



**ADVERTISEMENT FOR BIDS
2018 Park Water Plant Electric Pole Replacement Project**

Sealed bids will be received by the City Clerk at City Hall, 808 South HWY 77-A, PO Drawer 738 Yoakum, Texas 77995, **until 3:00 P.M. Thursday, August 9, 2018** for repair of the Electric Distribution System at the City of Yoakum Park Water Plant. Said bids will be publicly opened in the Conference Room in City Hall and read aloud. Bids will be reviewed and presented for award to the City Council at their meeting of August 14, 2018. All bids should be in a sealed envelope with "PARK WATER PLANT ELECTRIC POLE REPLACEMENT PROJECT" written on the envelope.

The Information for Bidders, Form of Bid, Form of Contract, Specifications, and Forms of Bid Bond, Performance and Payment Bond, and other contract documents will be available for examination beginning July 25, 2018 at the Yoakum City Hall. Copies may be obtained from the office of the City Clerk.

This project is partially funded through funds received through FEMA. As such, contractor must remain in compliance with 2CFR200, federal Award Requirements, throughout project. This includes documentation of compliance 2CFR200.318(h), Disbarment and Suspension.

Each bidder must deposit with his bid, security in the amount of 5% of the bid, form and subject to the conditions provided in the Information for Bidders. No bidder may withdraw his bid within thirty (30) days after the actual date of the opening thereof.

The City of Yoakum reserves the right to reject any or all bids, to waive any informalities in bidding and to accept the bid or bids deemed most advantageous to the City.

Theresa Bowe
City Clerk

SECTION A
INSTRUCTION FOR BID AND SPECIAL INSTRUCTIONS

A.1. SCOPE OF PROJECT

General:

The City of Yoakum (herein called **COY**) invites Bids from qualified bidders (herein called **Bidder**) for the replacement of an electric pole located at the City of Yoakum Park Water Plant located at 704 S. Park Road, Yoakum, TX.

The proposal shall include the following scope of work.

The City of Yoakum (herein called Owner) invites proposals for the removal and replacement, or removal and relocation of a class 3 utility pole at the following location:

Bid Item:

Location	Description
704 S. Park Road	Set and change-out 2 (two) 40' poles w/H rack to support 3-50 KVA 480 V 3 phase transformers
	Mount and install 3-Phase/3-Bank transformer
	Re-conductor to new transformers & to service drop

Alternate Bid Item:

Location	Description
703 S. Park Road	Set 40' pole inside Park Water Plant and install 3- 50 KVA transformers in cluster on new pole to provide 3 phase 480 V to Park Water Wlant. Will need to set 40' inline pole for take-off point to new pole inside plant and install approx. 80' of 3 phase #4 Aluminum wire to feed new transformer bank; the existing disconnects will need to be moved to the new setup.
	Re-conductor to new transformers & to service drop

Some work shall be performed while circuits remain energized. Unless otherwise indicated herein, all new poles shall be framed out and set by contractor.

Contractors shall familiarize themselves with the location of the projects and the type of work to be done as well as the type of material that is to be used. Information regarding the project/locations can be obtained by contacting Victor Gomez, Electric Supt. or Michael Bennett, Director of Public Works at 361-293-6321. Please call to schedule jobsite visits.

THE CONTRACTOR SHALL PROVIDE ALL LABOR, EQUIPMENT, AND SUPERINTENDENCE ON THE PROJECT.

THE CITY OF YOAKUM SHALL PROVIDE ALL MATERIALS ON THIS PROJECT.

A.2. METHOD OF BIDDING

The project consists of various items of work as listed above. **Bidder** will provide a detailed cost for each portion of the project as listed on the Bid Form, as well as a price for the total project and the price should be entered in the appropriate space on the Bid Form.

In order to comply with 2CFR200.321, contractor may submit bids for component parts without bidding the entire project.

Also, the **Bidder** will propose the number of calendar days for completion of the project and the date on which he will start the project. Project is to be completed on or before September 30, 2018.

A.3. OBLIGATION OF BIDDER

At the time of submitting their proposal, each **Bidder** shall have inspected the site(s) and have read and be thoroughly familiar with the project, specifications, and contract document (including all addenda). The failure or omission of any **Bidder** to examine any form, instrument or document shall in no way relieve any Bidder from an obligation with respect to his bid.

A.4. RECEIPT AND OPENING OF BIDS

In compliance with §200.320 of 2 CFR 200 Subpart D as shown below, bids will be received by the City Clerk at City Hall, 808 South HWY 77-A, (PO BOX 738), YOAKUM, TEXAS 77995, until 3:00 P.M., Thursday, August 9, 2018. Bids will be opened at said time and date in the Council Room. All Bids should be in a sealed envelope with ““PARK WATER PLANT ELECTRIC POLE REPLACEMENT PROJECT” written on the envelope.

A.5. QUALIFICATIONS OF BIDDER

COY shall make such investigations as deemed necessary to determine the ability of the **Bidder** and/or its subcontractors to perform the work, and the **Bidder** shall furnish to **COY** all such information and data for this purpose as the Owner may request. Prior to award of a contract, **COY** shall research the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” Bidders appearing on the exclusion list shall not be awarded the contract. (See 2 CFR 200 Subpart D: §200.318 (h) and Appendix II (D) page 16)

The **COY** may request a list of recent projects of equal difficulty and size that the low bidder has previously performed. Bidders hereby agree to supply such a list prior to award upon request of **COY**.

The **COY** reserves the right to reject any bid if upon investigation the evidence submitted fails to satisfy the **COY** that such Bidder is properly qualified to carry out the obligations of the Contract and to complete the work therein.

A.6. TIME OF COMPLETION AND LIQUIDATED DAMAGES

Bidder must agree to commence on the date to be specified in a written “Notice to Proceed” from **COY**.

A.7. PAYMENT BOND

With delivery of the executed Contract, the **Bidder** will be required to furnish a Payment Bond to ensure the payment of all persons, firms, or subcontractors performing labor on the project under this Contract and furnishing equipment in connection with this Contract. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to the **COY**.

A.8. BID SECURITY

Each bid must be accompanied by cash, certified check of the bidder, or a bid bond prepared on the form of bid bond attached hereto, duly executed by the bidder as principal and having as surety company approved by the Owner, in the amount of 5% of the bid. Such cash, checks or bid bonds will be returned to all except the three lowest bidders within three days after the opening of bids, and the remaining cash, checks, or bid bonds will be returned promptly after the Owner and the accepted bidder have executed the contract, or if no award has been made within 30 days after the date of the opening of bids, upon demand of the bidder at any time thereafter, so long as he has not been notified of the acceptance of his bid.

A.9. POWER OF ATTORNEY

In the event Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

A.10. LAWS AND REGULATIONS

The **Bidder's** attention is directed to the fact that all applicable State laws, municipal ordinances and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout, and will be deemed to be included in the Contract the same as though written out in full.

A.11. SUBCONTRACTS

The **Bidder** is specifically advised that any person, firm or other party to whom it is proposed to award a contract under this Contract must be acceptable to the **COY**.

A.12. FINANCING AND PAYMENTS

Financing of this project will be funded by the City of Yoakum directly. Payment shall be made on a one-time basis after final acceptance by the **COY** and within 30 days from the time the **COY** receives a bill for the project.

A.13. METHOD OF AWARD

An award will be made to only one **Bidder** (herein called Contractor). The award may be made on the basis of the total price and method or type of construction.

The **COY** reserves the right to waive informalities, to reject any or all bids, and to accept the bid most advantageous to the public interest. The right is also reserved to increase or decrease the total bid amount by 25%, by increasing or decreasing scope of work if the total bid exceeds or is below the funds available.

A.14. OWNERSHIP OF PROJECT

Until final acceptance of the total project by the **COY**, the **Contractor** shall take full responsibility for the welfare of the partially completed work. Damage caused by the **Contractor** from any cause shall be repaired at the Contractor's expense.

A.15. REPLACEMENT OF MISCELLANEOUS IMPROVEMENTS

The **Contractor** shall repair or replace all building components and attachments and other miscellaneous improvements damaged by the **Contractor** due to his operations on this project, to a condition equal to or better than their condition before construction, at no additional expense to the **COY**. No direct payment will be made for this item.

A.16. MAINTENANCE GUARANTEE

The **Contractor** shall maintain and guarantee the material and installation he provides against defective workmanship for a period of one (1) year from the date of final acceptance of the work by the **COY**.

Where defective workmanship is discovered, requiring repairs to be made under this guarantee, all such repair work shall be done by the **Contractor** at his own expense within five (5) days after written notice of such defect has been given to him by the **COY**. Should the **Contractor** fail to repair such defective workmanship within five (5) days after being notified, the **COY** may make the necessary repairs and charge the **Contractor** with the actual cost of all labor and materials required.

A.17. CLEAN-UP

After construction work is completed and before final acceptance of improvements by **COY**, **Contractor** shall remove all debris from project site to an approved place of disposal. The worksites shall be left in a neat and presentable condition throughout and restore in an acceptable manner all property damaged in the progress of this work. No direct payment will be made for clean-up.

A.18. MATERIAL

COY shall provide all materials. **Contractor** will provide incidental material as approved by City representatives.

A.19. EXISTING UTILITIES

It shall be the responsibility of the **Contractor** to avoid damaging existing structures including gas lines, water lines, sewer lines, telephone cables, etc. If any structure is damaged by the **Contractor**, it shall be his responsibility to repair the damage at his own expense and restore the structure to its functional use.

A.20. CONTRACTOR'S INSURANCE

The **Contractor** shall not commence work under this Contract until he has obtained all of the insurance required by law to work for a municipal government, including the following:

1) Worker's Compensation Insurance as required by applicable State law for all of his employees to be engaged in work at the site of the project under this contract. In the case of any such work sublet, the **Contractor** shall require the subcontractor similarly to provide Worker's Compensation Insurance.

2) **Contractor's** and Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance, in the amount of not less than \$250,000 for injuries, including accidental death, to any one person and subject to the same limit for each person, in an amount not less than \$500,000 on account of one accident, and Contractor's Property Damage Insurance in an amount not less than \$100,000.

The Scope of Insurance and Special Hazards: The insurance required shall provide adequate protection for the **Contractor** and his subcontractors, respectively, against damage claims which may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by him and, also against any of the special hazards which may be encountered in the performance of this Contract.

3) Proof of Coverage of Insurance: The **Contractor** shall furnish the **COY** with certificates showing the type, amount, class of operations covered, effective dates and also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after ten (10) days written notice has been received by the **COY**."

The City of Yoakum shall be listed as additional insured.

PROPOSAL UNIT PRICE SHEET

The following bid items outline the various components of the proposed work. The unit cost shall be used to determine total cost of the work performed.

The successful **Bidder** shall provide certificates of insurance as required by law before the project starts.

The successful **Bidder** hereby agrees to perform the work, including all labor, equipment, and supervision, as needed for the following unit prices. If replacement of various components is not required, and repair of these components can be performed and is less than replacement, **COY** will be charged for the repair only.

Bid Item:

Location	Component/Description	Cost
704 S. Park Road	Set and change-out 2 (two) 40' poles w/H rack to support 3-50 KVA 480 V 3 phase transformers	
	Mount and install 3-Phase/3-Bank transformer	
	Re-conductor to new transformers & to service drop	
	Total	\$

Alternate Bid Item:

Location	Component/Description	Total Cost
704 S. Park Road	Set and relocate 1 (one) 40' pole	
703 S. Park Road	Relocate 1 (one) 40' poles to 703 S. Park Road	
	Set pole inside Park Water Plant and install 3-50 KVA transformers in cluster on new pole to provide 3-phase 480 V to Park Water Plant. Will need to set 40' inline pole for take-off point to new pole inside plant and install approx. 80' of 3 phase #4 Aluminum wire to feed new transformer bank; the existing disconnects will need to be moved to the new setup. Mount and install a cluster mount 3-Bank transformer	
	Re-conductor to new transformers & to service drop	
	Total	

Other recommended equipment and services that may be necessary to perform the scope of:

Item	Cost
	\$
	\$
	\$

The bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 days after the closing time for receiving bids.

Upon receipt of written notice of the acceptance of this bid, bidder will execute the formal contract attached within 10 days and deliver a Surety Bond or Bonds as required under the General Conditions. The bid security attached in the sum of 5% Bid Bond (\$) is to become the property of the Owner in the extent the contract and bond are not executed within the time set forth, as liquidated damages for the delay and additional expense to the Owner caused hereby.

Earliest start date: _____ Total Bid price: _____

Time needed to complete project: _____ days

Time period bid is valid for: _____ days

Company

Phone

Signature

Fax

Printed Name & Title

Date

Address

City St. Zip

The City of Yoakum reserves the right to reject any or all proposals, to waive any informality in bidding and to accept the proposal deemed most advantageous to the City.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____
_____ as Principal, and _____
_____ as Surety, are hereby held and firmly bound unto the
City of Yoakum as owner in the penal sum of _____
for the payment of which, well and truly to be made, we hereby jointly and severally bind
ourselves, our heirs, executors, administrators, successors and assigns. Signed, this ____
day of _____, 2018.

The condition of the above obligation is such that whereas the Principal has submitted to
the City of Yoakum a certain Bid, attached hereto and hereby made a part hereof to enter
into a contract in writing, for the:

NOW, THEREFORE,

(a) If said Bid shall be rejected, or in the alternate,

(b) If said Bid shall be accepted and the Principal shall execute and deliver a contract
in the Form of Contract attached hereto (properly completed in accordance with said Bid)
and shall furnish a bond for his faithful performance of said contract, and for the payment
of all persons labor or furnishing materials in connection therewith, and shall in all other
respects perform the agreement created by the acceptance of said Bid,

then this obligation shall be void, otherwise the same shall remain in force and effect; it
being expressly understood and agreed that the liability of the Surety for any and all
claims hereunder shall, in no event, exceed the penal amount of this obligation as herein
stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said
Surety and its bond shall be in no way impaired or affected by any extension of the time
within which the Owner may accept such Bid; and said Surety does hereby waive notice
of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and
seals, and such of them as are corporations have caused their corporate seals to be
hereto affixed and these presents to be signed by their proper officers, the day and year
first set forth above.

_____(L.S.)
Principal

Surety

SEAL

Excerpts from 2 CFR 200 Subpart D – Post Federal Award Requirements

§ 200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

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

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

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

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

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

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

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

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.213 Suspension and debarment.

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

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

(i) The actual cost of materials; and

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

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

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

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 43309, July 22, 2015]

This is a list of United States Code sections, Statutes at Large, Public Laws, and Presidential Documents, which provide rulemaking authority for this CFR Part.

This list is taken from the Parallel Table of Authorities and Rules provided by GPO [Government Printing Office].

It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the GPO site.

§ 200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

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

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

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

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

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough

qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§ 200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

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

- (i)** A complete, adequate, and realistic specification or purchase description is available;
- (ii)** Two or more responsible bidders are willing and able to compete effectively for the business; and
- (iii)** The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

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

- (i)** Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
- (ii)** The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (iii)** All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- (iv)** A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

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

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

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

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

(b) Affirmative steps must include:

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

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

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

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

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

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

§ 200.322 Procurement of recovered materials.

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

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.325 Bonding requirements.

For construction or facility improvement contracts or sub contracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the

Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

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

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

§ 200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200 - Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141- 3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers

and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

Forum Selection: This agreement and the relationship between **COY** and **Contractor** shall be governed and interpreted under the laws of Texas without regard to any conflict of laws provision. Venue for any suit arising out of any relationship between **COY** and **Contractor** shall be the appropriate court in Lavaca or DeWitt County, Texas.

9.6 Legal Construction: In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

9.7 Law: This agreement is subject to all legal requirements in the City Charter and Code of Ordinances of the City of Yoakum and all other applicable County, State and Federal Laws, and **Contractor** agrees that it will promptly comply with all such applicable laws, regulations, orders and rules of the State, City and other applicable governmental agencies.

This agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.