional Engineer
PPI	Plastics Pipe Institute
PS&E	Plans, Specifications, and Estimates
PSL	Project-Specific Location
PTI	Post-Tension Institute
QA	Quality Assurance
QC	Quality Control
RCP	Reinforced Concrete Pipe
RPLS	Registered Public Land Surveyor
RRC	Railroad Commission of Texas
SBE	Small Business Enterprise
SFPA	Southern Forest Products Association
SI	International System of Units
SPIB	Southern Pine Inspection Bureau
SSPC	The Society for Protective Coatings
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
TDLR	Texas Department of Licensing and Regulation
TGC	Texas Government Code
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TxDOT	Texas Department of Transportation
UL	Underwriters Laboratory, Inc.
USC	United States Code
WRI	Wire Reinforcement Institute
WWPA	Western Wood Products Association

3. DEFINITIONS

- 3.1. Abrasive Blasting. Spraying blasts of pressurized air combined with abrasive media.
- 3.2. Actual Cost. Contractor's actual cost to provide labor, material, equipment, and project overhead necessary for the work.
- 3.3. Addendum. Change in bid documents developed between advertising and bid submittal deadline.

- 3.4. **Additive Alternate.** A bid item contained in the bid documents that is not a regular item or a replacement alternate bid item. The additive alternate items include work that may be added to the base bid work.
- 3.5. **Deductive Alternate.** A bid item contained in the bid documents that is not a regular item or a replacement alternate bid item. The deductive alternate items include work that may be deducted from the base bid work.
- 3.6. **Advertisement.** The public announcement required by law inviting bids for work to be performed or materials to be furnished.
- 3.7. **Affiliates.** Two or more firms are affiliated if they share common officers, directors, or stockholders; a family member of an officer, director, or stockholder of one firm serves in a similar capacity in another of the firms; an individual who has an interest in, or controls a part of, one firm either directly or indirectly also has an interest in, or controls a part of, another of the firms; the firms are so closely connected or associated that one of the firms, either directly or indirectly, controls or has the power to control another firm; one firm controls or has the power to control another of the firms; or the firms are closely allied through an established course of dealings, including, but not limited to, the lending of financial assistance.
- 3.8. **Air Blasting.** Spraying blasts of pressurized air free of oil and moisture.
- 3.9. **Air Temperature.** The temperature measured in degrees Fahrenheit (°F) in the shade, not in the direct rays of the sun, and away from artificial heat.
- 3.10. **Anticipated Profit.** Profit for work not performed.
- 3.11. **Apparent Low Bidder.** The Bidder determined to have the numerically lowest total bid as a result of the tabulation of bids by the Owner.
- 3.12. **Architect of Record.** A person registered as an architect or licensed as a landscape architect, in accordance with State law, exercising overall responsibility for the design or a significant portion of the design and performs certain Contract administration responsibilities as described in the Contract; or a firm employed by the Owner to provide professional architectural services.
- 3.13. **Arterial Highway.** A highway used primarily for through traffic and usually on a continuous route.
- 3.14. **Notice of Award.** The Owner's acceptance of a Contractor's bid for a proposed Contract that authorizes the Owner to enter into a Contract.
- 3.15. **Base Bid.** The total bid amount without additive alternates.
- 3.16. **Bid.** The offer from the Bidder for performing the work described in the bid documents, submitted on the prescribed bid form, considering addenda issued and giving unit bid prices for performing the work described in the bid documents.
- 3.17. **Bid Bond.** The security executed by the Contractor and the Surety furnished to the Owner to guarantee payment of liquidated damages if the Contractor fails to enter into an awarded Contract.
- 3.18. **Bid Documents.** The complete set of documents necessary for a Bidder to submit a bid. The documents may include plans, specifications, special specifications, special provisions, addenda, and the prescribed form a Bidder is to submit as the Bid. Other terms used may include general conditions, proposal, instructions to bidders, and construction specifications.
- 3.19. **Bid Error.** A mathematical mistake made by a Bidder in the unit price entered into the bid documents.
- 3.20. **Bid Form.** The portion of the bid documents that a prospective Bidder must submit to the Owner for their bid to be considered.

- 3.21. **Bidder.** An individual, partnership, limited liability company, corporation, or joint venture submitting a bid for a proposed Contract.
- 3.22. **Blast Cleaning.** Using one of the blasting methods, including, but not limited to, water blasting, low-pressure water blasting, high-pressure water blasting, abrasive blasting, water-abrasive blasting, shot blasting, slurry blasting, water injected abrasive blasting, and brush blasting.
- 3.23. **Bridge.** A structure, including supports, erected over a depression or an obstruction (e.g., water, a highway, or a railway) having a roadway or track for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 ft. between faces of abutments, spring lines of arches, or extreme ends of the openings for multiple box culverts.
- 3.24. **Brush Blasting.** Sweeping lightly with an abrasive blast to remove loose material.
- 3.25. **Building Contract.** A Contract entered under State law for the construction or maintenance of an Owner building or appurtenance facilities. Building Contracts are considered to be construction Contracts.
- 3.26. **Certificate of Insurance.** A form approved by the Owner covering insurance requirements stated in the Contract.
- 3.27. **Change Order.** Written order to the Contractor detailing changes to the specified work, item quantities or any other modification to the Contract.
- 3.28. **Concrete Construction Joint.** A joint formed by placing plastic concrete in direct contact with concrete that has attained its initial set.
- 3.29. **Concrete Repair Manual.** TxDOT manual specifying methods and procedures for concrete repair as an extension of the standard specifications.
- 3.30. **ConcreteWorks®.** TxDOT-owned software for concrete heat analysis. Software is available on the TxDOT's website.
- 3.31. **Construction Contract.** A Contract entered under State law for the construction, reconstruction, or maintenance of a segment of the Owner's transportation system.
- 3.32. **Consultant.** The licensed professional engineer or engineering firm, or the architect or architectural firm, registered in the State of Texas and under Contract to the Owner to perform professional services. The consultant may be the Engineer or architect of record or may provide services through and be subcontracted to the Engineer or architect of record.
- 3.33. **Contract.** The agreement between the Owner and the Contractor establishing the obligations of the parties for furnishing of materials and performance of the work prescribed in the Contract documents.
- 3.34. **Contract Documents.** Elements of the Contract, including, but not limited to, the plans, specifications incorporated by reference, special provisions, special specifications, Contract bonds, change orders, addendums, and supplemental agreements.
- 3.35. **Contract Time.** The number of days specified for completion of the work, including authorized additional working days.
- 3.36. **Contractor.** The individual, partnership, limited liability company, corporation, or joint venture and all principals and representatives with which the Contract is made by the Owner.
- 3.37. **Controlled Access Highway.** Any highway to or from which access is denied or controlled, in whole or in part, from or to abutting land or intersecting streets, roads, highways, alleys, or other public or private ways.

- 3.38. **Control of Access.** The condition in which the right to access of owners or occupants of abutting land or other persons in connection with a highway is fully or partially controlled by public authority.
- 3.39. **Control Point.** An established point shown on the plans to provide vertical and horizontal references for geometric control for construction.
- 3.40. **Cross-Sections.** Graphic representations of the original ground and the proposed facility, at right angles to the centerline or base line.
- 3.41. **Culvert.** Any buried structure providing an opening under a roadway for drainage or other purposes. Culverts may also be classified as bridges. (See Section 1.3.23., "Bridge.")
- 3.42. **Cycle.** The activity necessary for performing the specified work within the right of way project limits once.
- 3.43. **Daily Road-User Cost.** Damages based on the estimated daily cost of inconvenience to the traveling public resulting from the work.
- 3.44. **Date of Written Authorization.** Date of the written Notice to Proceed authorizing the Contractor to begin work.
- 3.45. **Debar (Debarment).** Action taken by the Owner, State, or federal government pursuant to regulation that prohibits a person or company from entering into a Contract, or from participating as a subcontractor, or supplier of materials or equipment used in a highway improvement Contract as defined in local, state, or federal law.
- 3.46. **Detour.** A temporary traffic route around a closed portion of a road.
- 3.47. **Department.** When used in the context of the party with whom the Contractor has a Construction Contract, Department refers to Owner. When used in other contexts such as technical specifications, refers to the Texas Department of Transportation.
- 3.48. **Departmental Material Specifications.** Reference specifications for various materials published by TxDOT's Construction Division with a DMS-XXXXX numbering system.
- 3.49. **Direct Traffic Culvert.** Concrete box culvert whose top slab is used as the final riding surface or is to have an overlay or other riding surface treatment.
- 3.50. **Disadvantaged Business Enterprise.** A small business certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26, that is at least 51% owned by one or more socially and economically disadvantaged individuals, or in the case of a publicly owned business, in which is at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals, and whose management and daily business operations are controlled by one or more of the individuals who own it.
- 3.51. **Divided Highway.** A highway with separate roadways intended to move traffic in opposite directions.
- 3.52. **Easement.** A real property right acquired by one party to use land belonging to another party for a specified purpose.
- 3.53. **Engineer.** The Professional Engineer licensed in Texas who represents the interests of the Owner.
- 3.54. **Entity.** Political subdivision for which the project is designed and constructed. Either a Municipality (City) or a County or other entity organized under the authority of State of Texas statutes. May also be referred to as an Owner.
- 3.55. **Expressway.** A divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections.

- 3.56. **Family Member.** A family member of an individual is the individual's parent, parent's spouse, step-parent, step-parent's spouse, sibling, sibling's spouse, spouse, child, child's spouse, spouse's child, spouse's child's spouse, grandchild, grandparent, uncle, uncle's spouse, aunt, aunt's spouse, first cousin, or first cousin's spouse.
- 3.57. **Force Account.** Payment for directed work based on the actual cost of labor, equipment, and materials furnished with markups for project overhead and profit.
- 3.58. **Freeway.** An expressway with full control of access.
- 3.59. **Frontage Road.** A local street or road auxiliary to and located along an arterial highway for service to abutting property and adjacent areas and for control of access (sometimes known as a service road, access road, or insulator road).
- 3.60. **Hazardous Materials or Waste.** Hazardous materials or waste include, but are not limited to, explosives, compressed gas, flammable liquids, flammable solids, combustible liquids, oxidizers, poisons, radioactive materials, corrosives, etiologic agents, and other material classified as hazardous by 40 CFR 261, or applicable state and federal regulations.
- 3.61. **High-Pressure Water Blasting.** Water blasting with pressures between 5,000 and 10,000 psi.
- 3.62. **Highway, Street, or Road.** General terms denoting a public way for purposes of vehicular travel, including the entire area within the right of way. Recommended usage in urban areas is highway or street; in rural areas, highway or road.
- 3.63. **Historically Underutilized Business.** A corporation, sole proprietorship, partnership, or joint venture formed for the purpose of making a profit certified by the Texas Comptroller of Public Accounts, and 51% owned by one or more persons who are economically disadvantaged because of their identification as members of certain groups, including African Americans, Hispanic Americans, Asian-Pacific Americans, Native Americans, or women, and have a proportionate interest and demonstrate active participation in the control, operation, and management of the business' affairs. Individuals meeting the HUB definition are required to be residents of the State of Texas. Businesses that do not have their primary headquarters in the State of Texas are not eligible for HUB certification.
- 3.64. **Incentive/Disincentive Provisions.** An adjustment to the Contract price of a predetermined amount for each day the work is completed ahead of or behind the specified milestone, phase, or Contract completion dates. The amount of the incentive/disincentive is determined based on estimated costs for engineering, traffic control, delays to the motorists, and other items involved in the Contract.
- 3.65. **Independent Assurance Tests.** Tests used to evaluate the sampling and testing techniques and equipment used in the acceptance program. The tests are performed by the Owner or the Owner's representative and are not used for acceptance purposes.
- 3.66. **Inspector.** The person assigned by the Owner to inspect any or all parts of the work and the materials used for compliance with the Contract.
- 3.67. **Intelligent Transportation System.** An integrated system that uses video and other electronic detection devices to monitor traffic flows.
- 3.68. **Intersection.** The general area where 2 or more highways, streets, or roads join or cross, including the roadway and roadside facilities for traffic movements within it.
- 3.69. **Island.** An area within a roadway from which vehicular traffic is intended to be excluded, together with any area at the approach occupied by protective deflecting or warning devices.
- 3.70. **Joint Venture.** Any combination of individuals, partnerships, limited liability companies, or corporations submitting a single bid form.

- 3.71. **Lane Rental.** A method to assess the Contractor daily or hourly rental fees for each lane, shoulder, or combination of lanes and shoulders taken out of service.
- 3.72. **Letting.** The receipt, opening, tabulation, and determination of the apparent low Bidder.
- 3.73. **Letting Official.** The Owner representative empowered by the Owner to officially receive bids and close the receipt of bids at a letting.
- 3.74. **Licensed Professional Engineer.** A person who has been duly licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas; also referred to as a Professional Engineer.
- 3.75. **Limits of Construction.** An area with established boundaries, identified within the highway right of way and easements, where the Contractor is permitted to perform the work.
- 3.76. **Local Street or Road.** A street or road primarily for access to residence, business, or other abutting property.
- 3.77. **Low-Pressure Water Blasting.** Water blasting with pressures between 3,000 and 5,000 psi.
- 3.78. **Major Item.** An item of work included in the Contract that has a total cost equal to or greater than 5% of the original Contract or \$100,000 whichever is less. A major item at the time of bid will remain a major item. An item not originally a major item does not become one through the course of the Contract.
- 3.79. **Material Producer List.** TxDOT-maintained list of approved products. Referenced as "Department's MPL".
- 3.80. **Materially Unbalanced Bid.** A bid that generates a reasonable doubt that award to the Bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Owner.
- 3.81. **Mathematically Unbalanced Bid.** A bid containing bid prices that do not reflect reasonable actual costs plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs.
- 3.82. **Median.** The portion of a divided highway separating the traffic lanes in opposite directions.
- 3.83. **Milestone Date.** The date that a specific portion of the work is to be completed, before the completion date for all work under the Contract.
- 3.84. **Monolithic Concrete Placement.** The placement of plastic concrete in such manner and sequence to prevent a construction joint.
- 3.85. **National Holidays.** January 1, the last Monday in May, July 4, the first Monday in September, the fourth Thursday in November, and December 24 or December 25.
- 3.86. **Nonhazardous Recyclable Material.** A material recovered or diverted from the nonhazardous waste stream for the purposes of reuse or recycling in the manufacture of products that may otherwise be produced using raw or virgin materials.
- 3.87. **Nonresident Bidder.** A Bidder whose principal place of business is not in Texas. This includes a Bidder whose ultimate parent company or majority owner does not have its principal place of business in Texas.
- 3.88. **Nonresponsive Bid.** A bid that does not meet the criteria for acceptance contained in the bid documents.
- 3.89. **Non-Site-Specific Contracts.** Contracts in which a geographic region is specified for the work and for which work orders, with or without plans, further detail the limits and work to be performed.
- 3.90. **Notice to Proceed,** Written notification to the Contractor authorizing work to begin.

- 3.91. **Notification.** Either written or oral instruction to the Contractor concerning the work. Voice mail is oral notification.
- 3.92. **Owner,** Political subdivision for whom the project is designed and constructed. Either a Municipality (City), a County or other entity organized under the authority of State of Texas statutes. May also be referred to as an **Entity.**
- 3.93. **Pavement.** That part of the roadway having a constructed surface for the use of vehicular traffic.
- 3.94. **Pavement Structure.** Combination of surface course and base course placed on a subgrade to support the traffic load and distribute it to the roadbed.
- 3.94.1. **Surface Course.** Pavement structure layers designed to accommodate the traffic load. The top layer resists skidding, traffic abrasion, and the disintegrating effects of climate and is sometimes called the wearing course.
- 3.94.2. **Base Course.** One or more layers of specified material thickness placed on a subgrade to support a surface course.
- 3.94.3. **Subgrade.** The top surface of a roadbed upon which the pavement structure, shoulders, and curbs are constructed.
- 3.94.4. **Subgrade Treatment.** Modifying or stabilizing material in the subgrade.
- 3.95. **Payment Bond.** The security executed by the Contractor and the Surety, furnished to the Owner to guarantee payment of all legal debts of the Contractor pertaining to the Contract.
- 3.96. **Performance Bond.** The security executed by the Contractor and the Surety, furnished to the Owner to guarantee the completion of the work in accordance with the terms of the Contract.
- 3.97. **Plans.** The approved drawings, including true reproductions of the drawings that show the location, character, dimensions, and details of the work and are a part of the Contract.
- 3.98. **Power of Attorney for Surety Bonds.** An instrument under corporate seal appointing an attorney-in-fact to act on behalf of a Surety in signing bonds.
- 3.99. **Qualification.** The process for determining a Contractor's eligibility to be awarded a construction contract
- 3.100. **Prequalification.** The process for determining a Contractor's eligibility to bid work.
- 3.101. **Prequalification Statement.** The forms on which required information is furnished concerning the Contractor's ability to perform and finance the work.
- 3.102. **Prequalified Contractor.** A contractor that is approved to bid on TxDOT contracts by satisfying their Prequalification Process.
- 3.103. **Post Qualification.** The owner will determine if contractors are qualified to bid on the project after bids are open. The bid documents will identify the minimum requirements that contractor must meet to be qualified for the project. Unqualified contractors' bids will be considered non-responsive and not accepted.
- 3.104. **Project-Specific Location.** A material source, plant, waste site, parking area, storage area, field office, staging area, haul road, or other similar location either outside the project limits or within the project limits but not specifically addressed in the Contract.
- 3.105. **Proposal Guaranty.** The security furnished by the Bidder as a guarantee that the Bidder will enter into a Contract if awarded the work.

- 3.106. **Quality Assurance.** Sampling, testing, inspection, and other activities conducted by the Engineer to determine payment and make acceptance decisions.
- 3.107. **Quality Control.** Sampling, testing, and other process control activities conducted by the Contractor to monitor production and placement operations.
- 3.108. **Ramp.** A section of highway for the primary purpose of making connections with other highways.
- 3.109. **Referee Tests.** Tests requested to resolve differences between Contractor and Owner test results. The referee laboratory is the Owners .
- 3.110. **Regular Item.** A bid item contained in the bid documents and not designated as an additive alternate or replacement alternate bid item.
- 3.111. **Rental Rate Blue Book for Construction Equipment.** Publication containing equipment rental rates.
- 3.112. **Replacement Alternate.** A bid item identified on the bid documents that a Bidder may substitute for a specific regular item of work.
- 3.113. **Responsive Bid.** A bid that meets all requirements of the advertisement and the bid documents for acceptance.
- 3.114. **Right of Way.** A general term denoting land or property devoted to transportation purposes.
- 3.115. **Roadbed.** The graded portion of a highway prepared as foundation for the pavement structure and shoulders. On divided highways, the depressed median type and the raised median type highways are considered to have 2 roadbeds. Highways with a flush median are considered to have 1 roadbed. Frontage roads are considered separate roadbeds.
- 3.116. **Road Master.** A railroad maintenance official in charge of a division of railway.
- 3.117. **Roadside.** The areas between the outside edges of the shoulders and the right of way boundaries. Unpaved median areas between inside shoulders of divided highways and areas within interchanges are included.
- 3.118. **Roadway.** The portion of the highway (including shoulders) used by the traveling public.
- 3.119. **Sandblasting, Dry.** Spraying blasts of pressurized air combined with sand.
- 3.120. **Sandblasting, Wet.** Spraying blasts of pressurized water combined with sand.
- 3.121. **Shoulder.** That portion of the roadway contiguous with the traffic lanes for accommodation of stopped vehicles for emergency use or for lateral support of base and surface courses.
- 3.122. **Shot Blasting.** Spraying blasts of pressurized air combined with metal shot.
- 3.123. **Sidewalk.** Portion of the right of way constructed exclusively for pedestrian use.
- 3.124. **Slurry Blasting.** Spraying blasts of pressurized air combined with a mixture of water and abrasive media.
- 3.125. **Special Provisions.** Additions or revisions to these standard specifications or special specifications.
- 3.126. **Special Specifications.** Supplemental specifications applicable to the Contract not covered by these standard specifications.
- 3.127. **Specifications.** Directives or requirements issued or made pertaining to the method and manner of performing the work or to quantities and qualities of materials to be furnished under the Contract. References to DMSs, ASTM or AASHTO specifications, or TxDOT bulletins and manuals, imply the latest standard or

tentative standard in effect on the date of the bid. The Owner will consider incorporation of subsequent changes to these documents in accordance with Item 4L, "Scope of Work."

- 3.128. **Small Business Enterprise.** A firm (including affiliates) whose annual gross receipts do not exceed the U.S. Small Business Administration's size standards for 4 consecutive years.
- 3.129. **State.** The State of Texas.
- 3.130. **State Holiday.** A holiday authorized by the State Legislature excluding optional state holidays and not listed in Section 1.3.85., "National Holidays." A list of state holidays can be found on the TxDOT's website.
- 3.131. **Station.** A unit of measurement consisting of 100 horizontal feet.
- 3.132. **Subcontract.** The agreement between the Contractor and subcontractor establishing the obligations of the parties for furnishing of materials and performance of the work prescribed in the Contract documents.
- 3.133. **Subcontractor.** An individual, partnership, limited liability company, corporation, or any combination thereof that the Contractor sublets, or proposes to sublet, any portion of a Contract, excluding a material supplier, a hauling firm hauling only from a commercial source to the project, truck owner-operator, wholly-owned subsidiary, or specialty-type businesses such as security companies and rental companies.
- 3.134. **Subsidiary.** Materials, labor, or other elements that because of their nature or quantity have not been identified as a separate item and are included within the items on which they necessarily depend.
- 3.135. **Substructure.** The part of the structure below the bridge seats, but not including bearings, drilled shafts, or piling. Parapets, back walls, wing walls of the abutments, and drainage structures are considered parts of the substructure.
- 3.136. **Superintendent.** The representative of the Contractor who is available at all times and able to receive instructions from the Owner or authorized Owner representatives and to act for the Contractor.
- 3.137. **Superstructure.** The part of the structure above the bridge seats or above the springing lines of arches and including the bearings. Flatwork construction may be considered superstructure.
- 3.138. **Supplemental Agreement.** Written agreement entered into between the Contractor and the Owner and approved by the Surety, covering alterations and changes in the Contract. A supplemental agreement is used by the Owner whenever the modifications include assignment of the Contract from one party to another or other cases as desired by the Owner.
- 3.139. **Surety.** The corporate body or bodies authorized to do business in Texas bound with and for the Contractor for the faithful performance of the work covered by the Contract and for the payment for all labor and material supplied in the prosecution of the work.
- 3.140. **Surplus Materials.** Any debris or material related to the Contract but not incorporated into the work.
- 3.141. **Suspension.** Action taken by the Owner, State, or federal government pursuant to regulation that prohibits a person or company from entering into a Contract, or from participating as a subcontractor, or supplier of materials or equipment used in a contract
- 3.142. **Tex –XXX-X.** TxDOT material test methods found on TxDOT's Construction Division Web Site.
- 3.143. **Traffic Lane.** The strip of roadway intended to accommodate the forward movement of a single line of vehicles.
- 3.144. **Traveled Way.** The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

- 3.145. **Truck Owner-Operator.** An individual who owns and operates 1 truck for hire.
- 3.146. **UT-Bridge.** TxDOT-owned software for steel girder erection. Software is available on TxDOT's website.
- 3.147. **UT-Lift.** TxDOT-owned software for steel girder erection. Software is available on TxDOT's website.
- 3.148. **Utility.** Privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, heat, gas, oil, water, waste, or storm water that are not connected with the highway drainage, signal systems, or other products that directly or indirectly serve the public; the utility company.
- 3.149. **Verification Tests.** Tests used to verify accuracy of QC and QA and mixture design testing.
- 3.150. **Water-Abrasive Blasting.** Spraying blasts of pressurized water combined with abrasive media.
- 3.151. **Water Blasting.** Spraying blasts of pressurized water of at least 3,000 psi.
- 3.152. **Water-Injected Abrasive Blasting.** Abrasive blasting with water injected into the abrasive/air stream at the nozzle.
- 3.153. **Wholly-Owned Subsidiary.** A legal entity owned entirely by the Contractor or subcontractor.
- 3.154. **Work.** The furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of the Contract.
- 3.155. **Written Notice.** Written notice is considered to have been duly given if delivered in person to the individual or member to whom it is intended or if sent by regular, registered, or certified mail and delivered to the last known business address; sent by facsimile to the last known phone number; or sent by e-mail to the last known address. The date of the letter will serve as the beginning day of notice. Unclaimed mail or failure to provide current mailing address will not be considered a failure to provide written notice.

Item 2L

Instructions to Bidders

1. INTRODUCTION

Instructions to the Contractor in these specifications are generally written in active voice, imperative mood. The subject of imperative sentences is understood to be "the Contractor." The Owner's responsibilities are generally written in passive voice, indicative mood. Phrases such as "as approved," "unless otherwise approved," "upon approval," "as directed," "as verified," "as ordered," and "as determined" refer to actions of the Engineer unless otherwise stated, and it is understood that the directions, orders, or instructions to which they relate are within the limitations of and authorized by the Contract.

2. ELIGIBILITY OF BIDDERS

Bidders on this project must be prequalified through TxDOT. Refer to TxDOT's web site for prequalification requirements. Assure prequalification documents are submitted to TxDOT at least 14 days before bid opening. Comply with all technical prequalification requirements in the bid documents.

3. ISSUING BID DOCUMENTS

Bid Documents may be obtained at _____.

Copies will be available in CD format at no cost.

At the time Bid Documents are obtained, Bidder must provide a working e-mail address, so as to receive any addenda or clarification issued by the Owner.

The Owner will not issue bid documents if one or more of the following apply:

- the Bidder is prohibited from rebidding a specific project due to a bid error on the original bid documents,
- the Bidder failed to enter into a Contract on the original award,
- the Bidder was defaulted or terminated on the original Contract, unless the Owner terminated for convenience, or
- the Bidder or a subsidiary or affiliate of the Bidder has received compensation from the Owner to participate in the preparation of the plans or specifications on which the bid or Contract is based.

4. INTERPRETING ESTIMATED QUANTITIES

The quantities listed in the bid documents are approximate and will be used for the comparison of bids. Payments will be made for actual quantities of work performed in accordance with the Contract.

5. EXAMINING DOCUMENTS AND WORK LOCATIONS

Examine the bid documents and specified work locations before submitting a bid for the work. Submitting a bid will be considered evidence that the Bidder has performed this examination. Borings, soil profiles, water elevations, and underground utilities shown on the plans were obtained for the use of the Owner in the preparation of plans. This information is provided for the Bidder's information only and the Owner makes no representation as to the accuracy of the data. Be aware of the difficulty of accurately classifying all material encountered in making foundation investigations, the possible erosion of stream channels and banks after survey data have been obtained, and the unreliability of water elevations other than for the date recorded.

Oral explanations, instructions, or consideration for Contractor-proposed changes in the bid documents given during the bidding process are not binding. Only requirements included in the bid documents and Owner-issued addenda are binding. Request explanations of documents at least five(5) days prior to the bid opening.

Immediately notify the Owner of any error, omission, or ambiguity discovered in any part of the bid documents. The Owner will issue addenda when appropriate.

6. PREPARING THE BID

Prepare the bid form furnished by the Owner. Informational bid forms printed from the Owner's website will not be accepted.

Specify a unit price in dollars and cents for each regular item, additive alternate item, deductive alternate item or replacement alternate item for which an estimated quantity is given.

When "Working Days" is an item, submit the number of working days to be used to complete the Contract or phases of the Contract.

The Owner will not accept an incomplete bid. A bid that has one or more of the deficiencies listed below is considered incomplete:

- the bid form was not signed,
- all certifications were not acknowledged,
- a regular item, additive alternate item or deductive alternate item is left blank,
- a regular item and the corresponding replacement alternate item are left blank,
- the bid form submitted had the incorrect number of items, or
- all addenda were not acknowledged.

7. NONRESPONSIVE BID

The Owner will not accept a nonresponsive bid. A bid that has one or more of the deficiencies listed below is considered nonresponsive:

- The bid was not in the hands of the Letting Official at the time and location specified in the advertisement.
- A bid was submitted for the same project by a Bidder or Bidders and one or more of its partners or affiliates.
- The Bidder failed to acknowledge receipt of all addenda issued.
- The bid form was signed by a person who was not authorized to bind the Bidder or Bidders.
- The bid guaranty did not comply with the requirements contained in this Item.
- The bid was in a form other than the official bid form issued by the Owner.
- The Bidder modified the bid in a manner that altered the conditions or requirements for work as stated in the bid documents.
- The Bidder bid more than the maximum or less than the minimum number of allowable working days when working days was an item.
- The Bidder did not attend a specified mandatory pre-bid conference.
- The Bidder did not meet the requirements of the technical qualification.
- The Bidder did not include a signed State of Texas Child Support Business Ownership Form.
- The bidder is not prequalified by TxDOT
- The bidder does not meet the Owner's qualification requirements.

8. SUBMITTAL OF BIDS

8.1. **Electronic Bids.** When electronic bidding is available, the Bidder is responsible for taking the appropriate measures to submit a bid. These measures include, but are not limited to, acquiring hardware, software, and Internet connectivity needed for submitting a bid via the Owner's bidding system.

8.1.1. **Bid Form.** Use the electronic bid form in the Owner's bidding system. When regular bid items have corresponding replacement alternate items, select the bid item or group of items to be used for the bid tabulation. Acknowledge all addenda listed in the Owner's bidding system.

The electronic bid form may not contain the special provisions, special specifications, general notes, and other Contract documents. These documents are included by reference.

8.1.2. **Bid Guaranty.** Provide a bid guaranty in the amount indicated on the bid form. Use an electronic bid bond. Guaranty checks or printed bid bonds will not be accepted.

Use the most current version of the electronic bond accepted by the Owner. For a joint venture, the bond must be in the name of all joint venture participants. Enter the bond authorization code into the Owner's bidding system.

It is the Bidder's responsibility to ensure the electronic bid bond is issued in the name or names of the Bidder or Bidders.

8.1.3. **Submittal of Bid.** Submit the bid using the Owner's bidding system.

8.1.4. **Revising the Bid Form.** Make desired changes as allowed by the Owner's bidding system up until the time and date set for the opening of bids. The last bid submitted will be used for tabulation purposes.

8.1.5. **Withdrawing a Bid.** Submit an electronic or written request to withdraw a bid before the time and date set for the opening. The Owner will not accept oral requests. An electronic request must be made using the Owner's bidding system.

A written request must be signed and submitted to the Letting Official with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In the case of joint venture, the Owner will accept a request from any person authorized to bind a party to the joint venture. The Owner may require written delegation of authority to withdraw a bid when the individual sent to withdraw the bid is not authorized to bind the Bidder or Bidders.

8.2. **Printed Bid.**

8.2.1. **Bid Form.** Mark all entries in ink. As an alternative to hand writing the unit prices in the bid form, submit a typed bid form. A typed bid form must contain the information in the format shown on the "Example of Bid Prices Submitted by Computer Printout" in the bid form.

When regular bid items have corresponding replacement alternate items, select the bid item or group of items to be used for the bid tabulation. Acknowledge all addenda by checking the appropriate box on the addendum acknowledgement page. Provide the complete and correct name of the Bidder submitting the bid. A person authorized to bind the Bidder must sign the bid form. In the case of a joint venture, provide the complete and correct name of all Bidders submitting the bid. In the case of a joint venture, the person signing the bid form must be authorized to bind all joint venture participants.

If a bid form contains both regular items for domestic steel or iron materials and replacement alternate items for foreign steel or iron materials, the Bidder must either:

- submit unit bid prices for domestic items only, or
- submit unit bid prices for both the domestic and foreign items.

- 8.2.2. **Bid Guaranty.** Provide a bid guaranty in the amount indicated on the bid documents. Use either a guaranty check or a printed bid bond. An electronic bid bond may be used as the guaranty. Ensure the electronic bid bond meets the requirements of Section 2.8.1.2., "Bid Guaranty," and submit the electronic bid bond with the printed bid.
- 8.2.3. **Guaranty Check.** Make the check payable to the Owner. The check must be a cashier's check, money order, or teller's check drawn by or on a state or national bank, or a state or federally chartered credit union (collectively referred to as "bank"). The check must be dated on or before the date of the bid opening. Postdated checks will not be accepted. The type of check or money order must be indicated on the face of the instrument, except in the case of a teller's check, and the instrument must be no more than 90 days old. A check must be made payable at or through the institution issuing the instrument; be drawn by a bank and on a bank; or be payable at or through a bank. The Owner will not accept personal checks, certified checks, or other types of money orders.
- 8.2.4. **Bid Bond.** Use the bid bond form provided by the Owner. Submit the bid bond with the powers of attorney attached and in the amount specified. The bond must be dated on or before the date of the bid opening, bear the impressed seal of the Surety, and be signed by the Bidder or Bidders and an authorized individual of the Surety. As an alternative for joint venture Bidders, each of the Bidders may submit a separate bid bond completed as outlined in this section. Bid bonds will only be accepted from Sureties authorized to execute a bond under and in accordance with State law.
- 8.2.5. **Submittal of Bid.** Place the completed bid form and the bid guaranty in a sealed envelope marked to indicate the contents.
- When submitting by mail or delivery service, place the envelope in another sealed envelope and address as indicated in the official advertisement or in the bid documents. It is the Bidder's responsibility to ensure that the sealed bid arrives at the location described on or before the time and date set for the bid opening. To be accepted, the bid must be in the hands of the Letting Official by that time of opening regardless of the method chosen for delivery.
- 8.2.6. **Revising the Bid Form.** Make desired changes to the bid form in ink and submit the bid to the Letting Official. The Owner will not make revisions to a bid on behalf of a Bidder.
- 8.2.7. **Withdrawing a Bid.** Submit a written request to withdraw a bid before the time and date set for the opening. The Owner will not accept oral requests. A written request must be signed and submitted to the Letting Official with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In the case of joint venture, the Owner will accept a request from any person authorized to bind a party to the joint venture. The Owner may require written delegation of authority to withdraw a bid when the individual sent to withdraw the bid is not authorized to bind the Bidder or Bidders.

9. OPENING AND READING OF BIDS

At the time, date, and location specified in the official advertisement, the Owner will publicly open and read bids.

10. TABULATING BIDS

- 10.1. **Official Total Bid Amount.** The Owner will sum the products of the quantities and the unit prices bid in the bid form to determine the official total bid amount, except as provided in Section 2.11., "Consideration of Unit Prices." The official total bid amount is the basis for determining the apparent low Bidder. The total bid amounts will be compared and the results made public.
- 10.2. **Rounding of Unit Prices.** The Owner will round off all unit bids involving fractional parts of a cent to the nearest one-tenth cent (\$0.001) in determining the amount of the bid as well as computing the amount due for payment of each item under the Contract. For rounding purposes, entries of five-hundredths of a cent

(\$0.0005) or more will be rounded up to the next highest tenth of a cent, while entries less than five-hundredths of a cent will be rounded down to the next lowest tenth of a cent.

10.3. **Interpretation of Unit Prices.** The Owner will make a documented determination of the unit bid price if a unit bid price is illegible or conflicting in the case of replacement alternate items. The Owner's determination will be final.

10.4. **Consideration of Unit Prices.**

10.4.1. **A + B Bidding.** The official total bid amount will be determined by the summation of the Contract amount and the time element. The Owner will use the following formula to make the calculation:

$$A + B1 + B2 + BX + \dots + BT$$

The Contract amount, equal to A in the formula, is determined by the summation of the products of the approximate quantities shown in the bid and the unit bid prices bid. The time element, equal to B1, B2, BX (when phases are included as bid components), and BT (substantial completion of the project when included as a bid component), of the bid is determined by multiplying the number of working days bid to substantially complete the project, or phases, by the daily road-user cost (RUC) provided on the bid documents. When partial days are bid they will be rounded up to the nearest whole day.

The formula above determines the low Bidder and establishes the Contract time.

10.4.2. **"Buy America."** Comply with Buy America in accordance with Section 6.1.1.. For a Bidder who proposes to use foreign steel or iron materials to be considered the apparent low Bidder, their total bid must be at least 25% lower than the next lowest bid if that bid proposes to use domestic steel or iron materials.

This requirement does not apply to minimal use of steel or iron materials provided that the total cost of all foreign source items used in the project, as delivered to the project site, is less than \$2,500 or one-tenth-of-one-percent (1/10 of 1%) of the Contract amount, whichever is greater

11. **CONSIDERATION OF BID ERRORS.**

The Owner will consider a claim of a bid error by the apparent low Bidder if the following requirements have been met:

- Submit written notification to the Owner within 5 business days after the date the bid is opened.
- Identify the items of work involved and include bidding documentation. The Owner may request clarification of submitted documentation.

The Owner will evaluate the claim of an error by the apparent low Bidder by considering the following:

- The bid error relates to a material item of work.
- The bid error amount is a significant portion of the total bid.
- The bid error occurred despite the exercise of ordinary care.
- The delay of the proposed work will not impact cost and safety to the public.

Acceptance of the bid error claim by the Owner will result in the rejection of the bid of the apparent low bidder and the Owner may consider the second responsive bid. The erring Contractor will not be allowed to bid the project if it is relet. Rejection of bids due to the Contractor's bid error may result in the application of sanctions by the Owner.

12. **TIE BIDS**

If the official total bid amount for 2 or more Bidders is equal and those bids are the lowest submitted, each tie Bidder will be given an opportunity to withdraw their bid. If 2 or more tie Bidders do not withdraw their bids, the low Bidder will be determined by a coin toss. If all tie Bidders request to withdraw their bids, no

withdrawals will be allowed and the low Bidder will be determined by a coin toss. The Letting Official will preside over the proceedings for the coin toss.

Item 3L

Award and Execution of Contract

1. AWARD OF CONTRACT

The Owner will award, reject, or defer the Contract within 30 days after the opening of the bid. The Owner reserves the right to reject any or all bids and to waive technicalities in the best interest of the Owner.

1.1. Award. The Owner will award the Contract to the low Bidder as determined by Article 2.11., "Tabulating Bids." The Owner may award a Contract to the second lowest Bidder when the following requirements have been met:

- The low Bidder withdraws its bid.
- The low Bidder fails to enter into a contract with the Owner after Award
- The second low Bidder's unit bid prices are reasonable.

1.2. Rejection. The Owner will reject the Contract if:

- Collusion may have existed among the Bidders. Collusion participants will not be allowed to bid future bids for the same Contract.
- The low bid is mathematically and materially unbalanced. The Bidder will not be allowed to bid future bids for the same Contract.
- The lowest bid is higher than the Owner's estimate and re-advertising for bids may result in a lower bid.
- Rejection of the Contract is in the best interest of the Owner.

1.3. Deferral. The Owner may defer the award or rejection of the Contract when deferral is in the best interest of the Owner.

2. RESCINDING OF AWARD

The Owner reserves the right to cancel the award of any Contract before Contract execution with no compensation due when the cancellation is in the best interest of the Owner. The Owner will return the bid guaranty to the Contractor.

3. DISADVANTAGED BUSINESS ENTERPRISE (DBE)/HISTORICALLY UNDERUTILIZED BUSINESS/SMALL BUSINESS ENTERPRISE (SBE)

Submit all DBE/HUB/SBE information in the time frame specified when required by the bid documents.

4. EXECUTION OF CONTRACT

Provide the following within 15 days after written notification of award of the Contract:

4.1. Contract. Executed by Contractor and Surety.

4.2. Bonds. Executed performance bond and payment bond in the full amount of the Contract price with powers of attorney. Provide bonds in accordance with Table 1. Furnish the payment and performance bonds as a guaranty for the protection of the claimants and the Owner for labor and materials and the faithful performance of the work.

**Table 1
Bonding Requirements**

Contract Amount	Required Bonds
Less than \$25,000	None
\$25,000 to \$100,000	Payment
More than \$100,000	Performance and Payment

4.3. **Insurance.** Submit a Certificate of Insurance showing coverages in accordance with Contract requirements.

Insurances must cover the contracted work for the duration of the Contract and must remain in effect until final acceptance. Failure to obtain and maintain insurance for the contracted work may result in suspension of work or default of the Contract. If the insurance expires and coverage lapses for any reason, stop all work until the Owner receives an acceptable Certificate of Insurance.

Provide the Owner with a Certificate of Insurance verifying the types and amounts of coverage shown in Table 2. The Certificate of Insurance must be in a form approved by the Owner. Any Certificate of Insurance provided must be available for public inspection.

**Table 2
Insurance Requirements**

Type of Insurance	Amount of Coverage
Commercial General Liability Insurance	Not Less Than: \$600,000 each occurrence
Business Automobile Policy	Not Less Than: \$600,000 combined single limit
Workers' Compensation	Not Less Than: Statutory
All Risk Builder's Risk Insurance (For building-facilities Contracts only)	100% of Contract Price

By signing the Contract, the Contractor certifies compliance with all applicable laws, rules, and regulations pertaining to workers' compensation insurance. This certification includes all subcontractors. Pay all deductibles stated in the policy. Subcontractors must meet the requirements of Table 2 either through their own coverage or through the Contractor's coverage.

The Workers' Compensation policy must include a waiver of subrogation endorsement in favor of the Owner.

For building-facilities Contracts, provide All Risk Builder's Risk Insurance to protect the Owner against loss by storm, fire or extended coverage perils on work and materials intended for use on the project including the adjacent structure. Name the Owner under the Lost Payable Clause.

For Contracts with railroad requirements, see project-specific details for additional insurance requirements.

Provide a substitute Surety on the Contract bonds in the original full Contract amount within 15 days of notification if the Surety is declared bankrupt or insolvent, the Surety's underwriting limitation drops below the Contract amount or the Surety's right to do business is terminated by the Owner. The substitute Surety must be authorized by the laws of the State and acceptable to the Owner. Work will be suspended until a substitute Surety is provided. Working day charges will be suspended for 15 days or until an acceptable Surety is provided, whichever is sooner.

The work performed under this section will not be measured or paid for directly but will be subsidiary to pertinent items.

4.4. **Railroad Documents.** Provide all required documents for satisfaction of railroad requirements for projects that have work which involves railroad right of way.

5. FAILURE TO ENTER CONTRACT

If the Contractor fails to comply with all of the requirements in Article 3.4., "Execution of Contract," the bid guaranty will become the property of the Owner, not as a penalty, but as liquidated damages. The Contractor forfeiting the bid guaranty will not be considered in future bids for the same work unless there has been a substantial change in design of the work.

6. APPROVAL AND EXECUTION OF CONTRACT

The Contract will be approved and signed under authority of the Owner.

7. RETURN OF BID GUARANTY

The bid guaranty check of the low Bidder will be retained until after the Contract has been rejected or awarded and executed. Bid bonds will not be returned.

8. BEGINNING OF WORK

Do not begin work until authorized in writing by the Owner.

When callout work is required, provide a method of contact available from 8 A.M. until 5 P.M. every work day and 24 hr. a day, 7 days a week for projects with emergency mobilization, unless otherwise shown on the plans. The time of notice will be the transmission time of the notice sent, provided orally, or provided in person by the Owner's representative.

Verify all quantities of materials shown on the plans before ordering.

For projects with alternate bid items, the work order will identify the base bid work and additive or deductive alternate work to be performed. The Owner makes no guarantee that the additive or deductive alternate work will be required.

9. ASSIGNMENT OF CONTRACT

Do not assign, sell, transfer, or otherwise dispose of the Contract or any portion rights, title, or interest (including claims) without the approval of the Owner or designated representative. The Owner must deem any proposed assignment justified and legally acceptable before the assignment can take place.

10. EXCLUDED PARTIES

The Contractor certifies by signing the Contract that the Contractor will not enter into any subcontract with a subcontractor that is debarred or suspended by the Owner or by any state or federal agency.

Item 4L

Scope of Work

1. CONTRACT INTENT

The intent of the Contract is to describe the completed work to be performed. Furnish materials, supplies, tools, equipment, labor, and other incidentals necessary for the proper prosecution and completion of the work in accordance with Contract documents.

2. PRECONSTRUCTION CONFERENCE

Before starting work, schedule and attend a preconstruction conference with the Owner. Failure to schedule and attend a preconstruction conference is not grounds for delaying the beginning of working day charges.

Work with the Owner to resolve all issues during the course of the Contract. Refer to Article 4.7., "Dispute or Claims Procedure," for all unresolved issues.

3. PARTNERING

The intent of this Article is to promote an environment of trust, mutual respect, integrity, and fair-dealing between the Owner and the Contractor.

Informal partnering does not make use of a facilitator, while formal partnering uses the services of a facilitator (internal or external).

3.1. **Procedures for Partnering Meetings and Format.** Informal partnering is required, unless formal partnering is mutually agreed to instead of the informal partnering.

3.2. **Facilitators.** The facilitator is to act as a neutral party seeking to initiate cooperative working relationships. This individual must have the technical knowledge and ability to lead and guide discussions. Choose either an internal or external facilitator. The facilitator must be acceptable to the Engineer.

3.2.1. **Internal Facilitators.** An Owner or Contractor internal (staff) facilitator may be selected as the facilitator at no additional cost to either party.

3.2.2. **External Facilitators.** A private firm or individual that is independent of the Contractor and the Owner may be selected as the facilitator. Submit the facilitator's name and estimated fees for approval before contracting with the facilitator.

3.3. **Meetings and Arrangements.** Coordinate with the Engineer for meeting dates and times, locations including third party facilities, and other needs and appurtenances, including, but not limited to, audio or visual equipment. Make all meeting arrangements for formal partnering. Use Owner facilities or facilities in the vicinity of the project if available. Submit the estimated meeting costs for approval before finalizing arrangements.

Coordinate facilitator discussions before the partnering meeting to allow the facilitator time to prepare an appropriate agenda. Prepare a list of attendees with job titles and include critical Contractor, subcontractor, and supplier staff in the list. Provide the facilitator the list of attendees and invite the attendees listed.

The Owner will invite and provide a list of attendees that includes, but is not limited to, Owner, TxDOT, other local governments, law enforcement, railroad, and utility representatives.

Participate in additional partnering meetings as mutually agreed.

- 3.4. **Payment.** Expenses for labor, Contractor equipment, or overhead will not be allowed. Markups as prescribed in Article 9.7., "Payment for Extra Work and Force Account Method," will not be allowed.

Informal partnering will be conducted with each party responsible for their own costs.

For formal partnering using internal facilitators, the Contractor will be responsible for arrangements and for expenses incurred by its internal facilitator, including, but not limited to, meals, travel, and lodging. Owner facilitators, if available, may be used at no additional cost.

For formal partnering using external facilitators, submit an invoice to the Engineer for reimbursement. The Owner will reimburse the Contractor for half of the eligible expenses as approved. For external facilitators not approved by the Owner but used at the Contractor's option, the Contractor will be responsible for all costs of the external facilitator.

For meeting facilities and appurtenances, submit an invoice to the Engineer for reimbursement. The Owner will reimburse the Contractor for half of the eligible expenses as approved.

4. **CHANGES IN THE WORK**

The Engineer reserves the right to make changes in the work including addition, reduction, or elimination of quantities and alterations needed to complete the Contract. Perform the work as altered. These changes will not invalidate the Contract nor release the Surety. The Contractor is responsible for notifying the sureties of any changes to the Contract.

If the changes in quantities or the alterations do not significantly change the character of the work under the Contract, the altered work will be paid for at the Contract unit price. If the changes in quantities or the alterations significantly change the character of the work, the Contract will be amended by a change order. If no unit prices exist, this will be considered extra work and the Contract will be amended by a change order. Provide cost justification as requested, in an acceptable format. Payment will not be made for anticipated profits on work that is eliminated.

Agree on the scope of work and the basis of payment for the change order before beginning the work. If there is no agreement, the Engineer may order the work to proceed under Article 9.7., "Payment for Extra Work and Force Account Method," or by making an interim adjustment to the Contract. In the case of an adjustment, the Engineer will consider modifying the compensation after the work is performed.

A significant change in the character of the work occurs when:

- the character of the work for any item as altered differs materially in kind or nature from that in the Contract or
- a major item of work varies by more or less than 25% from the original Contract quantity.

When the quantity of work to be done under any major item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.

When the quantity of work to be done under any major item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price. When mutually agreed, the unit price may be adjusted by multiplying the Contract unit price by the factor in Table 1. If an adjusted unit price cannot be agreed upon, the Engineer may determine the unit price by multiplying the Contract unit price by the factor in Table 1.

Table 1
Quantity-Based Price Adjustment Factors

% of Original Quantity	Factor
≥ 50 and < 75	1.05
≥ 25 and < 50	1.15
< 25	1.25

If the changes require additional working days to complete the Contract, Contract working days will be adjusted in accordance with Item 8, "Prosecution and Progress."

5. DIFFERING SITE CONDITIONS

During the progress of the work, differing subsurface or latent physical conditions may be encountered at the site. The 2 types of differing site conditions are defined as:

- those that differ materially from those indicated in the Contract and
- unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract.

Notify the Engineer in writing when differing site conditions are encountered. The Engineer will notify the Contractor when the Owner discovers differing site conditions. Unless directed otherwise, do not work on the affected items and leave the site undisturbed. The Engineer will investigate the conditions and determine whether differing site conditions exist. If the differing site conditions cause an increase or decrease in the cost or number of working days specified for the performance of the Contract, the Engineer will make adjustments, excluding the loss of anticipated profits, in accordance with the Contract. Additional compensation will be made only if the required written notice has been provided.

6. REQUESTS FOR ADDITIONAL COMPENSATION

Notify the Engineer in writing of any intent to request additional compensation once there is knowledge of the basis for the request. An assessment of damages is not required to be part of this notice but is desirable. The intent of the written notice requirement is to provide the Owner an opportunity to evaluate the request and to keep an accurate account of the actual costs that may arise. Minimize impacts and costs.

If written notice is not given, the Contractor waives the right to additional compensation unless the circumstances could have reasonably prevented the Contractor from knowing the cost impact before performing the work. Notice of the request and the documentation of the costs will not be construed as proof or substantiation of the validity of the request. Submit the request in enough detail to enable the Owner to determine the basis for entitlement, adjustment in the number of working days specified in the Contract, and compensation.

The Owner will not consider fees and interest on requests for additional compensation. Fees include, but are not limited to: preparation, attorney, printing, shipping, and various other fees.

Damages occur when impacts that are the responsibility of the Owner result in additional costs to the Contractor that could not have been reasonably anticipated at the time of letting. Costs of performing additional work are not considered damages. For Contractor damages, the intent is to reimburse the Contractor for actual expenses arising out of a compensable impact. No profit or markups, other than labor burden, will be allowed. For damages, labor burden will be reimbursed at 35% unless the Contractor can justify higher actual cost. Justification for a higher percentage must be in accordance with the methodology provided by the Owner, submitted separately for project overhead labor and direct labor, and determined and submitted by a Certified Public Accountant (CPA). Submit CPA-prepared labor burden rates directly to the Owner.

If the Contractor requests compensation for delay damages and the delay is determined to be compensable, then standby equipment costs and project overhead compensation will be based on the duration of the compensable delay and will be limited as follows:

- 6.1. **Standby Equipment Costs.** Payment will be made in accordance with Section 9.7.1.4.3., “Standby Equipment Costs.”
- 6.2. **Project Overhead.** Project overhead is defined as the administrative and supervisory expenses incurred at the work locations. When delay to project completion occurs, reimbursement for project overhead for the Contractor will be made using the following options:
- reimbursed at 6% (computed as daily cost by dividing 6% of the original Contract amount by the number of original Contract work days), or
 - actual documented costs for the impacted period.
- Project overhead for delays impacting subcontractors will be determined from actual documented costs submitted by the Contractor.
- Time extensions and suspensions alone will not be justification for reimbursement for project overhead.
- 6.3. **Home Office Overhead.** The Owner will not compensate the Contractor for home office overhead.

7. DISPUTE OR CLAIMS PROCEDURE

The dispute resolution policy promotes a cooperative attitude between the Engineer and Contractor. Emphasis is placed on resolving issues while they are still current, at the project office, and in an informal manner. Open sharing of information is encouraged by all parties involved so the information provided completely and accurately reflects the issues and facts. If information is not shared, decisions may be limited to relying on the documentation that is available for review.

The Owners’s goal is to have a dispute settled by the Engineer before elevating it as a claim.

If a dispute cannot be resolved, initiate the Contract claim procedure by filing a Contract claim after the completion of the Contract or when required for orderly performance of the Contract. Submit the claim to the Owner in accordance with state law.

For a claim resulting from enforcement of a warranty period, file the claim no later than one year after expiration of the warranty period. For all other claims, file the claim no later than the date the Owner issues notice to the Contractor that they are in default, the date the Owner terminates the Contract, or one year after the date of final acceptance of the Contract. It is the Contractor’s responsibility to submit requests in a timely manner.

Item 5L

Control of the Work

1. AUTHORITY OF ENGINEER

The Engineer has the authority to observe, test, inspect, approve, and accept the work on behalf of the Owner. The Engineer decides all questions about the quality and acceptability of materials, work performed, work progress, Contract interpretations, and acceptable Contract fulfillment. The Engineer has the authority to enforce and make effective these decisions.

The Engineer acts as a referee in all questions arising under the terms of the Contract. The Engineer's decisions will be final and binding.

2. PLANS AND WORKING DRAWINGS

When required, provide working drawings to supplement the plans with all necessary details not included on the Contract plans. Prepare and furnish working drawings in a timely manner and obtain approval, if required, before the beginning of the associated work. For all working drawing submittal requirements, the Engineer may allow electronic and other alternative submission procedures. Have a licensed professional engineer sign, seal, and date the working drawings as indicated in Table 1.

Prepare working drawings using United States standard measures in the English language. The routing of submittals for review and approval will be established at the preconstruction conference. The Contractor is responsible for the accuracy, coordination, and conformity of the various components and details of the working drawings. Owner approval of the Contractor's working drawings will not relieve the Contractor of any responsibility under the Contract. The work performed under this article will not be measured or paid for directly but will be subsidiary to pertinent items.

Table 1
Signature and Approval Requirements for Working Drawings

Working Drawings For		Requires Licensed Professional Engineer's Signature, Seal, and Date	Requires Owner Approval
1. Alternate or optional designs submitted by Contractor		Yes	Yes
2. Supplementary shop and fabrication drawings for structural Items		No unless required on the plans	See applicable Item
3. Contractor-proposed temporary facilities that affect the public safety, not included on the plans		Yes	Yes
4. Form and falsework details	Bridges, retaining walls, and other major structures	Yes unless otherwise shown on the plans	No ¹
	Minor structures	No unless otherwise shown on the plans	No
5. Erection drawings		Yes	No ^{1,2}
6. Contractor-proposed major modifications to traffic control plan		Yes	Yes

1. The Engineer may require that the Contractor have a licensed professional engineer certify that the temporary works are constructed according to the sealed drawings.
2. Approval is required for items spanning over live traffic or where safety of the traveling public is affected, in the opinion of the Engineer.

3. CONFORMITY WITH PLANS, SPECIFICATIONS, AND SPECIAL PROVISIONS

Furnish materials and perform work in reasonably close conformity with the lines, grades, cross-sections, dimensions, details, gradations, physical and chemical characteristics of materials, and other requirements shown in the Contract (including additional plans for non-site-specific work). Reasonably close conformity limits will be as defined in the respective items of the Contract or, if not defined, as determined by the Engineer. Obtain approval before deviating from the plans and approved working drawings. Do not perform work beyond the lines and grades shown on the plans or any extra work without the Engineer's approval. Work performed beyond the lines and grades shown on the plans or any extra work performed without approval is considered unauthorized and excluded from pay consideration. The Owner will not pay for material rejected due to improper fabrication, excess quantity, or any other reasons within the Contractor's control.

3.1. **Acceptance of Defective or Unauthorized Work.** When work fails to meet Contract requirements, but is adequate to serve the design purpose, the Engineer will decide the extent to which the work will be accepted and remain in place. The Engineer will document the basis of acceptance by a letter and may adjust the Contract price.

3.2. **Correction of Defective or Unauthorized Work.** When work fails to meet Contract requirements and is inadequate to serve the design purpose it will be considered defective. Correct, or remove and replace, the work at the Contractor's expense, as directed.

The Engineer has the authority to correct or to remove and replace defective or unauthorized work. The cost may be deducted from any money due or to become due to the Contractor.

4. COORDINATION OF PLANS, SPECIFICATIONS, AND SPECIAL PROVISIONS

The specifications, accompanying plans (including additional plans for non-site-specific work), special provisions, change orders, and supplemental agreements are intended to work together and be interpreted as a whole.

Numerical dimensions govern over scaled dimensions. Special provisions govern over plans (including general notes), which govern over standard specifications and special specifications. Job-specific plan sheets govern over standard plan sheets.

However, in the case of conflict between plans (including general notes) and specifications regarding responsibilities for hazardous materials and traffic control in Items 1L through 9L and Item 502, "Barricades, Signs, and Traffic Handling," special provisions govern over standard specifications and special specifications, which govern over the plans.

Notify the Engineer promptly of any omissions, errors, or discrepancies discovered so that necessary corrections and interpretations can be made. Failure to promptly notify the Engineer will constitute a waiver of all claims for misunderstandings or ambiguities that result from the errors, omissions, or discrepancies discovered.

5. COOPERATION OF CONTRACTOR

Cooperate with the Engineer. Respond promptly to instructions from the Engineer. Provide all information necessary to administer the Contract.

Designate in writing a competent, English-speaking Superintendent employed by the Contractor. The Superintendent must be experienced with the work being performed and capable of reading and understanding the Contract. Ensure the Superintendent is available at all times and able to receive instructions from the Engineer or authorized Owner representatives and to act for the Contractor. The Engineer may suspend work without suspending working day charges if a Superintendent is not available or does not meet the above criteria.

At the written request of the Engineer, immediately remove from the project any employee or representative of the Contractor or a subcontractor who, in the opinion of the Engineer, does not perform work in a proper and skillful manner or who is disrespectful, intemperate, disorderly, uncooperative, or otherwise objectionable. Do not reinstate these individuals without the written consent of the Engineer.

Furnish suitable machinery, equipment, and construction forces for the proper prosecution of the work. Provide adequate lighting to address quality requirements and inspection of nighttime work.

The Engineer may suspend the work without suspending working day charges until the Contractor complies with this requirement. All work associated with fulfilling this requirement is subsidiary to the various items of the Contract and no direct compensation will be made.

6. COOPERATING WITH UTILITIES

Use established safety practices when working near utilities. Consult with the appropriate utilities before beginning work. Notify the Engineer immediately of utility conflicts. The Engineer will decide whether to adjust utilities or adjust the work to eliminate or lessen the conflict. Unless otherwise shown on the plans, the Engineer will make necessary arrangements with the utility owner when utility adjustments are required.

Use work procedures that protect utilities or appurtenances that remain in place during construction. Cooperate with utilities to remove and rearrange utilities to avoid service interruption or duplicate work by the utilities. Allow utilities access to the right of way.

Immediately notify the appropriate utility of service interruptions resulting from damage due to construction activities. Cooperate with utilities until service is restored. Maintain access to active fire hydrants at all times unless approved by the Engineer.

7. COOPERATION BETWEEN CONTRACTORS

Cooperate and coordinate with other Contractors working within the limits or adjacent to the limits.

8. COOPERATION WITH RAILROADS

Plan and prosecute portions of the work involving a railway to avoid interference with or hindrance to the railroad company.

If the work is on railroad right of way, do not interfere with the operation of the railroad company's trains or other property.

8.1. **Project-Specific Information.** Refer to project-specific plan sheets in the Contract for specific information concerning the work to be completed by both the Contractor and the railroad within railroad right of way; railroad right of way locations impacted by construction; percentage of Contract work at each location; train movements at each location; and requirements for railroad insurance, flagging, and Right of Entry (ROE) Agreements.

8.2. **Right of Entry Agreement (if required).** The process for obtaining a fully executed ROE Agreement will be as follows:

- The Owner will send the unexecuted ROE Agreement to the Contractor with the unexecuted construction Contract.
- Partially execute the ROE Agreement and return it to the Department with the required insurance attached.
- The Owner will coordinate with the railroad company regarding the further execution of the ROE Agreement and associated fees. The Owner will pay any ROE Agreement fees directly to the railroad company.

- Once the Owner has received the fully-executed ROE Agreement from the railroad company, the Owner will forward the fully-executed ROE Agreement to the Contractor.

9. CONSTRUCTION SURVEYING

Use Method A unless otherwise specified in the Contract. Upon request, the Engineer will allow the Contractor to copy available earthwork cross-sections, computer printouts or data files, and other information necessary to establish and control work. Maintain the integrity of control points. Preserve all control points, stakes, marks, and right of way markers. Assume cost and responsibility of replacing disturbed control points, stakes, marks, and right of way markers damaged by the Contractor's or its subcontractor operations. If the Owner repairs disturbed control points, stakes, marks, or right of way markers, the cost of repair may be deducted from money due or to become due to the Contractor. Replace right of way markers under the direction of a RPLS. This work will be subsidiary to pertinent items.

The Engineer reserves the right to make measurements and surveys to determine the accuracy of the work and determine pay quantities. The Engineer's measurements and surveys do not relieve the Contractor's responsibility for accuracy of work. Allow the Engineer adequate time to verify the surveying.

- 9.1. **Method A.** The Engineer will set control points for establishing lines, slopes, grades, and centerlines and for providing both vertical and horizontal control. At a minimum, provide a controlling pair of monument points at both the beginning and end of construction project for projects less than 2 miles in length. For projects greater than 2 miles in length, monuments will be set in pairs of 2 at a minimum of 2 miles based on the overall length of the project. Use these control points as reference to perform the work.

Furnish materials, equipment, and qualified workforce necessary for the construction survey work. Place construction points, stakes, and marks at intervals sufficient to control work to established tolerances. Place construction stakes at intervals of no more than 100 ft., or as directed. Place stakes and marks so as not to interfere with normal maintenance operations.

- 9.2. **Method B.** The Engineer will set adequate control points, stakes, and marks to establish lines, slopes, grades, and centerlines. Furnish additional work, stakes, materials, and templates necessary for marking and maintaining points and lines.
- 9.3. **Method C.** Set adequate control points, stakes, and marks to establish lines, slopes, grades, and centerlines.

10. INSPECTION

Inspectors are authorized representatives of the Engineer. Inspectors are authorized to examine all work performed and materials furnished, including preparation, fabrication, and material manufacture. Inspectors inform the Contractor of failures to meet Contract requirements. Inspectors may reject work or materials and may suspend work until any issues can be referred to and decided by the Engineer. Inspectors cannot alter, add, or waive Contract provisions, issue instructions contrary to the Contract, act as foremen for the Contractor, or interfere with the management of the work. Inspection, or lack of inspection, will not relieve the Contractor from obligation to provide materials or perform the work in accordance with the Contract.

Provide safe access to all parts of the work and provide information and assistance to the Engineer to allow a complete and detailed inspection. Give the Engineer sufficient notice to inspect the work. Work performed without suitable inspection, as determined by the Engineer, may be ordered removed and replaced at Contractor's expense. Remove or uncover portions of finished work as directed. Once inspected, restore work to Contract requirements. If the uncovered work is acceptable, the costs to uncover, remove, and replace or make good the parts removed will be paid for in accordance with Article 4.4., "Changes in the Work." If the work is unacceptable, assume all costs associated with repair or replacement, including the costs to uncover, remove, and replace or make good the parts removed.

When a government entity, utility, railroad company, or other entity accepts or pays a portion of the Contract, that organization's representatives may inspect the work but cannot direct the Contractor. The right of inspection does not make that entity a party to the Contract and does not interfere with the rights of the parties to the Contract.

11. FINAL CLEANUP

Upon completion of the work, remove litter, debris, objectionable material, temporary structures, excess materials, and equipment from the work locations. Clean and restore property damaged by the Contractor's operations during the prosecution of the work. Leave the work locations in a neat and presentable condition. This work will not be paid for directly but will be considered subsidiary to items of the Contract.

Remove from the right of way cofferdams, construction buildings, material and fabrication plants, temporary structures, excess materials, and debris resulting from construction. Where work is in a stream, remove debris to the ground line of the bed of the stream. Leave stream channels and rights of way in a neat and presentable condition. Clean structures to the flow line or the elevation of the outfall channel, whichever is higher. Dispose of all excess material in accordance with federal, state, and local regulations.

12. FINAL ACCEPTANCE

12.1. Final acceptance is made when all work is complete and the Engineer, in writing, accepts all work for the work locations in the Contract. Final acceptance relieves the Contractor from further Contract responsibilities.

12.1.1. **Work Completed.** Work completed must include work for vegetative establishment and maintenance, test, and performance periods and work to meet the requirements of Article 5.11., "Final Cleanup."

12.1.2. **Final Inspection.** After all work is complete, the Contractor will request a final inspection by the Engineer authorized to accept the work.

The final inspection will be made as soon as possible, and not later than 10 calendar days after the request. No working day charges will be made between the date of request and final inspection.

After the final inspection, if the work is satisfactory, the Engineer will notify the Contractor in writing of the final acceptance of the work. If the final inspection finds any work to be unsatisfactory, the Engineer will identify in writing all deficiencies in the work requiring correction. Correct the deficiencies identified. Working day charges will resume if these deficiencies are not corrected within 7 calendar days, unless otherwise approved. Upon correction, the Engineer will make an inspection to verify that all deficiencies were corrected satisfactorily. The Engineer will provide written notice of the final acceptance.

12.1.3. **Final Measurement.** Final measurements and pay quantity adjustments may be made after final acceptance.

12.1.4. **Removal of Traffic Control Devices.** Remove construction traffic control devices and advance warning signs upon final acceptance or as directed.

Item 6L

Control of Materials

1. SOURCE CONTROL

Use only materials that meet Contract requirements. Unless otherwise specified or approved, use new materials for the work. Secure the Engineer's approval of the proposed source of materials to be used before their delivery. Materials can be approved at a supply source or staging area but may be reinspected in accordance with Article 6.4., "Sampling, Testing, and Inspection."

1.1. Buy America. Comply with the latest provisions of Buy America as listed at 23 CFR 635.410. Use steel or iron materials manufactured in the United States except when:

- the cost of materials, including delivery, does not exceed 0.1% of the total Contract cost or \$2,500, whichever is greater;
- the Contract contains a replacement alternate item for a foreign source steel or iron product and the Contract is awarded based on the replacement alternate item; or
- the materials are temporarily installed.

Provide a notarized original of the TxDOT FORM D-9-USA-1 (or equivalent) with the proper attachments for verification of compliance.

Manufacturing is any process that modifies the chemical content, physical shape or size, or final finish of a product. Manufacturing begins with initial melting and mixing and continues through fabrication (cutting, drilling, welding, bending, etc.) and coating (paint, galvanizing, epoxy, etc.).

1.2. Convict Produced Materials. Materials produced by convict labor may only be incorporated in the work if such materials have been:

- produced by convicts who are on parole, supervised release, or probation from prison; or
- produced in a qualified prison facility.

A "qualified prison facility" means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in federal-aid highway construction projects.

2. MATERIAL QUALITY

Correct or remove materials that fail to meet Contract requirements or that do not produce satisfactory results. Reimburse the Owner for cost incurred if additional sampling and testing is required by a change of source.

Materials not meeting Contract requirements will be rejected, unless the Engineer approves corrective actions. Upon rejection, immediately remove and replace rejected materials.

If the Contractor does not comply with this article, the Owner may have defective material removed and replaced. The cost of testing, removal, and replacement will be deducted from the estimate.

3. MANUFACTURER WARRANTIES

Transfer to the Owner warranties and guarantees required by the Contract or received as part of normal trade practice.

4. SAMPLING, TESTING, AND INSPECTION

Incorporate into the work only material that has been inspected, tested, and accepted by the Engineer. Remove, at the Contractor's expense, materials from the work locations that are used without prior testing and approval or written permission.

Unless otherwise mutually agreed, the material requirements and standard test methods in effect at the time the proposed Contract is advertised govern. Unless otherwise noted, the Engineer will perform testing at Owner's expense. In addition to facilities and equipment required by the Contract, furnish facilities and calibrated equipment required for tests to control the manufacture of construction items. If requested, provide a complete written statement of the origin, composition, and manufacture of materials.

All materials used are subject to inspection or testing at any time during preparation or use. Material which has been tested and approved at a supply source or staging area may be reinspected or tested before or during incorporation into the work, and rejected if it does not meet Contract requirements. Copies of test results are to be made available upon request. Do not use material that, after approval, becomes unfit for use.

Unless otherwise noted in the Contract, all testing must be performed within the United States and witnessed by the Engineer. If materials or processes require testing outside the contiguous 48 United States, reimburse the Owner for inspection expenses.

5. PLANT INSPECTION AND TESTING

The Engineer may, but is not obligated to, inspect materials at the acquisition or manufacturing source. Material samples will be obtained and tested for compliance with quality requirements.

If inspection is at the plant, meet the following conditions unless otherwise specified:

- Cooperate fully and assist the Engineer during the inspection.
- Ensure the Engineer has full access to all parts of the plant used to manufacture or produce materials.
- In accordance with pertinent items and the Contract, provide a facility at the plant for use by the Engineer as an office or laboratory.
- Provide and maintain adequate safety measures and restroom facilities.
- Furnish and calibrate scales, measuring devices, and other necessary equipment.

The Engineer may provide inspection for periods other than daylight hours if:

- continuous production of materials for Owner use is necessary due to the production volume being handled at the plant, and
- the lighting is adequate to allow satisfactory inspection.

6. STORAGE OF MATERIALS

Store and handle materials to preserve their quality and fitness for the work. Store materials so that they can be easily inspected and retested. Place materials under cover, on wooden platforms, or on other hard, clean surfaces as necessary or when directed.

Obtain approval to store materials on the right of way. Storage space off the right of way is at the Contractor's expense.

7. OWNER-FURNISHED MATERIAL

The Owner will supply materials as shown in the Contract documents. The cost of handling and placing materials supplied by the Owner will not be paid directly but is subsidiary to the item in which they are used. Assume responsibility for materials upon receipt.

8. USE OF MATERIALS FOUND ON THE RIGHT OF WAY

Material found in the excavation areas and meeting the Owner's specifications may be used in the work. This material will be paid for at the Contract bid price for excavation and under the item for which the material is used.

Do not excavate or remove any material from within the right of way that is not within the limits of the excavation without written permission. If excavation is allowed within a right of way project-specific location (PSL), replace the removed material with suitable material at no cost to the Owner as directed.

9. RECYCLED MATERIALS

The Owner will not allow hazardous wastes, as defined in 30 TAC 335, proposed for recycling to be used on the project. Use nonhazardous recyclable materials (NRMs) only if the specification for the item does not disallow or restrict use. Determine if NRMs are regulated under 30 TAC 312, 330, 332, 334, or 335, and comply with all general prohibitions and requirements. Use NRMs in accordance with DMS-11000, "Evaluating and Using Nonhazardous Recyclable Materials Guidelines," and furnish all documentation required by that specification.

10. HAZARDOUS MATERIALS

Use materials that are free of hazardous materials as defined in Item 1L, "Abbreviations and Definitions."

Notify the Engineer immediately when a visual observation or odor indicates that materials in required material sources or on sites owned or controlled by the owner may contain hazardous materials. Except when the contract includes bid items for the contractor to remove hazardous materials, the Engineer is responsible for testing and removing or disposing of hazardous materials not introduced by the Contractor on sites owned or controlled by the Owner as indicated below.

The plans will indicate locations where paint on steel is suspected to contain hazardous materials and where regulated asbestos containing materials have been found. The Engineer may suspend work wholly or in part during the testing, removal, or disposition of hazardous materials on sites owned or controlled by the Owner, except in the case of when the contract includes removing and disposing of hazardous materials.

When a visual observation or odor indicates that materials delivered to the work locations by the Contractor may contain hazardous materials, have an approved commercial laboratory test the materials for contamination. Remove, remediate, and dispose of any of these materials found to be contaminated. Testing, removal, and disposition of hazardous materials introduced onto the work locations by the Contractor will be at the Contractor's expense. Working day charges will not be suspended and extensions of working days will not be granted for activities related to handling hazardous material delivered by the Contractor.

10.1. **Painted Steel Requirements.** Paint containing hazardous materials will be removed as shown on the plans.

10.1.1. **Paint Removed by Third Party.** The Owner may provide a third party to remove paint containing hazardous materials where paint must be removed to perform work or to allow dismantling of the steel.

10.1.2. **Paint Removed by the Contractor.** This work may only be performed by a firm or company with one of the following certifications:

- SSPC-QP2 certification for lead painting operations, or
- Certified Lead Firm by the Texas Department of State Health Services.

Maintain certification for the duration of the work. Provide copies of audits or certification if requested.

Comply with worker and public safety regulations, including, but not limited to, OSHA 29 CFR Parts 1910.1025, 1926.62, and 1926.63. Monitor permissible exposure limits in accordance with OSHA requirements.

Remove paint containing hazardous materials from designated areas shown on the plans or as directed. Comply with access limitations shown on the plans.

Provide power hand tools, equipped with high-efficiency particulate air filter vacuums to mechanically remove paint.

Contain, collect, store, transport, and dispose of all waste generated by cleaning operation in accordance with local, state, and federal requirements including 40 CFR 302. Properly characterize and dispose of all wastes. Manage any hazardous wastes in accordance with regulatory requirements and dispose in a facility authorized to accept such wastes. Provide copies of disposal manifests.

The work performed, materials furnished, equipment, labor, tools, and incidentals will be paid for in accordance with Item 446, "Field Cleaning and Painting Steel."

- 10.2. **Removal and Disposal of Painted Steel.** Painted steel will be disposed of at a steel recycling or smelting facility unless otherwise shown on the plans. If the paint contains hazardous materials, maintain and make available to the Engineer invoices and other records obtained from the facility showing the received weight of the steel and the facility name.

For steel that is dismantled by unbolting, no paint stripping will be required. Use care to not damage existing paint. When dismantling is performed using flame or saw-cutting methods to remove steel elements coated with paint containing hazardous materials, the plans will show stripping locations.

The work provided, materials furnished, equipment, labor, tools, and incidentals will be paid for in accordance with Item 496, "Removing Structures," and Item 497, "Sale of Salvagable Material."

- 10.3. **Asbestos Requirements.** The plans will indicate locations or elements where asbestos containing materials (ACM) have been found. At locations where previously unknown ACM has been found, the Owner will arrange for abatement by a third party. For work at these locations, notify the Engineer of proposed dates of demolition or removal of structural elements with ACM at least 60 days before work is to begin to allow the Owner enough time to abate the asbestos.

- 10.4. **Work Performed by a Third Party.** When the work for removal of paint or asbestos abatement is to be provided by a third party, coordinate and cooperate with the third party and the Owner. Continue other work detailed on the plans not directly involved in the paint removal or asbestos abatement work. Provide notice to the Owner regarding the progress of the work to allow the Owner enough time to schedule the third party work.

11. SURPLUS MATERIALS

Take ownership of surplus materials unless otherwise shown on the plans or as directed by the Engineer. Remove and dispose of materials in accordance with federal, state, and local regulations. If requested, provide an appropriate level of documentation to verify proper disposal. When materials are disposed of on private property, provide written authorization from the property owner for the use of the property for this purpose upon request.

Item 7L

Legal Relations and Responsibilities

1. SAFETY

- 1.1. **Point of Contact.** Designate a Contractor Safety Point of Contact (CSPOC). The Owner will assign an Owner employee for their point of contact designated as Owner's Safety Point of Contact OSPOC. The CSPOC will ensure that the Contractor's and Subcontractor's employees' use the appropriate personal protection equipment (hard hats, safety vests, protective toe footwear, etc.).

The CSPOC will ensure that crew leaders and foremen (including subcontractors) have attended the required training.

- 1.2. **Safety Preconstruction Meeting.** In cooperation with the Engineer, schedule and attend a safety preconstruction meeting (may be a part of the preconstruction conference in Article 4.2., "Preconstruction Conference." Attendees for this safety preconstruction meeting will be:

- the Contractor,
- subcontractors,
- Owner,
- local law enforcement, and
- other personnel that play an active role on the project.

- 1.3. **Public Safety and Convenience.** Ensure the safety and convenience of the public and property as provided in the Contract and as directed by the Engineer. Keep existing roadways open to traffic or construct and maintain detours and temporary structures for safe public travel. Manage construction to minimize disruption to traffic. Maintain the roadway in a good and passable condition, including proper drainage and provide for ingress and egress to adjacent property.

Store all equipment not in use in a manner and at locations that will not interfere with the safe passage of traffic.

Provide qualified flaggers in accordance with Item 502.2.2., "Flaggers," for the safety and convenience of the traveling public and workers, as directed.

If the Engineer determines that any of the requirements of this article have not been met, the Engineer may take any necessary corrective action. This will not change the legal responsibilities set forth in the Contract. The cost to the Owner for this work will be deducted from any money due or to become due to the Contractor.

- 1.4. **Use of Blue Warning Lights.** Texas Transportation Code 547.105 authorizes the use of warning lights to promote safety and provides an effective means of gaining the travelling public's attention as they drive in areas where construction crews are present. In order to influence the public to move over when high risk construction activities are taking place, minimize the utilization of blue warning lights. These lights must be used only while performing work on or near the travel lanes or shoulder where the travelling public encounters construction crews that are not protected by a standard work zone set up such as a lane closure, shoulder closure, or one-way traffic control. Refrain from leaving the warning lights engaged while travelling from one work location to another or while parked on the right of way away from the pavement or a work zone.

- 1.5. **Barricades, Warning and Detour Signs, and Traffic Handling.** Provide, install, move, replace, maintain, clean, and remove all traffic control devices in accordance with the traffic control devices specifications and as shown on the plans and as directed. If details are not shown on the plans, provide devices and work in

accordance with the TMUTCD and as directed by the Engineer. When authorized or directed by the Engineer, provide additional signs or traffic control devices not required by the plans.

If an unexpected situation arises that causes the Contractor to believe that the traffic control should be changed, make all reasonable efforts to promptly contact the Engineer. Take prudent actions until the Engineer can be contacted.

The Engineer may authorize or direct in writing the removal or relocation of project limit advance warning signs. When project limit advance warning signs are removed before final acceptance, traffic control in accordance with the TMUTCD may be used for minor operations as approved. Removal or relocation of project limit advance warning signs does not imply final acceptance.

2. LAWS TO BE OBSERVED

Comply with all federal, state, and local laws, ordinances, and regulations that affect the performance of the work. Indemnify and save harmless the Owner and its representatives against any claim arising from violation by the Contractor of any law, ordinance, or regulation.

This Contract is between the Owner and the Contractor only. No person or entity may claim third-party beneficiary status under this Contract or any of its provisions, nor may any non-party sue for personal injuries or property damage under this Contract.

3. PERMITS, LICENSES, AND TAXES

Procure all permits and licenses; pay all charges, fees, and taxes; and give all notices necessary and incidental to the due and lawful prosecution of work, except for permits provided by the Owner and as specified in Article 7.6., "Preservation of Cultural and Natural Resources and the Environment."

4. PATENTED DEVICES, MATERIAL, AND PROCESSES

Indemnify and save harmless the Owner from any claims for infringement from the Contractor's use of any patented design, device, material, process, trademark, or copyright selected by the Contractor and used in connection with the work. Indemnify and save harmless the Owner against any costs, expenses, or damages that it may be obliged to pay, by reason of this infringement, at any time during the prosecution or after the completion of the work.

5. PERSONAL LIABILITY OF PUBLIC OFFICIALS

Owner employees are agents and representatives of the Owner and will incur no liability, personal or otherwise, in carrying out the provisions of the Contract or in exercising any power or authority granted under the Contract.

6. PRESERVATION OF CULTURAL AND NATURAL RESOURCES AND THE ENVIRONMENT

If the Contractor initiates changes to the Contract and the Owner approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agencies.

6.1. Cultural Resources. Cease all work immediately if a site, building, or location of historical, archeological, educational, or scientific interest is discovered within the right of way. The site, building, or location will be investigated and evaluated by the Owner.

6.2. Texas Pollutant Discharge Elimination System (TPDES) Permits and Storm Water Pollution Prevention Plans (SWP3). The Owner will file the Notice of Intent (NOI) and the Notice of Termination (NOT) for work shown on the plans in the right of way. Adhere to all requirements of the SWP3.

- 6.3. **Work in Waters of the United States.** For work in the right of way, the Owner will obtain any required Section 404 permits from the U.S. Army Corps of Engineers before work begins. Adhere to all agreements, mitigation plans, and standard best management practices required by the permit. When Contractor-initiated changes in the construction method changes the impacts to waters of the U.S., obtain new or revised Section 404 permits.
- 6.4. **Work in Navigable Waters of the United States.** For work in the right of way, the Owner will obtain any required Section 9 permits from the U.S. Coast Guard before work begins. Adhere to the stipulations of the permits and associated best management practices. When Contractor-initiated changes in the construction method changes the impacts to navigable waters of the U.S., obtain new or revised Section 9 permits.
- 6.5. **Work Over the Recharge or Contributing Zone of Protected Aquifers.** Make every reasonable effort to minimize the degradation of water quality resulting from impacts relating to work over the recharge or contributing zones of protected aquifers, as defined and delineated by the TCEQ. Use best management practices and perform work in accordance with Contract requirements.
- 6.6. **Project-Specific Locations.** For all project-specific locations (PSLs) on or off the right of way (material sources, waste sites, parking areas, storage areas, field offices, staging areas, haul roads, etc.), signing the Contract certifies compliance with all applicable laws, rules, and regulations pertaining to the preservation of cultural resources, natural resources, and the environment as issued by the following or other agencies:
- Occupational Safety and Health Administration,
 - Texas Commission on Environmental Quality,
 - Texas Department of Transportation,
 - Texas Historical Commission,
 - Texas Parks and Wildlife Department,
 - Texas Railroad Commission,
 - U.S. Army Corps of Engineers,
 - U.S. Department of Energy,
 - U.S. Department of Transportation,
 - U.S. Environmental Protection Agency,
 - U.S. Federal Emergency Management Agency, and
 - U.S. Fish and Wildlife Service.

All subcontractors must also comply with applicable environmental laws, rules, regulations, and requirements in the Contract. Maintain documentation of certification activities including environmental consultant reports, Contractor documentation on certification decisions and contacts, and correspondence with the resource agencies. Provide documentation upon request.

Obtain written approval from the Engineer for all PSLs in the right of way not specifically addressed on the plans. Prepare an SWP3 for all Contractor facilities, such as asphalt or concrete plants located within public right of way. Comply with all TCEQ permit requirements for portable facilities, such as concrete batch plants, rock crushers, asphalt plants, etc. Address all environmental issues, such as Section 404 permits, wetland delineation, endangered species consultation requirements, or archeological and historic site impacts. Obtain all permits and clearances in advance.

7. **AGRICULTURAL IRRIGATION**

Regulate the sequence of work and make provisions as necessary to provide for agricultural irrigation or drainage during the work. Meet with the Irrigation District or land owner to determine the proper time and sequence when irrigation demands will permit shutting-off water flows to perform work.

Unless otherwise provided on the plans, the work performed under this article will not be measured or paid for directly but will be subsidiary to pertinent items.

8. SANITARY PROVISIONS

Provide and maintain adequate, neat, and sanitary toilet accommodations for employees, including Owner employees, in compliance with the requirements and regulations of the Texas Department of Health or other authorities with jurisdiction.

9. ABATEMENT AND MITIGATION OF EXCESSIVE OR UNNECESSARY NOISE

Minimize noise throughout all phases of the Contract. Exercise particular and special efforts to avoid the creation of unnecessary noise impact on adjacent noise sensitive receptors in the placement of non-mobile equipment such as air compressors, generators, pumps, etc. Place mobile and stationary equipment to cause the least disruption of normal adjacent activities.

All equipment associated with the work must be equipped with components to suppress excessive noise and these components must be maintained in their original operating condition considering normal depreciation. Noise-attenuation devices installed by the manufacturer such as mufflers, engine covers, insulation, etc. must not be removed nor rendered ineffectual nor be permitted to remain off the equipment while the equipment is in use.

10. USING EXPLOSIVES

Do not endanger life or property. The contractor is required to submit a written Blasting Plan if required by the plans or requested by the Engineer. The Owner retains the right to reject the blasting plan. Store all explosives securely and clearly mark all storage places with "DANGER – EXPLOSIVES." Store, handle, and use explosives and highly flammable material in compliance with federal, state, and local laws, ordinances, and regulations. Assume liability for property damage, injury, or death resulting from the use of explosives.

Give at least a 48-hr. advance notice to the appropriate Road Master before doing any blasting work involving the use of electric blasting caps within 200 ft. of any railroad track.

11. RESPONSIBILITY FOR HAZARDOUS MATERIALS

Indemnify and save harmless the Owner and its agents and employees from all suits, actions, or claims and from all liability and damages for any injury or damage to any person or property arising from the generation or disposition of hazardous materials introduced by the Contractor on any work done by the Contractor on Owner-owned or controlled sites. Indemnify and save harmless the Owner and its representatives from any liability or responsibility arising out of the Contractor's generation or disposition of any hazardous materials obtained, processed, stored, shipped, etc., on sites not owned or controlled by the Owner. Reimburse the Owner for all payments, fees, or restitution the Owner is required to make as a result of the Contractor's actions.

12. ASBESTOS CONTAINING MATERIAL

In Texas, the Department of State Health Services (DSHS), Asbestos Programs Branch, is responsible for administering the requirements of the National Emissions Standards for Hazardous Air Pollutants, 40 CFR, Subpart M (NESHAP) and the Texas Asbestos Health Protection Rules (TAHPR). Based on EPA guidance and regulatory background information, bridges are considered to be a regulated "facility" under NESHAP. Therefore, federal standards for demolition and renovation apply.

Provide notice to the Owner of demolition or renovation to the structures listed on the plans at least 30 calendar days before initiating demolition or renovation of each structure or load bearing member. Provide the scheduled start and completion date of structure demolition, renovation, or removal.

When demolition, renovation, or removal of load-bearing members is planned for several phases, provide the start and completion dates identified by separate phases.

DSHS requires that notifications be postmarked at least 10 working days before initiating demolition or renovation. If the date of actual demolition, renovation, or removal is changed, the Owner will be required to notify DSHS at least 10 days in advance of the work. This notification is also required when a previously scheduled (notification sent to DSHS) demolition, renovation, or removal is delayed. Therefore, if the date of actual demolition, renovation, or removal is changed, provide the Engineer, in writing, the revised dates in enough time to allow for the Owner's notification to DSHS to be postmarked at least 10 days in advance of the actual work.

Failure to provide the above information may require the temporary suspension of work under Article 8.4., "Temporary Suspension of Work or Working Day Charges," due to reasons under the control of the Contractor. The Owner retains the right to determine the actual advance notice needed for the change in date to address post office business days and staff availability.

13. RESTORING SURFACES OPENED BY PERMISSION

Do not authorize anyone to make an opening in the highway for utilities, drainage, or any other reason without written permission by the Engineer. Repair all openings as directed by the Engineer. Payment for repair of surfaces opened by permission will be made in accordance with pertinent items or Article 4.4., "Changes in the Work." Costs associated with openings made with Contractor authorization but without Owner approval will not be paid.

14. PROTECTING ADJACENT PROPERTY

Protect adjacent property from damage. If any damage results from an act or omission on the part of or on behalf of the Contractor, take corrective action to restore the damaged property to a condition similar or equal to that existing before the damage was done.

15. RESPONSIBILITY FOR DAMAGE CLAIMS

Indemnify and save harmless the Owner and its agents and employees from all suits, actions, or claims and from all liability and damages for any injury or damage to any person or property due to the Contractor's negligence in the performance of the work and from any claims arising or amounts recovered under any laws, including workers' compensation and the Texas Tort Claims Act. Indemnify and save harmless the Owner and assume responsibility for all damages and injury to property of any character occurring during the prosecution of the work resulting from any act, omission, neglect, or misconduct on the Contractor's part in the manner or method of executing the work; from failure to properly execute the work; or from defective work or material.

Pipelines and other underground installations that may or may not be shown on the plans may be located within the right of way. Indemnify and save harmless the Owner from any suits or claims resulting from damage by the Contractor's operations to any pipeline or underground installation. Make available the scheduled sequence of work to the respective utility owners so that they may coordinate and schedule adjustments of their utilities that conflict with the proposed work.

16. HAULING AND LOADS ON ROADWAYS AND STRUCTURES

Comply with federal and state laws concerning legal gross and axle weights. Except for the designated Interstate system, vehicles with a valid yearly overweight tolerance permit may haul materials to the work locations at the permitted load. Provide copies of the yearly overweight tolerance permits to the Engineer upon request. Construction equipment is not exempt from oversize or overweight permitting requirements on roadways open to the traveling public.

Protect existing bridges and other structures that will remain in use by the traveling public during and after the completion of the Contract. Construction traffic on roadways, bridges, and culverts within the limits of the work, including any structures under construction that will remain in service during and after completion of the Contract is subject to legal size and weight limitations.

Additional temporary fill may be required by the Engineer for hauling purposes for the protection of certain structures. This additional fill will not be paid directly but will be subsidiary.

Replace or restore to original condition any structure damaged by the Contractor's operations.

The Engineer may allow equipment with oversize or non-divisible overweight loads to operate without a permit within the work locations on pavement structures not open to the traveling public. Submit Contractor-proposed changes to traffic control plans for approval, in accordance with Item 502, "Barricades, Signs, and Traffic Handling." The following sections further address overweight allowances. The Owner will make available to the Contractor any available plans and material reports for existing structures.

- 16.1. **Overweight Construction Traffic Crossing Structures.** The Engineer may allow crossing of a structure not open to the public within the work locations, when divisible or non-divisible loads exceed legal weight limitations, including limits for load-posted bridges. Obtain written permission to make these crossings. Submit for approval a structural analysis by a licensed professional engineer indicating that the excessive loads should be allowed. Provide a manufacturer's certificate of equipment weight that includes the weight distribution on the various axles and any additional parts such as counterweights, the configuration of the axles, or other information necessary for the analysis. Submit the structural analysis and supporting documentation sufficiently in advance of the move to allow for review. Permission may be granted if the Engineer finds that no damage or overstresses in excess of those normally allowed for occasional overweight loads will result to structures that will remain in use after Contract completion. Provide temporary matting or other protective measures as directed.

Schedule loads so that only one vehicle is on any span or continuous unit at any time. Use barricades, fences, or other positive methods to prevent other vehicular access to structures at any time the overweight load is on any span or continuous unit.

- 16.2. **Construction Equipment Operating on Structures.** Cranes and other construction equipment used to perform construction operations that exceed legal weight limits may be allowed on structures. Before any operation that may require placement of equipment on a structure, submit for approval a detailed structural analysis prepared by a licensed professional engineer.

Submit the structural analysis and supporting documentation sufficiently in advance of the use to allow for review and approval. Include all axle loads and configurations, spacing of tracks or wheels, tire loads, outrigger placements, center of gravity, equipment weight, and predicted loads on tires and outriggers for all planned movements, swings, or boom reaches. The analysis must demonstrate that no overstresses will occur in excess of those normally allowed for occasional overweight loads.

- 16.3. **Loads on Structures.** Do not store or stockpile material on bridge structures without written permission. If required, submit a structural analysis and supporting documentation by a licensed professional engineer for review. Permission may be granted if the Engineer finds that no damage or overstresses in excess of those normally allowed for occasional overweight loads will result to structures that will remain in use after Contract completion. Provide temporary matting or other protective measures as directed.

- 16.4. **Hauling Divisible Overweight Loads on Pavement Within the Work Locations.** The Engineer may allow divisible overweight loads on pavement structures within the work locations not open to the traveling public. Obtain written approval before hauling the overweight loads. Include calculations to demonstrate that there will be no damage or overstress to the pavement structure.

17. **CONTRACTOR'S RESPONSIBILITY FOR WORK**

Until final acceptance of the Contract, take every precaution against injury or damage to any part of the work by the action of the elements or by any other cause, whether arising from the execution or from the nonexecution of the work. Protect all materials to be used in the work at all times, including periods of suspension.

When any roadway or portion of the roadway is in suitable condition for travel, it may be opened to traffic as directed. Opening of the roadway to traffic does not constitute final acceptance.

Repair damage to all work until final acceptance. Repair damage to existing facilities in accordance with the Contract or as directed. Repair damage to existing facilities or work caused by Contractor operations at the Contractor's expense. Repair work for damage that was not due to the Contractor's operations will not be paid for except as provided below.

- 17.1. **Reimbursable Repair.** Except for damage to appurtenances listed in Section 7.17.2.1., "Unreimbursed Repair," the Contractor will be reimbursed for repair of damage caused by:
- motor vehicle, watercraft, aircraft, or railroad-train incident;
 - vandalism; or
 - Acts of God, such as earthquake, tidal wave, tornado, hurricane, or other cataclysmic phenomena of nature.

17.2. **Appurtenances.**

- 17.2.1. **Unreimbursed Repair.** Except for destruction (not reusable) due to hurricanes, reimbursement will not be made for repair of damage to the following temporary appurtenances, regardless of cause:
- signs,
 - barricades,
 - changeable message signs, and
 - other work zone traffic control devices.

Crash cushion attenuators and guardrail end treatments are the exception to the above listing and are to be reimbursed in accordance with Section 7.17.2.2., "Reimbursed Repair."

For the devices listed in this section, reimbursement may be made for damage due to hurricanes. Where the Contractor retains replaced appurtenances after completion of the project, the Owner will limit the reimbursement to the cost that is above the salvage value at the end of the project.

- 17.2.2. **Reimbursed Repair.** Reimbursement will be made for repair of damage due to the causes listed in Section 7.17.1., "Reimbursable Repair," to appurtenances (including temporary and permanent crash cushion attenuators and guardrail end treatments).

- 17.3. **Roadways and Structures.** Until final acceptance, the Contractor is responsible for all work constructed under the Contract. The Owner will not reimburse the Contractor for repair work to new construction, unless the failure or damage is due to one of the causes listed in Section 7.17.1., "Reimbursable Repair."

The Owner will be responsible for the cost for repair of damage to existing roadways and structures not caused by the Contractor's operations.

- 17.4. **Detours.** The Contractor will be responsible for the cost of maintenance of detours constructed under the Contract, unless the failure or damage is due to one of the causes listed in Section 7.17.1., "Reimbursable Repair." The Engineer may consider failures beyond the Contractor's control when determining reimbursement for repairs to detours constructed. The Owner will be responsible for the cost of maintenance of existing streets and roadways used for detours or handling traffic.

- 17.5. **Relief from Maintenance.** The Engineer may relieve the Contractor from responsibility of maintenance as outlined in this section. This relief does not release the Contractor from responsibility for defective materials or work or constitute final acceptance.

- 17.5.1. **Isolated Work Locations.** For isolated work locations, when all work is completed, including work for Article 5.11., "Final Cleanup," the Engineer may relieve the Contractor from responsibility for maintenance.

- 17.5.2. **Work Except for Vegetative Establishment and Test Periods.** When all work for all or isolated work locations has been completed, including work for Article 5.11., "Final Cleanup," with the exception of vegetative establishment and maintenance periods and test and performance periods, the Engineer may relieve the Contractor from responsibility for maintenance of completed portions of work.
- 17.5.3. **Work Suspension.** When all work is suspended for an extended period of time, the Engineer may relieve the Contractor from responsibility for maintenance of completed portions of work during the period of suspension.
- 17.5.4. **When Directed by the Engineer.** The Engineer may relieve the Contractor from the responsibility for maintenance when directed.
- 17.6. **Basis of Payment.** When reimbursement for repair work is allowed and performed, payment will be made in accordance with pertinent items or Article 4.4., "Changes in the Work."

18. ELECTRICAL REQUIREMENTS

18.1. Definitions.

18.1.1. Electrical Work. Electrical work is work performed for:

- Item 610, "Roadway Illumination Assemblies,"
- Item 614, "High Mast Illumination Assemblies,"
- Item 616, "Performance Testing of Lighting Systems,"
- Item 617, "Temporary Roadway Illumination,"
- Item 618, "Conduit,"
- Item 620, "Electrical Conductors,"
- Item 621, "Tray Cable,"
- Item 622, "Duct Cable,"
- Item 628, "Electrical Services,"
- Item 680, "Highway Traffic Signals,"
- Item 681, "Temporary Traffic Signals,"
- Item 684, "Traffic Signal Cables,"
- Item 685, "Roadside Flashing Beacon Assemblies,"
- other items that involve either the distribution of electrical power greater than 50 volts or the installation of conduit and duct banks,
- the installation of conduit and wiring associated with Item 624, "Ground Boxes," and Item 656, "Foundations for Traffic Control Devices," and
- the installation of the conduit system for communication and fiber optic cable.

Electrical work does not include the installation of communications or fiber optic cable, or the connections for low voltage and inherently power limited circuits such as electronic or communications equipment. Assembly and placement of poles, structures, cabinets, enclosures, manholes, or other hardware will not be considered electrical work as long as no wiring, wiring connections, or conduit work is done at the time of assembly and placement.

18.1.2. Specialized Electrical Work. Specialized electrical work is work that includes the electrical service and feeders, sub-feeders, branch circuits, controls, raceways, and enclosures for the following:

- pump stations,
- moveable bridges,
- ferry slips,
- motor control centers,
- facilities required under Item 504, "Field Office and Laboratory,"
- rest area or other public buildings,

- weigh-in-motion stations,
- electrical services larger than 200 amps,
- electrical services with main or branch circuit breaker sizes not shown in the Contract, and
- any 3-phase electrical power.

18.1.3. **Certified Person.** A certified person is a person who has passed the test from the TxDOT course TRF450, "TxDOT Roadway Illumination and Electrical Installations," or other courses as approved by the Owner. Submit a current and valid certification upon request.

18.1.4. **Licensed Electrician.** A licensed electrician is a person with a current and valid unrestricted master electrical license, or unrestricted journeyman electrical license that is supervised or directed by an unrestricted master electrician. An unrestricted master electrician need not be on the work locations at all times electrical work is being done, but the unrestricted master electrician must approve work performed by the unrestricted journeyman. Licensed electrician requirements by city ordinances do not apply to on state system work.

The unrestricted journeyman and unrestricted master electrical licenses must be issued by the Texas Department of Licensing and Regulation or by a city in Texas with a population of 50,000 or greater that issues licenses based on passing a written test and demonstrating experience.

The Engineer may accept other states' electrical licenses. Submit documentation of the requirements for obtaining that license. Acceptance of the license will be based on sufficient evidence that the license was issued based on:

- passing a test based on the NEC similar to that used by Texas licensing officials, and
- sufficient electrical experience commensurate with general standards for an unrestricted master and unrestricted journeyman electrician in the State of Texas.

18.2. **Work Requirements.** The qualifications required to perform electrical work and specialized electrical work are listed in Table 2.

Table 2
Work Requirements

Type of Work	Qualifications to Perform Work
Electrical work with plans	Licensed electrician, certified person, or workers directly supervised by a licensed electrician or certified person
Electrical work without plans	Licensed electrician or workers directly supervised by a licensed electrician
Specialized electrical work	Licensed electrician or workers directly supervised by a licensed electrician
Replace lamps, starting aids, and changing fixtures	Licensed electrician, certified person, or workers directly supervised by a licensed electrician or certified person
Conduit in precast section with approved working drawings	Inspection by licensed electrician or certified person
Conduit in cast-in-place section	Inspection by licensed electrician or certified person
All other electrical work (troubleshooting, repairs, component replacement, etc.)	Licensed electrician or workers directly supervised by a licensed electrician

A licensed electrician must be physically present during all electrical work when Table 2 states that workers are to be directly supervised by a licensed electrician or certified person.

A non-certified person may install conduit in cast-in-place concrete sections if the work is verified by a certified person before concrete placement.

When the plans specify IMSA certification, the requirements of Table 2 will still apply to the installation of the conduit, ground boxes, electrical services, pole grounding, and electrical conductors installed under Item 620, "Electrical Conductors."

Item 8L

Prosecution and Progress

1. PROSECUTION OF WORK

Unless otherwise shown in the Contract, begin work within 90 calendar days after the authorization date to begin work as shown on the Notice to Proceed. Prosecute the work continuously to completion within the working days specified. Unless otherwise shown in the Contract documents, work may be prosecuted in concurrent phases if no changes are required in the traffic control plan or if a revised traffic control plan is approved. Notify the Engineer at least 24 hr. before beginning work or before beginning any new operation. Do not start new operations to the detriment of work already begun. Minimize interference to traffic.

2. SUBCONTRACTING

Do not sublet any portion of a construction Contract without the Engineer's written approval. A subcontract does not relieve any responsibility under the Contract and bonds. Ensure that all subcontracted work complies with all governing labor provisions.

The Contractor certifies by signing the Contract that the Contractor will not enter into any subcontract with a subcontractor that is debarred or suspended by the Owner, or any state or federal agency.

For federally funded Contracts, ensure the required federal documents are physically attached to each subcontract agreement including all tiered subcontract agreements.

For all DBE/HUB/SBE subcontracts including all tiered DBE/HUB/SBE subcontracts, submit a copy of the executed subcontract agreement.

Submit a copy of the executed non-DBE subcontracts including all tiered non-DBE subcontracts when requested.

2.1. **Construction Contracts.** Perform work with own organization on at least 30% of the total original Contract cost (25% if the Contractor is an SBE on a wholly State or local funded Contract) excluding any items determined to be specialty items. Specialty items are those that require highly specialized knowledge, abilities, or equipment not usually available in the contracting firm expected to bid on the proposed Contract as a whole.

Specialty items will be shown on the plans or as directed by the Engineer. Bid cost of specialty items performed by subcontractors will be deducted from the total original Contract cost before computing the required amount of work to be performed by the Contractor's own organization.

The term "perform work with own organization" includes only:

- workers employed and paid directly by the Contractor or wholly owned subsidiary;
- equipment owned by the Contractor or wholly owned subsidiary;
- rented or leased equipment operated by the Contractor's employees or wholly owned subsidiary's employees;
- materials incorporated into the work if the majority of the value of the work involved in incorporating the material is performed by the Contractor's own organization, including a wholly owned subsidiary's organization; and
- labor provided by staff leasing firms licensed under Chapter 91 of the Texas Labor Code for nonsupervisory personnel if the Contractor or wholly owned subsidiary maintains direct control over the activities of the leased employees and includes them in the weekly payrolls.

When staff leasing firms provide materials or equipment, they are considered subcontractors. In these instances, submit staff leasing firms for approval as a subcontractor.

Copies of cancelled checks and certified statements may be required to verify compliance with the requirements of this section.

- 2.2. **Payments to Subcontractors.** Report payments for DBE/HUB/SBE subcontracts including tiered DBE/HUB/SBE subcontracts in the manner as prescribed by the Owner.
- 2.3. **Payment Records.** Make payment records, including copies of cancelled checks, available for inspection by the Owner. Submit payment records upon request. Retain payment records for a period of 3 yr. following completion of the Contract work or as specified by the Owner.

Failure to submit this information to the Engineer by the 20th day of each month will result in the Owner taking actions, including, but not limited to, withholding estimates and suspending the work. This work will not be measured or paid for directly but will be subsidiary to pertinent items.

3. COMPUTATION OF CONTRACT TIME FOR COMPLETION

Upon request, the Engineer will provide the conceptual time determination schedule to the Contractor for informational purposes only. The schedules assume generic resources, production rates, sequences of construction and average weather conditions based on historic data. The Owner will not adjust the number of working days and milestones, if any, due to differences in opinion regarding any assumptions made in the preparation of the schedule or for errors, omissions, or discrepancies found in the Owner's conceptual time schedule.

The number of working days is established by the Contract. Working day charges will begin 30 calendar days after the date of the written authorization to begin work. Working day charges will continue in accordance with the Contract. The Engineer may consider increasing the number of working days under extraordinary circumstances.

- 3.1. **Working Day Charges.** Working days will be charged in accordance with Section 8.3.1.4., "Standard Workweek," unless otherwise shown in the Contract documents. Working days will be computed and charged in accordance with one of the following:
 - 3.1.1. **Five-Day Workweek.** Working days will be charged Monday through Friday, excluding national holidays, regardless of weather conditions or material availability. The Contractor has the option of working on Saturdays. Provide sufficient advance notice when scheduling work on Saturdays. Work on Sundays and national holidays will not be permitted without written permission. If work requiring an Inspector to be present is performed on a Saturday, Sunday, or national holiday, and weather and other conditions permit the performance of work for 7 hr. between 7 A.M. and 6 P.M., a working day will be charged.
 - 3.1.2. **Six-Day Workweek.** Working days will be charged Monday through Saturday, excluding national holidays, regardless of weather conditions or material availability. Work on Sundays and national holidays will not be permitted without written permission. If work requiring an Inspector to be present is performed on a Sunday or a national holiday, and weather or other conditions permit the performance of work for 7 hr. between 7 A.M. and 6 P.M., a working day will be charged.
 - 3.1.3. **Seven-Day Workweek.** Working days will be charged Monday through Sunday, excluding national holidays, regardless of weather conditions or material availability. Work on national holidays will not be permitted without written permission. If work is performed on any of these holidays requiring an Inspector to be present, and weather or other conditions permit the performance of work for 7 hr. between 7 A.M. and 6 P.M., a working day will be charged.
 - 3.1.4. **Standard Workweek.** Working days will be charged Monday through Friday, excluding national or state holidays, if weather or other conditions permit the performance of the principal unit of work underway, as determined by the Engineer, for a continuous period of at least 7 hr. between 7 A.M. and 6 P.M., unless

otherwise shown in the Contract. The Contractor has the option of working on Saturdays or state holidays. Provide sufficient advance notice to the Engineer when scheduling work on Saturdays. Work on Sundays and national holidays will not be permitted without written permission. If work requiring an Inspector to be present is performed on a Saturday, Sunday, or holiday, and weather or other conditions permit the performance of work for 7 hr. between 7 A.M. and 6 P.M., a working day will be charged.

- 3.1.5. **Calendar Day.** Working days will be charged Sunday through Saturday, including all holidays, regardless of weather conditions, material availability, or other conditions not under the control of the Contractor.
- 3.1.6. **Other.** Working days will be charged as shown in the Contract documents.
- 3.2. **Restricted Work Hours.** Restrictions on Contractor work hours and the related definition for working day charges are as prescribed in this article unless otherwise shown in the Contract documents.
- 3.3. **Nighttime Work.** Nighttime work is allowed only when shown in the Contract documents or as directed. Nighttime work is defined as work performed from 30 min. after sunset to 30 min. before sunrise.
 - 3.3.1. **Five-, Six-, and Seven-Day Workweeks.** Nighttime work that extends past midnight will be assigned to the following day for the purposes of approval for allowing work on Sundays or national holidays.
 - 3.3.2. **Standard Workweek.**
 - 3.3.2.1. **Nighttime Work Only.** When nighttime work is allowed or required and daytime work is not allowed, working day charges will be made when weather and other conditions permit the performance of the principal unit of work underway, as determined by the Engineer, for a continuous period of at least 7 hr. for the nighttime period, as defined in Section 8.3.3., "Nighttime Work," unless otherwise shown in the Contract documents.
 - 3.3.2.2. **Nighttime Work and Daytime Work Requiring Inspector.** When nighttime work is performed or required and daytime work is allowed, working day charges will be made when weather and other conditions permit the performance of the principal unit of work underway, as determined by the Engineer, for a continuous period of at least 7 hr. for the nighttime period, as defined in Section 8.3.3., "Nighttime Work," or for a continuous period of at least 7 hr. for the alternative daytime period unless otherwise shown in the Contract documents. Only one day will be charged for each 24-hr. time period. When the Engineer agrees to restrict work hours to the nighttime period only, working day charges will be in accordance with Section 8.3.3.2.1., "Nighttime Work Only."
- 3.4. **Time Statements.** The Engineer will furnish the Contractor a monthly time statement. Review the monthly time statement for correctness. Report protests in writing, no later than 30 calendar days after receipt of the time statement, providing a detailed explanation for each day protested. Not filing a protest within 30 calendar days will indicate acceptance of the working day charges and future consideration of that statement will not be permitted.

4. **TEMPORARY SUSPENSION OF WORK OR WORKING DAY CHARGES**

The Engineer may suspend the work, wholly or in part, and will provide notice and reasons for the suspension in writing. Suspend and resume work only as directed in writing.

When part of the work is suspended, the Engineer may suspend working day charges only when conditions not under the control of the Contractor prohibit the performance of critical activities. When all of the work is suspended for reasons not under the control of the Contractor, the Engineer will suspend working day charges.

5. **PROJECT SCHEDULES**

Prepare, maintain, and submit project schedules. Project schedules are used to convey the Contractor's intended work plan to the Owner. Prepare project schedules with a level of effort sufficient for the work being

performed. Project schedules will not be used as a basis to establish the amount of work performed or for the preparation of the progress payments.

- 5.1. **Project Scheduler.** Designate an individual who will develop and maintain the progress schedule. The Project Scheduler will be prepared to discuss, in detail, the proposed sequence of work and methods of operation, and how that information will be communicated through the Progress Schedule at the Preconstruction Meeting. This individual will also attend the project meetings and make site visits to prepare, develop, and maintain the progress schedules.
- 5.2. **Construction Details.** Before starting work, prepare and submit a progress schedule based on the sequence of work and traffic control plan shown in the Contract documents. At a minimum, prepare the progress schedule as a Bar Chart or Critical Path Method (CPM), as shown on the plans. Include all planned work activities and sequences and show Contract completion within the number of working days specified. Incorporate major material procurements, known utility relocations, and other activities that may affect the completion of the Contract in the progress schedule. Show a beginning date, ending date, and duration in whole working days for each activity. Do not use activities exceeding 20 working days, except for agreed upon activities. Show an estimated production rate per working day for each work activity.
- 5.3. **Schedule Format.** Format all project schedules according to the following:
 - Begin the project schedule on the date of the start of Contract time or start of activities affecting work on the project;
 - Show the sequence and interdependence of activities required for complete performance of the work. If using a CPM schedule, show a predecessor and a successor for each activity; and
 - Ensure all work sequences are logical and show a coordinated plan of the work.

CPM schedules must also include:

- Clearly and accurately identify the critical path as the longest continuous path;
- Provide a legend for all abbreviations, run date, data date, project start date, and project completion date in the title block of each schedule submittal; and
- Through the use of calendars, incorporate seasonal weather conditions into the schedule for work (e.g., earthwork, concrete paving, structures, asphalt, drainage, etc.) that may be influenced by temperature or precipitation. Also, incorporate non-work periods such as holidays, weekends, or other non-work days as identified in the Contract.

- 5.4. **Activity Format.** For each activity on the project schedule provide:
 - A concise description of the work represented by the activity;
 - An activity duration in whole working days;
 - Code activities so that organized plots of the schedule may be produced.

CPM schedules must also include the quantity of work and estimated production rate for major items of work. Provide enough information for review of the work being performed.

- 5.5. **Schedule Types.**
 - 5.5.1. **Bar Chart.** Seven calendar days before the preconstruction meeting, prepare and submit a hard copy of the schedule using the bar chart method.
 - 5.5.1.1. **Progress Schedule Reviews.** Update the project schedule and submit a hard copy when changes to the schedule occur or when requested.
 - 5.5.2. **Critical Path Method.** Prepare and submit the schedule using the CPM.

5.5.2.1. **Preliminary Schedule.** Seven calendar days before the preconstruction meeting, submit both the plotted and electronic copies of the project schedule showing work to be performed within the first 90 calendar days of the project.

5.5.2.2. **Baseline Schedule.** The baseline schedule will be considered the Contractor's plan to successfully construct the project within the time frame and construction sequencing indicated in the Contract. Submit both plotted and electronic copies of the baseline schedule. Submit 2 plots of the schedule: one organized with the activities logically grouped using the activity coding; and the other plot showing only the critical path determined by the longest path, not based on critical float.

Develop and submit the baseline schedule for review within the first 45 calendar days of the project unless the time for submission is extended.

5.5.2.2.1. **Review.** Within 15 calendar days of receipt of the schedule, the Engineer will evaluate, and inform the Contractor if the schedule has been accepted. If the schedule is not accepted, the Engineer will provide comments to the Contractor for incorporation. Provide a revised schedule based on the Engineer's comments, or reasons for not doing so within 10 calendar days. The Engineer's review and acceptance of the project schedule is for conformance to the requirements of the Contract documents only and does not relieve the Contractor of any responsibility for meeting the interim milestone dates (if specified) or the Contract completion date. Review and acceptance does not expressly or by implication warrant, acknowledge, or admit the reasonableness of the logic or durations of the project schedule. If the Contractor fails to define any element of work, activity, or logic and the Engineer's review does not detect this omission or error, the Contractor is responsible for correcting the error or omission.

Submit an acceptable baseline schedule before the 90th calendar day of the project unless the time for submission is extended.

5.5.2.3. **Progress Schedule.** Maintain the project schedule for use by both the Contractor and the Engineer. Submit both the plotted and electronic copy as it will become an as-built record of the daily progress achieved on the project. If continuous progress of an activity is interrupted for any reason except non-work periods (such as holidays, weekend, or interference from temperature or precipitation), then the activity will show the actual finish date as that date of the start of the interruption and the activity will be broken into a subsequent activity (or activities, based on the number of interruptions) similarly numbered with successive alpha character as necessary. The original duration of the subsequent activity will be that of the remaining duration of the original activity. Relationships of the subsequent activity will match those of the original activity so that the integrity of the project schedule logic is maintained. Once established, the original durations and actual dates of all activities must remain unchanged. Revisions to the schedule may be made as necessary.

The project schedule must be revised when changes in construction phasing and sequencing occur or other changes that cause deviation from the original project schedule occur. Any revisions to the schedule must be listed in the monthly update narrative with the purpose of the revision and description of the impact on the project schedule's critical path and project completion date. Create the schedule revision using the latest update before the start of the revision.

Monthly updating of the project schedule will include updating of:

- The actual start dates for activities started;
- The actual finish dates for activities completed;
- The percentage of work completed and remaining duration for each activity started but not yet completed; and
- The calendars to show days actual work was performed on the various work activities.

The cut-off day for recording monthly progress will be the last day of each month. Submit the updated project schedule no later than the 20th calendar day of the following month. The Engineer will evaluate the updated schedule within 5 calendar days of receipt and inform the Contractor if it has or has not been accepted. If the schedule is not accepted, the Engineer will provide comments to the Contractor for incorporation. Provide a revised schedule based on the Engineer's comments, or reasons for not doing so within 5 calendar days.

Provide a brief narrative in a bulleted statement format for major items that have impacted the schedule. Notify the Engineer if resource-leveling is being used.

5.5.2.3.1. **Project Schedule Summary Report (PSSR).** When shown on the plans, provide the PSSR instead of the narrative required in Section 8.5.5.2.3., "Progress Schedule." The PSSR includes a listing of major items that have impacted the schedule as well as a summary of progress in days ahead or behind schedule. Include an explanation of the project progress for the period represented on the form provided by the Owner.

5.5.3. **Notice of Potential Time Impact.** Submit a "Notice of Potential Time Impact" when a Contract time extension or adjustment of milestone dates may be justified or when directed.

Failure to provide this notice in the time frames outlined above will compromise the Owner's ability to mitigate the impacts and the Contractor forfeits the right to request a time extension or adjustment of milestone dates unless the circumstances are such that the Contractor could not reasonably have had knowledge of the impact at the time.

5.5.4. **Time Impact Analysis.** When directed, provide a time impact analysis. A time impact analysis is an evaluation of the effects of impacts on the project. A time impact analysis consists of the following steps:

- Step 1. Establish the status of the project immediately before the impact.
- Step 2. Predict the effect of the impact on the schedule update used in Step 1.
- Step 3. Track the effects of the impact on the schedule during its occurrence.
- Step 4. Establish the status of the project after the impact's effect has ended and provide details identifying any mitigating actions or circumstances used to keep the project ongoing during the impact period.

Determine the time impact by comparing the status of the work before the impact (Step 1) to the prediction of the effect of the impact (Step 2), if requested, and to actual effects of the impact once it is complete (Step 4). Unless otherwise approved, Steps 1, 3, and 4, must be completed before consideration of a Contract time extension or adjustment of a milestone date will be provided. Time extensions will only be considered when delays that affect milestone dates or the Contract completion date are beyond the Contractor's control. Submit Step 4 no later than 15 calendar days after the impact's effects have ended or when all the information on the effect has been realized.

Submit one electronic backup copy of the complete time impact analysis and a copy of the full project schedule incorporating the time impact analysis. If the project schedule is revised after the submittal of a time impact analysis, but before its approval, indicate in writing the need for any modification to the time impact analysis.

The Engineer will review the time impact analysis upon completion of step 4. If this review detects revisions or changes to the schedule that had not been performed and identified in a narrative, the Engineer may reject the time impact analysis. If the Engineer is in agreement with the time impact analysis, a change order may be issued to grant additional working days, or to adjust interim milestones. Once a change order has been executed, incorporate the time impact analysis into the project schedule. The time impact analysis may also be used to support the settlement of disputes and claims. Compensation related to the time impact analysis may be provided at the completion of the analysis or the completion of the project to determine the true role the impact played on the final completion.

The work performed under this article will not be measured or paid for directly but will be subsidiary to pertinent items.

6. FAILURE TO COMPLETE WORK ON TIME

The time established for the completion of the work is an essential element of the Contract. If the Contractor fails to complete the work within the number of working days specified, working days will continue to be charged. Failure to complete the Contract, a separate work order, or callout work within the number of working days specified, including any approved additional working days, will result in liquidated damages for

each working day charged over the number of working days specified in the Contract. The dollar amount specified in the Contract will be deducted from any money due or to become due the Contractor for each working day the Contract remains incomplete. This amount will be assessed not as a penalty but as liquidated damages.

7. DEFAULT OF THE CONTRACT

7.1. Declaration of Default. The Engineer may declare the Contractor to be in default of the Contract if the Contractor:

- fails to begin the work within the number of days specified,
- fails to prosecute the work to assure completion within the number of days specified,
- is uncooperative, disruptive or threatening,
- fails to perform the work in accordance with the Contract requirements,
- neglects or refuses to remove and replace rejected materials or unacceptable work,
- discontinues the prosecution of the work without the Engineer's approval,
- makes an unauthorized assignment,
- fails to resume work that has been discontinued within a reasonable number of days after notice to do so,
- fails to conduct the work in an acceptable manner, or
- commits fraud or other unfixable conduct as determined by the Owner.

If any of these conditions occur, the Engineer will give notice in writing to the Contractor and the Surety of the intent to declare the Contractor in default. If the Contractor does not proceed as directed within 10 days after the notice, the Owner will provide written notice to the Contractor and the Surety to declare the Contractor to be in default of the Contract. The Owner will also provide written notice of default to the Surety. If the Contractor provides the Owner written notice of voluntary default of the Contract, the Owner may waive the 10 day notice of intent to declare the Contractor in default and immediately provide written notice of default to the Contractor and the Surety. Working day charges will continue until completion of the Contract. The Owner may suspend work in accordance with Section 8.4., "Temporary Suspension of Work or Working Day Charges," to investigate apparent fraud or other unfixable conduct before defaulting the Contractor. The Contractor may be subject to sanctions under the state and/or federal laws and regulations.

The Owner will determine the method used for the completion of the remaining work as follows:

- **Contracts without Performance Bonds.** The Owner will determine the most expeditious and efficient way to complete the work, and recover damages from the Contractor.
- **Contracts with Performance Bonds.** The Owner will, without violating the Contract, demand that the Contractor's Surety complete the remaining work in accordance with the terms of the original Contract. A completing Contractor will be considered a subcontractor of the Surety. The Owner reserves the right to approve or reject proposed subcontractors. Work may resume after the Owner receives and approves Certificates of Insurance as required in Section 3.4.3., "Insurance." Certificates of Insurance may be issued in the name of the completing Contractor. The Surety is responsible for making every effort to expedite the resumption of work and completion of the Contract. The Owner may complete the work using any or all materials at the work locations that it deems suitable and acceptable. Any costs incurred by the Owner for the completion of the work under the Contract will be the responsibility of the Surety.

From the time of notification of the default until work resumes (either by the Surety or the Owner), the Owner will maintain traffic control devices and will do any other work it deems necessary, unless otherwise agreed upon by the Owner and the Surety. All costs associated with this work will be deducted from money due to the Surety.

The Owner will hold all money earned but not disbursed by the date of default. Upon resumption of the work after the default, all payments will be made to the Surety. All costs and charges incurred by the Owner as a result of the default, including the cost of completing the work under the Contract, costs of maintaining traffic

control devices, costs for other work deemed necessary, and any applicable liquidated damages or disincentives will be deducted from money due the Contractor for completed work. If these costs exceed the sum that would have been payable under the Contract, the Surety will be liable and pay the Owner the balance of these costs in excess of the Contract price. In case the costs incurred by the Owner are less than the amount that would have been payable under the Contract if the work had been completed by the Contractor, the Owner will be entitled to retain the difference.

Comply with Article 8.2., "Subcontracting," and abide by the DBE/HUB/SBE commitments previously approved by the Owner .

No markups as defined in Article 9.7., "Payment for Extra Work and Force Account Method," will be allowed for the Surety.

7.2. **Wrongful Default.** Submit a written request to the Owner within 14 calendar days of receipt of the notice of default for consideration of wrongful default.

The Owner will determine if the Contractor has been wrongfully defaulted, and will proceed with the following:

- If the Owner determines the default is proper, the default will remain. If the Contractor is in disagreement, the Contractor may file a claim in accordance with Article 4.7., "Dispute or Claims Procedure."
- If the Owner determines it was a wrongful default, the Owner will terminate the Contract for convenience, in accordance with Article 8.8., "Termination of the Contract."

8. TERMINATION OF THE CONTRACT

The Owner may terminate the Contract in whole or in part whenever:

- the Contractor is prevented from proceeding with the work as a direct result of an executive order of the President of the United States or the Governor of the State;
- the Contractor is prevented from proceeding with the work due to a national emergency, or when the work to be performed under the Contract is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor as the result of an order or a proclamation of the President of the United States;
- the Contractor is prevented from proceeding with the work due to an order of any federal authority;
- the Contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining court order where the issuance of the restraining order is primarily caused by acts or omissions of persons or agencies other than the Contractor; or
- the Owner determines that termination of the Contract is in the best interest of the Owner or the public. This includes, but is not limited to, the discovery of significant hazardous material problems, right of way acquisition problems, or utility conflicts that would cause substantial delays or expense to the Contract.

8.1. **Procedures and Submittals.** The Engineer will provide written notice to the Contractor of termination specifying the extent of the termination and the effective date. Upon notice, immediately proceed in accordance with the following:

- stop work as specified in the notice;
- place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete a critical portion of the Contract, as approved;
- terminate all subcontracts to the extent they relate to the work terminated;
- complete performance of the work not terminated;
- settle all outstanding liabilities and termination settlement proposals resulting from the termination for public convenience of the Contract;
- create an inventory report, including all acceptable materials and products obtained for the Contract that have not been incorporated in the work that was terminated (include in the inventory report a

description, quantity, location, source, cost, and payment status for each of the acceptable materials and products); and

- take any action necessary, or that the Engineer may direct, for the protection and preservation of the materials and products related to the Contract that are in the possession of the Contractor and in which the Owner has or may acquire an interest.

8.2.

Settlement Provisions. Within 60 calendar days of the date of the notice of termination, submit a final termination settlement proposal, unless otherwise approved. The Engineer will prepare a change order that reduces the affected quantities of work and adds acceptable costs for termination. No claim for loss of anticipated profits will be considered. The Owner will pay reasonable and verifiable termination costs including:

- all work completed at the unit bid price and partial payment for incomplete work;
- the percentage of Item 500, "Mobilization," equivalent to the percentage of work complete or actual cost that can be supported by cost records, whichever is greater;
- expenses necessary for the preparation of termination settlement proposals and support data;
- the termination and settlement of subcontracts;
- storage, transportation, restocking, and other costs incurred necessary for the preservation, protection, or disposition of the termination inventory; and
- other expenses acceptable to the Owner.

Item 9L

Measurement and Payment

1. MEASUREMENT OF QUANTITIES

The Engineer will measure all completed work using United States standard measures, unless otherwise specified.

- 1.1. **Linear Measurement.** Unless otherwise specified, all longitudinal measurements for surface areas will be made along the actual surface of the roadway and not horizontally. No deduction will be made for structures in the roadway with an area of 9 sq. ft. or less. For all transverse measurements for areas of base courses, surface courses, and pavements, the dimensions to be used in calculating the pay areas will be the neat dimensions and will not exceed those shown on the plans, unless otherwise directed.
- 1.2. **Volume Measurement.** Transport materials measured for payment by volume in approved hauling vehicles. Display a unique identification mark on each vehicle. Furnish information necessary to calculate the volume capacity of each vehicle. The Engineer may require verification of volume through weight measurement. Use body shapes that allow the capacity to be verified. Load and level the load to the equipment's approved capacity. Loads not hauled in approved vehicles may be rejected.
- 1.3. **Weight Measurement.** Transport materials measured for payment by weight or truck measure in approved hauling vehicles. Furnish certified measurements, tare weights, and legal gross weight calculations for all haul units. Affix a permanent, legible number on the truck and on the trailer to correspond with the certified information. Furnish certified weights of loaded haul units transporting material if requested.
- The material will be measured at the point of delivery. The cost of supplying these volume and weight capacities is subsidiary to the pertinent item. For measurement by the ton, in the field, provide measurements in accordance with Item 520, "Weighing and Measuring Equipment," except for items where ton measurements are measured by standard tables.
- The Engineer may reject loads and suspend hauling operations for overloading.
- 1.3.1. **Hauling on Routes Accessible to the Traveling Public.** For payment purposes on haul routes accessible to the traveling public, the net weight of the load will be calculated as follows:
- If the gross vehicle weight is less than the maximum allowed by state law, including applicable yearly weight tolerance permit, the net weight of the load will be determined by deducting the tare weight of the vehicle from the gross weight.
 - If the gross vehicle weight is more than the maximum allowed by state law, including applicable yearly weight tolerance permit, the net weight of the load will be determined by deducting the tare weight of the vehicle from the maximum gross weight allowed.
- 1.3.2. **Hauling on Routes Not Accessible to the Traveling Public.** For payment purposes on haul routes that are not accessible to the traveling public where advance permission is obtained in writing from the Engineer:
- If the gross vehicle weight is less than the maximum allowed, including applicable yearly weight tolerance permit, the net weight of the load will be determined by deducting the tare weight of the vehicle from the gross weight.
 - If the gross vehicle weight is more than the maximum allowed, the net weight of the load will be determined by deducting the tare weight of the vehicle from the maximum gross weight allowed.

2. PLANS QUANTITY MEASUREMENT

Plans quantities may or may not represent the exact quantity of work performed or material moved, handled, or placed during the execution of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised by the governing specifications or this article.

If the quantity measured as outlined under "Measurement" varies by more than 5% (or as stipulated under "Measurement" for specific Items) from the total estimated quantity for an individual item originally shown in the Contract, an adjustment may be made to the quantity of authorized work done for payment purposes.

When quantities are revised by a change in design approved by the Owner, by change order, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount involved in the change, and the 5% variance will apply to the new plans quantity.

If the total Contract quantity multiplied by the unit bid price for an individual item is less than \$250 and the item is not originally a plans quantity item, then the item may be paid as a plans quantity item if the Engineer and Contractor agree in writing to fix the final quantity as a plans quantity.

For Contracts with callout work and work orders, plans quantity measurement requirements are not applicable.

3. ADJUSTMENT OF QUANTITIES

The party to the Contract requesting the adjustment will provide field measurements and calculations showing the revised quantity. When approved, this revised quantity will constitute the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that item, except as provided for in Article 4.4., "Changes in the Work."

4. SCOPE OF PAYMENT

Payment of the Contract unit price is full compensation for all materials, equipment, labor, tools, and supplies necessary to complete the item of work under the Contract. Until final acceptance in accordance with Article 5.12., "Final Acceptance," assume liability for completing the work according to the Contract documents and any loss or damage arising from the performance of the work or from the action of the elements, infringement of patent, trademark, or copyright, except as provided elsewhere in the Contract.

The Owner will only pay for material incorporated into the work in accordance with the Contract. Payment of progress estimates will in no way affect the Contractor's obligation under the Contract to repair or replace any defective parts in the construction or to replace any defective materials used in the construction and to be responsible for all damages due to defects if the defects and damages are discovered on or before final inspection and acceptance of the work.

5. PROGRESS PAYMENTS

The Engineer will prepare a monthly estimate of the amount of work performed, including materials in place. Incomplete items of work may be paid at an agreed upon percentage as approved. Payment of the monthly estimate is determined at the Contract item prices less any withholdings or deductions in accordance with the Contract. Progress payments may be withheld for failure to comply with the Contract.

6. PAYMENT FOR MATERIAL ON HAND (MOH)

If payment for MOH is desired, request compensation for the invoice cost of acceptable nonperishable materials that have not been used in the work before the request, and that have been delivered to the work location or are in acceptable storage places. Nonperishable materials are those that do not have a shelf life or whose characteristics do not materially change when exposed to the elements. Include only materials that

have been sampled, tested, approved, or certified, and are ready for incorporation into the work. Only materials which are completely constructed or fabricated on the Contractor's order for a specific Contract and are so marked and on which an approved test report has been issued are eligible. Payment for MOH may include the following types of items: concrete traffic barrier, precast concrete box culverts, concrete piling, reinforced concrete pipe, and illumination poles. Any repairs required after fabricated materials have been approved for storage will require approval of the Engineer before being made and will be made at the Contractor's expense. Include only those materials that have an invoice cost of at least \$1,000 in the request for MOH payment.

If the request is acceptable, the Engineer will include payment for MOH in a progress payment. Payment for MOH does not constitute acceptance of the materials. Payment will not exceed the actual cost of the material as established by invoice, or the total cost for the associated item less reasonable placement costs, whichever is less. Materials for which the Contractor does not have a paid invoice within 60 days will not be eligible for payment and will be removed from the estimate. Payment may be limited to a portion of the invoice cost or unit price if shown elsewhere in the Contract. Payment for precast products fabricated or constructed by the Contractor for which invoices or freight bills are not available may be made based on statements of actual cost.

Submit the request on forms provided by the Owner. These forms may be electronically reproduced, provided they are in the same format and contain all the required information and certifications. Continue to submit monthly MOH forms until the total value of MOH is \$0.

By submitting a request for MOH payment, the Contractor expressly authorizes the Owner to audit MOH records, and to perform process reviews of the record-keeping system. If the Owner determines noncompliance with any of the requirements of this provision, the Owner may exclude payment for any or all MOH for the duration of the Contract.

Maintain all records relating to MOH payment until final acceptance. Provide these records to the Engineer upon request.

7. PAYMENT FOR EXTRA WORK AND FORCE ACCOUNT METHOD

Payment for extra work directed, performed, and accepted will be made in accordance with Article 4.4., "Changes in the Work." Payment for extra work may be established by agreed unit prices or by Force Account Method.

Agreed unit prices are unit prices that include markups and are comparable to recent bid prices for the same character of work. These unit prices may be established without additional breakdown justification.

When using Force Account Method, determine an estimated cost for the proposed work and establish labor and equipment rates and material costs. Maintain daily records of extra work and provide copies of these records daily, signed by the Contractor's representative, for verification by the Engineer. Request payment for the extra work no later than the 10th day of the month following the month in which the work was performed. Include copies of all applicable invoices. If the extra work to be performed has an estimated cost of less than \$10,000, submit for approval and payment an invoice of actual cost for materials, equipment, labor, tools, and incidentals necessary to complete the extra work.

- 7.1. **Markups.** Payment for extra work may include markups as compensation for the use of small tools, overhead expense, and profit.
- 7.1.1. **Labor.** Compensation will be made for payroll rates for each hour that the labor, foremen, or other approved workers are actually engaged in the work. In no case will the rate of wages be less than the minimum shown in the Contract for a particular category. An additional 25% of this sum will be paid as compensation for overhead, superintendence, profit, and small tools.
- 7.1.2. **Insurance and Taxes.** An additional 55% of the labor cost, excluding the 25% compensation provided in Section 9.7.1.1., "Labor," will be paid as compensation for labor insurance and labor taxes including the cost

of premiums on non-project-specific liability (excluding vehicular) insurance, workers compensation insurance, Social Security, unemployment insurance taxes, and fringe benefits.

7.1.3. **Materials.** Compensation will be made for materials associated with the work based on actual delivered invoice costs, less any discount. An additional 25% of this sum will be paid as compensation for overhead and profit.

7.1.4. **Equipment.** Payment will be made for the established equipment hourly rates for each hour that the equipment is involved in the work. An additional 15% of this sum will be paid as compensation for overhead and profit not included in the rates.

Transportation cost for mobilizing equipment will be included if the equipment is mobilized from an off-site location.

7.1.4.1. **Contractor-Owned Equipment.** For Contractor-owned machinery, trucks, power tools, or other equipment, use the FHWA rental rates found in the *Rental Rate Blue Book* multiplied by the regional adjustment factor and the rate adjustment factor to establish hourly rates. Use the rates in effect for each section of the *Rental Rate Blue Book* at the time of use.

If a rate has not been established for a particular piece of equipment in the *Rental Rate Blue Book*, the Engineer will allow a reasonable hourly rate. This price will include operating costs.

Payment for equipment will be made for the actual hours used in the work. The Owner reserves the right to withhold payment for low production or lack of progress. Payment will not be made for time lost for equipment breakdowns, time spent to repair equipment, or time after equipment is no longer needed.

If equipment is used intermittently while dedicated solely to the work, payment will be made for the duration the equipment is assigned to the work but no more than 8 hours will be paid during a 24-hour day, nor more than 40 hours per week, nor more than 176 hours per month, except when time is computed using a six-day or seven-day workweek. When using a six-day workweek, no more than 8 hours will be paid during a 24-hour day, nor more than 48 hours per week, nor more than 211 hours per month. When using a seven-day workweek, no more than 8 hours will be paid during a 24-hour day, nor more than 56 hours per week, nor more than 246 hours per month.

7.1.4.2. **Equipment Not Owned by the Contractor.** For equipment rented from a third party not owned by the Contractor, payment will be made at the invoice daily rental rate for each day the equipment is needed for the work. The Owner reserves the right to limit the daily rate to comparable *Rental Rate Blue Book* rates. When the invoice specifies that the rental rate does not include fuel, lubricants, repairs, and servicing, the *Rental Rate Blue Book* hourly operating cost for each hour the equipment is operated will be added.

When the invoice specifies equipment operators as a component of the equipment rental, payment will be made at the invoice rate for each operator for each day the equipment is needed for the work.

7.1.4.3. **Standby Equipment Costs.** Payment for standby equipment will be made in accordance with Section 9.7.1.4., "Equipment," except that:

7.1.4.3.1. **Contractor-Owned Equipment.** For Contractor-owned machinery, trucks, power tools, or other equipment:

- Standby will be paid at 50% (to remove operating cost) of the FHWA rental rates found in the *Rental Rate Blue Book* multiplied by the regional adjustment factor and the rate adjustment factor.
- Standby costs will not be allowed during periods when the equipment would have otherwise been idle.

7.1.4.3.2. **Equipment Not Owned by the Contractor.** For equipment rented from a third party not owned by the Contractor:

- Standby will be paid at the invoice daily rental rate, excluding operating cost, which includes fuel, lubricants, repairs, and servicing. The Owner reserves the right to limit the daily standby rate to

comparable FHWA rental rates found in the *Rental Rate Blue Book* multiplied by the regional adjustment factor and the rate adjustment factor.

- Standby will be paid for equipment operators when included on the invoice and equipment operators are actually on standby.
- Standby costs will not be allowed during periods when the equipment would have otherwise been idle.

7.1.5. **Subcontracting.** An additional 5% of the actual invoice cost will be paid to the Contractor as compensation for administrative cost, superintendence, and profit.

7.1.6. **Law Enforcement.** An additional 5% of the actual invoice cost will be paid as compensation for administrative costs, superintendence, and profit.

7.1.7. **Railroad Flaggers.** An additional 5% of the actual invoice cost will be paid as compensation for administrative cost, superintendence, and profit.

7.1.8. **Bond Cost.** An additional 1% of the total compensation provided in Article 9.7., "Payment for Extra Work and Force Account Method," will be paid for the increase in bond.

8. RETAINAGE

The Owner will not withhold retainage on the Contractor. The Contractor may withhold retainage on subcontractors in accordance with state and federal regulations.

9. PAYMENT PROVISIONS FOR SUBCONTRACTORS

For the purposes of this article only, the term subcontractor includes suppliers and the term work includes materials provided by suppliers at a location approved by the Engineer.

These requirements apply to all tiers of subcontractors. Incorporate the provisions of this article into all subcontract or material purchase agreements.

Pay subcontractors for work performed within 10 days after receiving payment for the work performed by the subcontractor. Also, pay any retainage on a subcontractor's work within 10 days after satisfactory completion of all of the subcontractor's work. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor.

For the purpose of this section, satisfactory completion is accomplished when:

- the subcontractor has fulfilled the Contract requirements of both the Owner and the subcontract for the subcontracted work, including the submittal of all information required by the specifications and the Owner; and
- the work done by the subcontractor has been inspected, approved, and paid by the Owner.

Provide a certification of prompt payment in accordance with the Owner's prompt payment procedure to certify that all subcontractors and suppliers were paid from the previous months payments and retainage was released for those whose work is complete. Submit the completed form each month and the month following the month when final acceptance occurred at the end of the project.

The inspection and approval of a subcontractor's work does not eliminate the Contractor's responsibilities for all the work as defined in Article 7.17., "Contractor's Responsibility for Work."

The Owner may pursue actions against the Contractor, including withholding of estimates and suspending the work, for noncompliance with the subcontract requirements of this section upon receipt of written notice with sufficient details showing the subcontractor has complied with contractual obligations.

10.

FINAL PAYMENT

When the Contract has been completed, all work has been approved, final acceptance has been made in accordance with Article 5.12., "Final Acceptance," and Contractor submittals have been received, the Engineer will prepare a final estimate for payment showing the total quantity of work completed and the money owed the Contractor. The final payment will reflect the entire sum due, less any sums previously paid.