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Meeting Date: March 20, 2024

Staff Contact: David Laughlin, Planning & Engineering Division Manager

**TITLE: C-24-10 – Approval of Contract with New Mexico Underground Utilities Inc. as a result of B2024000004 MDC Sewer Improvements, Vol. 2: Force Main, Project No. 03019.00**

**ACTION: Recommend Approval**

**Summary:**

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) issued a Request for Bids (RFB) for Construction to solicit bids from qualified vendors to provide construction services for the Metropolitan Detention Center (MDC) facility Sewer Improvements Project for the construction of a wastewater collection system which consists of 30,870 LF of ten-inch sewer force main and 8,660 LF of ten-inch gravity sewer, including all necessary cleanouts, air valves, manholes, fittings and appurtenances.

The RFB was advertised in the local newspaper and available for download on the Water Authority's eProcurement website, BidSync. Bids were opened for the above-referenced project on Wednesday, February 21<sup>st</sup>, 2024, at 1:30 p.m. The bids received were reviewed and evaluated by the Water Authority and BH Inc.

New Mexico Underground Utilities Inc. was the apparent low bidder for this project. Following the review and evaluation, New Mexico Underground Utilities Inc.'s bid was deemed responsive. A summary of the bids received is attached. The Water Authority staff requests approval to proceed with award to New Mexico Underground Utilities Inc.

This approval is intended to delegate signature authority to the Executive Director to enter into an Agreement with the selected contractor, approve any change orders or amendments to the Agreement as necessary to complete the project and to provide construction services for this project based on the results of the RFB, B2024000004.

**FISCAL IMPACT:**

\$10,649,006.00 which amount includes NM GRT. ARPA funding has been allocated for this project.

February 26, 2024

Armida Magallanes  
Albuquerque Bernalillo County Water Utility Authority  
PO Box 568  
Albuquerque, NM 87103-0568  
Sent via email: [amagallanes@abcwua.org](mailto:amagallanes@abcwua.org)

Re: Recommendation of Award: MDC Sewer Improvements, Volume 2: Force Main

Dear Ms. Magallanes,

A request for bid proposals for the referenced project were received by 1:30pm on Wednesday, February 21, 2024. The following is a summary of the bids received:

Contractor	Base Bid (Bid Items 1-40)	Total Allowances	TOTAL Base Bid + Allowances (excl NMGRT)
<i>Engineer's Estimate</i>	<i>\$10,757,670.30</i>	<i>\$107,500.00</i>	<i>\$10,865,170.30</i>
<b>NM Underground Utilities, Inc.</b>	<b>\$9,920,993.00</b>	<b>\$107,500.00</b>	<b>\$10,028,493.00</b>
TLC Company, Inc.	\$11,686,970.00	\$107,500.00	\$11,794,470.00

A tabulation of bids (after check) and the Engineer's cost estimate are attached. No mathematical errors were found in any of the bids received. One item of note is the amount of the Base Bid plus Allowances plus NMGRT for TLC Company, Inc. differ between the submitted bid form and the bid tabulation. This is because TLC Company, Inc. used a tax rate of 7.625% for their calculation rather than 6.1875%. This is not considered an error as the bid form did not indicate the rate to be applied. The apparent lowest responsive bidder for the project is NM Underground Utilities, Inc. We reviewed and confirmed the following:

- The bid proposal was signed by Casey Thompson, Vice President of NM Underground Utilities, Inc.
- NM Underground Utilities, Inc. is a licensed contractor in the State of New Mexico, License No. 384433, License Classification GF98. **Note this license expires on 2/28/2024.** We have verified this information with PSI License Management (<http://public.psiexams.com/search.jsp>).
  - **Note that the State of New Mexico Construction Industries Division card included with the submitted bid also lists License Classifications GA98, GB98, and MM98.**
- The New Mexico Department of Workforce Solutions (NM DWS) lists an active Registration No. of 1749120150318 for this company.
  - **Of the subcontractors listed by NM Underground Utilities, Inc. in the SFPA Listing of their bid proposal, we have verified that E2RC, LLC's registration is currently inactive, as it expired on 1/6/2024. A screen shot of the search result is attached.** We have verified

that the following subcontractors have an active NM DWS Registration No.: AWP, Inc., Bogan Brothers Painting, Terra Land Surveys, LLC, and Star Paving Company.

- Of the additional subcontractors listed by NM Underground Utilities, Inc., **J. Aimone Associates, LLC is not registered with NM DWS. A screen shot of the search result is attached.** We have verified that the following additional subcontractors have an active NM DWS Registration No.: DH Underground, Inc. and Grandin Testing Lab, Inc. It is our assumption that the other companies listed are suppliers: Armorock, Core & Main, and JCH.

<https://www.dws.state.nm.us/pwaa/LRDEmployer/PW/Search/LEFSearch.ASPX>

- Bid Bond in the amount of 5% of the total amount bid. The surety for the Bid Bond is Great American Insurance Company (NAIC #16691), who is listed on Federal Circular 570 and licensed to do business in the State of New Mexico to an underwriter's limit of \$311,389,000. We have verified this information with the U.S. Department of the Treasury's Listing of Sureties Approved to Conduct Business in the State of New Mexico:  
[https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570\\_a-z.htm#](https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm#).

The following required forms were also provided with the bid submitted by NM Underground Utilities, Inc.:

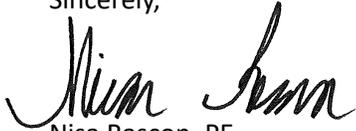
- Unfair Business Practices Disclosure Form
- SFPA Listing of Subcontractors *(NM DWS status reviewed by Bohannon Huston, Inc. – see above)*
- Bid Bond *(reviewed by Bohannon Huston, Inc. – see above)*
- **Disclosure of Lobbying Activities Form was not signed, however a Certification Regarding Lobbying Form was completed**
- Bidder Qualification Form
- List of Additional Subcontractors/Suppliers *(NM DWS status reviewed by Bohannon Huston, Inc. – see above)*

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) shall verify the Contractor has completed the required forms in accordance with the instructions or, per Part I: Instructions to Bidders, Item 21. Minor Technical Irregularities “waive technical irregularities that do not alter the price, quality or quantity of the items bid or insignificant mistakes that can be waived or corrected without prejudice to other Bidders”.

Based on the evaluation of bid price presented above, the bid of NM Underground Utilities, Inc. is considered the lowest responsive, responsible bid. Bohannon Huston, Inc. recommends the award of the MDC Sewer Improvements, Volume 2: Force Main to NM Underground Utilities, Inc. for a contract amount of \$10,028,493.00, not including NMGR. A condition of this recommendation is that NM Underground Utilities, Inc. has a current license with State of New Mexico, as the expiration date is 2/28/2024. **In addition, the Water Authority shall address the NM DWS status of subcontractors prior to awarding a contract to NM Underground Utilities, Inc.**

Armida Magallanes  
Albuquerque Bernalillo County Water Utility Authority  
February 26, 2024  
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Sincerely,

A handwritten signature in black ink, appearing to read "Nisa Rascon". The signature is fluid and cursive, with the first name "Nisa" being larger and more prominent than the last name "Rascon".

Nisa Rascon, PE  
Water Systems

NR/ab  
Enclosure

cc: Todd Burt, Bohannon Huston, Inc. (w/encl.)

**MDC Sewer Improvements Volume 2**

**Bid Tabulation**

Project #: 20230104

Date: 2/21/2024

Bid Item	Item ID #	Description	Unit	Quantity	Engineer's OPC		NM Underground		TLC		% Total of Low Bid
					Cost/Unit	Extension	Cost/Unit	Extension	Cost/Unit	Extension	
1	301.02	Shelly Road; Subgrade Prep 12" at 95% compaction, CIP	SY	28,200	\$11.50	\$324,300.00	\$5.75	\$162,150.00	\$4.75	\$133,950.00	2%
2	302.01	Shelly Road: Aggregate Base Course, crushed, 6" at 95% compaction, cip.	SY	25,800	\$17.25	\$445,050.00	\$17.25	\$445,050.00	\$15.30	\$394,740.00	4%
3	336.01	Shelly Road: Prime coat, emulsified asphalt	SY	23,400	\$1.73	\$40,482.00	\$0.92	\$21,528.00	\$0.45	\$10,530.00	0%
4	336.12	Shelly Road: Tack coat, cationic emulsified asphalt	SY	43,200	\$1.15	\$49,680.00	\$0.92	\$39,744.00	\$0.35	\$15,120.00	0%
5	336.XX	Shelly Road: Asphalt Concrete, 2" thick, superpave-IV	SY	64,800	\$34.21	\$2,216,808.00	\$16.10	\$1,043,280.00	\$17.90	\$1,159,920.00	10%
6	343.03	Shelly Road: Sawcut Remove and Dispose Existing Asphalt Concrete Pavement, up to 6" thick	SY	28,440	\$5.75	\$163,530.00	\$8.00	\$227,520.00	\$9.80	\$278,712.00	2%
7	440.002	Shelly Road: Reflectorized Plastic Markings, 4" width, 90mil, cip.	LF	48,600	\$1.84	\$89,424.00	\$1.15	\$55,890.00	\$1.00	\$48,600.00	1%
8	300.XX	Shelly Road: Detour Pavement Construction	SY	600	\$59.44	\$35,664.00	\$25.30	\$15,180.00	\$50.85	\$30,510.00	0%
9	301.02	Frontage Road: Subgrade Prep 12" at 95% compaction, CIP	SY	13,800	\$11.50	\$158,700.00	\$12.20	\$168,360.00	\$10.00	\$138,000.00	2%
10	302.01	Frontage Road: Aggregate Base Course, crushed, 6" at 95% compaction, cip.	SY	12,000	\$17.25	\$207,000.00	\$17.95	\$215,400.00	\$21.15	\$253,800.00	2%
11	336.01	Frontage Road: Prime coat, emulsified asphalt	SY	10,200	\$1.73	\$17,646.00	\$0.92	\$9,384.00	\$0.45	\$4,590.00	0%
12	336.12	Frontage Road: Tack coat, cationic emulsified asphalt	SY	19,600	\$1.15	\$22,540.00	\$0.92	\$18,032.00	\$0.35	\$6,860.00	0%
13	336.XX	Frontage Road: Asphalt Concrete, 1.5" thick, superpave-IV	SY	11,600	\$25.70	\$298,120.00	\$15.93	\$184,788.00	\$14.60	\$169,360.00	2%
14	336.XX	Frontage Road: Asphalt Concrete, 2.5" thick, superpave-IV	SY	7,600	\$42.78	\$325,128.00	\$23.70	\$180,120.00	\$25.20	\$191,520.00	2%
15	336.XX	Frontage Road: Asphalt Concrete, 3" thick, superpave-IV	SY	9,300	\$51.35	\$477,555.00	\$24.85	\$231,105.00	\$30.10	\$279,930.00	2%
16	343.03	Frontage Road: Sawcut Remove and Dispose Existing Asphalt Concrete Pavement, up to 6" thick	SY	13,800	\$5.75	\$79,350.00	\$8.00	\$110,400.00	\$9.60	\$132,480.00	1%
17	440.002	Frontage Road: Reflectorized Painted Marking, 6" width, cip.	LF	60,700	\$1.31	\$79,517.00	\$1.43	\$86,801.00	\$1.00	\$60,700.00	1%
18	450.XX	Traffic Sign Temporary Removal and Replacement	EA	10	\$230.00	\$2,300.00	\$150.00	\$1,500.00	\$260.00	\$2,600.00	0%
19	410.XX	Existing Chain Link Fence w/ barb wire, remove & reinstall, compl.	SF	160	\$9.20	\$1,472.00	\$26.00	\$4,160.00	\$67.50	\$10,800.00	0%
20	710.05	Boring & Casing, carrier pipe not incl., cip.	LF	90	\$1,380.00	\$124,200.00	\$1,252.00	\$112,680.00	\$945.00	\$85,050.00	1%
21	901.XX	10-inch Dia. HDPE DR 17 Pipeline and Fittings, including couplings, trenching, backfill and compaction, all depths, cip.	LF	27,450	\$62.86	\$1,725,507.00	\$86.66	\$2,378,817.00	\$67.10	\$1,841,895.00	22%
22	901.XX	10-inch Dia. HDPE SDR 21 (DIPS) Pipeline and Fittings (green), including trenching, backfill and compaction, all depths, cip.	LF	3,320	\$152.94	\$507,760.80	\$82.20	\$272,904.00	\$87.00	\$288,840.00	3%
23	901.XX	10-inch Dia. PVC SDR 35 Pipeline and Fittings (green), including trenching, backfill and compaction, all depths, cip.	LF	8,660	\$79.80	\$691,068.00	\$99.30	\$859,938.00	\$107.80	\$933,548.00	8%

Bid Item	Item ID #	Description	Unit	Quantity	Engineer's OPC		NM Underground		TLC		% Total of Low Bid
					Cost/Unit	Extension	Cost/Unit	Extension	Cost/Unit	Extension	
24	901.XX	Combination Air Valve including vaults, vent piping, gravel and concrete supports incl. trench excavation and compacted backfill, cip. Refer to D-08 in Volume II.	EA	7	\$55,234.50	\$386,641.50	\$63,015.00	\$441,105.00	\$83,290.00	\$583,030.00	4%
25	901.XX	Cleanout structures including fittingsm, vaults, valves, valve boxes, gravel, concrete supports incl. trench excavation and compacted backfill, cip. Refer to Sheet D-11	EA	16	\$41,780.00	\$668,480.00	\$68,671.00	\$1,098,736.00	\$98,750.00	\$1,580,000.00	10%
26	901.XX	Connection to Atrisco Vista Blvd 4' dia Manhole including new coatings, compl.	EA	1	\$34,500.00	\$34,500.00	\$17,825.00	\$17,825.00	\$24,000.00	\$24,000.00	0%
27	920.XX	Existing 6' dia Manhole Collar, Remove and Replace, compl. SD 2461. Apply new coat inside manhole.	EA	1	\$5,750.00	\$5,750.00	\$23,606.00	\$23,606.00	\$34,900.00	\$34,900.00	0%
28	920.XX	Hydraulic Break 4' dia Manhole including coatings, compl.	EA	1	\$23,000.00	\$23,000.00	\$26,757.00	\$26,757.00	\$26,075.00	\$26,075.00	0%
29	920.07	Manhole, 4' dia., Type "C" or "E", 6' to 10' deep, cip. SD 2101	EA	19	\$18,434.50	\$350,255.50	\$17,668.00	\$335,692.00	\$26,900.00	\$511,100.00	3%
30	920.08	Manhole, 4' dia., Type "C" or "E", 10' to 14' deep, cip. SD 2101	EA	5	\$18,434.50	\$92,172.50	\$23,410.00	\$117,050.00	\$40,070.00	\$200,350.00	1%
31	925.XX	Pipe Blocking or Encasement of Force Main, Reinforced PC Concrete, cip. SD 2140	CY	170	\$299.00	\$50,830.00	\$522.00	\$88,740.00	\$445.00	\$75,650.00	1%
32	201.01	Site Clearing and Grubbing, compl.	AC	7	\$2,875.00	\$20,125.00	\$1,678.00	\$11,746.00	\$1,765.00	\$12,355.00	0%
33	1011.XX	Seeding, Class "A", native, cip.	AC	7	\$4,922.00	\$34,454.00	\$11,990.00	\$83,930.00	\$2,500.00	\$17,500.00	1%
34		Vibration Monitoring	LS	1	\$50,000.00	\$50,000.00	\$15,140.00	\$15,140.00	\$5,000.00	\$5,000.00	0%
35	34X.XX	Milling, Existing Asphalt Concrete Pavement, 1.5" thickness, incl. disposal of millings, compl.	SY	5,200	\$5.00	\$26,000.00	\$3.45	\$17,940.00	\$5.65	\$29,380.00	0%
36	920.09	Manhole, 4' dia., Type "C" or "E", added cost for each additional foot over 14', cip. SD 2101	VF	5	\$730.00	\$3,650.00	\$1,390.00	\$6,950.00	\$3,135.00	\$15,675.00	0%
<b>Subtotal Bid Items 1 - 36</b>						<b>\$9,828,660.30</b>		<b>\$9,129,948.00</b>		<b>\$9,587,070.00</b>	
37	6.05 6.06	Mobilization/Demobilization (not to exceed 5% of above Subtotal)	LS	1	\$491,400.00	\$491,400.00	\$375,614.00	\$375,614.00	\$475,000.00	\$475,000.00	4%
38	4.01	Construction Staking and As-Built Preparation	LS	1	\$196,600.00	\$196,600.00	\$105,754.00	\$105,754.00	\$45,000.00	\$45,000.00	1%
39	19.01	Traffic Control and Barricading	LS	1	\$196,600.00	\$196,600.00	\$298,242.00	\$298,242.00	\$1,564,500.00	\$1,564,500.00	3%
40	30.02	NPDES Permitting and Implementation	LS	1	\$49,100.00	\$49,100.00	\$11,435.00	\$11,435.00	\$15,400.00	\$15,400.00	0%
<b>Subtotal Bid Items 1 - 40</b>						<b>\$10,762,360.30</b>		<b>\$9,920,993.00</b>		<b>\$11,686,970.00</b>	
		Project Sign Screen @ \$500 per sign	LS	1	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	
		Utility Relocation	LS	1	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	
		Lab Testing	LS	1	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	
		Permits	LS	1	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	
<b>Total Allowances</b>						<b>\$107,500.00</b>		<b>\$107,500.00</b>		<b>\$107,500.00</b>	<b>1%</b>
<b>Subtotal Base Bid plus Allowances</b>						<b>\$10,869,860.30</b>		<b>\$10,028,493.00</b>		<b>\$11,794,470.00</b>	
		NMGRT		6.1875%		\$672,572.61		\$620,513.00		\$729,782.83	6%
<b>BASE BID plus ALLOWANCES plus NMGRT</b>						<b>\$11,542,432.91</b>		<b>\$10,649,006.00</b>		<b>\$12,524,252.83</b>	

 Denotes a mathematical error in summation of extended costs

Bid Item	Item ID #	Description	Unit	Quantity	Engineer's OPC		NM Underground		TLC		% Total of Low Bid
					Cost/Unit	Extension	Cost/Unit	Extension	Cost/Unit	Extension	
		Denotes changes made to Engineer's Estimate via Addendum during Bidding									
		Items removed from project									

**AGREEMENT  
BETWEEN THE  
ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY  
AND  
NEW MEXICO UNDERGROUND UTILITES INC.**

**B2024000004 MDC SEWER IMPROVEMENTS, VOLUME II: FORCE  
MAIN  
PROJECT NO. 03019.00**

**THIS AGREEMENT** is made and entered into on the date last entered below, by and between the Albuquerque Bernalillo County Water Utility Authority, hereinafter called OWNER, and New Mexico Underground Utilities Inc., hereinafter called CONTRACTOR.

That Owner and Contractor for the consideration stated herein mutually agree as follows:

**1 STATEMENT OF WORK:** CONTRACTOR shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services, including utility and transportation services, and perform and complete the Work for the construction of the above-referenced Project and any authorized supplemental work, all in strict accordance with the Contract Documents.

**2 CONTRACT TIME:** The Contract Time will commence on the day indicated in the Notice to Proceed, as specified in the General Terms and Conditions, and continue for a period of 300 days. Changes to the Contract Time are allowed only as provided in the General Terms and Conditions.

Liquidated damages, in the amount per day of One Thousand, Five-Hundred and 00/100 Dollars (\$1,500.00) will be assessed against the Contractor for each calendar day, or portion thereof, the Work has not achieved Substantial Completion after expiration of that portion of the Contract Time allotted for construction, including any approved extension of time granted. Further, liquidated damages, in the amount per day of One Thousand, Five-Hundred and 00/100 Dollars (\$1,500.00) will be assessed against the Contractor for each calendar day, or portion thereof, the punch list items listed as incomplete and attached to the Certificate of Substantial Completion are not completed or corrected after expiration of the time allotted for completion and correction, including any approved extension of time granted. These liquidated damages are cumulative. See the General Terms and Conditions, referenced in Part IV of this RFB, for additional information terms relating to liquidated damages.

**3 CONTRACT PRICE:** OWNER will pay CONTRACTOR for the performance of the Contract in current funds, as provided in the Contract Documents, the amount of Ten Million, Six-Hundred Forty-Nine Thousand, Six and 00/100 Dollars (\$10,649,006.00), which amount includes any applicable New Mexico Gross Receipts Taxes.

**4 NON-APPROPRIATION OF FUNDS:** Notwithstanding any provision in this Contract to the contrary, payments hereunder are contingent upon the Water Authority Board making the necessary appropriations. If sufficient appropriations are not made, this Contract may be terminated at the end of the Water Authority's then current fiscal year upon written notice given by OWNER to CONTRACTOR. Such event shall not constitute an event of default and all payment obligations of OWNER and all of its interest in this Contract will cease upon the date of termination. OWNER'S determination regarding appropriations shall be accepted by CONTRACTOR and shall be final.

**5 COMPLIANCE WITH LAWS:** In providing the Work outlined herein, Contractor shall comply with all applicable laws, ordinances, and codes of the federal, State, and local governments, including, but not limited to the New Mexico Human Rights Act, Title VII of the federal Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and all federal, State and local statutes, regulations and executive orders relating to civil rights. Furthermore, this Agreement must be conducted in accordance with mandatory applicable federal laws and regulations as set forth in Exhibit A, Water Authority Federal Funding Contract Addendum.

**6 CONTRACT DOCUMENTS:** The Contract Documents consist of the following, which are as fully a part of the Contract as if attached to this Agreement or repeated herein, and have precedence in the following order:

- Modifications to the Contract Documents
- the Agreement (Along with Exhibit A, Federal Funding Contract Addendum), insurance certificates and surety bonds
- Contractor's Bid Proposal, except as provided below
- the Addenda to the Bid Documents.
- the Special Instructions (Part II of the RFB)
- the Project Technical Specifications attached as Appendix A to the Bid Documents
- the Drawings attached as Appendix B to the Bid Documents
- the Federal Funding Solicitation Addendum attached as Appendix C to the Bid Documents
- the General Terms and Conditions, as supplemented in Part II of the RFB
- the Referenced Standard Specifications (as updated and amended).
- the Instructions to Bidders (Part I of the RFB)
- additional forms and instructions in the RFB
- the Advertisement for Bids

**6.1** Construction detail drawings shall govern over scaled dimensions and over other drawings. Dimensions given on plans or which can be calculated will govern over scaled dimensions.

**6.2** Anything in the CONTRACTOR'S Bid Proposal which alters or provides a condition to the Bid Documents will not take precedence over any part of the Bid Documents unless it is specifically so provided in the Agreement, or a Modification to the Contract Documents, signed by the parties.

**6.3** All definitions and terms set forth in the General Terms and Conditions and the Procurement Ordinance are applicable to the Bid and Contract Documents.

**IN WITNESS WHEREOF**, OWNER and CONTRACTOR have executed this Agreement the day and year last entered below.

**ALBUQUERQUE BERNALILLO COUNTY  
WATER UTILITY AUTHORITY**

Approved By:

\_\_\_\_\_  
Mark S. Sanchez, Executive Director

Date: \_\_\_\_\_

Reviewed by:

\_\_\_\_\_  
Christopher P. Melendrez, General Counsel

Date: \_\_\_\_\_

**CONTRACTOR:**

New Mexico Underground Utilities Inc.  
Contractor Firm Name

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **AGREEMENT EXHIBIT A:**

### **Water Authority – Federal Funding Contract Addendum**

This addendum hereby incorporates into the Agreement between the Water Authority and the Contractor additional requirements pursuant to Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

The following provisions, as applicable, are considered an enforceable part of the Agreement:

1. Administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. Termination for cause and for convenience including the manner by which it will be effected and the basis for settlement.
3. § 60-1.4 Equal opportunity clause.

(a) Government contracts.

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in

response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) Federally assisted construction contracts.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or

national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be

canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from

extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) Inclusion of the equal opportunity clause by reference. The equal opportunity clause may be included by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Director of OFCCP may designate.

(e) Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the Contractor is written.

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

4. In accordance the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), Construction contractors must 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, Construction contractors must pay wages not less than once a week. When both federal and state minimum wage rates apply to certain classes of laborers, then the higher of the two wage rates shall apply.
5. Contractor must comply 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.
6. Pursuant to 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), contracts in excess of \$100,000 that involve the employment of mechanics or laborers, each contractor must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less

than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
8. 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.
9. As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

(b) For purposes of this section:

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

## **WAGE RATE DECISION**

The successful Bidder (the “Contractor”) and any Subcontractor performing Work under the Contract resulting from this RFB shall comply fully with the "Public Works Minimum Wage Act", Sections 13-4-10 et seq., NMSA 1978 and all amendments thereto. Please see the General Terms and Conditions, referenced in this Part IV above, for additional information.

The minimum wage rates and fringe benefit rates which may be paid to workmen in the performance of the Contract shall be as set forth in the schedule of Minimum Wage Rates and Fringe Benefit Rates contained in the attached Wage Rate Decisions for this Project.

Furthermore, this project is funded in whole or in part with Federal monies, and the Contractor must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). A copy of the current prevailing wage determination issued by the Department of Labor is attached to this solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.

Whenever a conflict exists between the State and federal minimum hourly wage rates, the higher of the conflicting wage rates shall govern.