



THE COUNTY OF GALVESTON

RUFUS G. CROWDER, CPPO, CPPB
PURCHASING AGENT

GWEN MCLAREN, CPPB
ASST. PURCHASING AGENT

COUNTY COURTHOUSE
722 Moody (21st Street)
Fifth (5th) Floor
GALVESTON, TEXAS 77550

February 21, 2019

PROJECT NAME: Motor Fuels, Oils, Fluids, & Greases

SOLICITATION NO: RFP #B192008

RE: ADDENDUM #1

To All Prospective Bidders,

The following information is being provided to aid in preparation of your bid submittal(s):

Revised Procurement Timeline:

The timeline for Bid #B192008, Motor Fuels, Oils, Fluids & Greases has been revised:

- **Questions Deadline** **Thursday, March 7, 2019**
- **Bid Opening** **Friday, March 21, 2019, at 2:00 p.m.**

AMENDED SPECIAL PROVISIONS:

Due to slight changes in scope, the Special Provisions section has been amended to include the following:

- Exhibit A, which is referenced in the amended Special Provisions, page 2, paragraph G;
- Certification Regarding Lobbying

If you have any further questions regarding this bid, please address them to the representative listed below, via e-mail at purchasing.bids@co.galveston.tx.us, or contact the Purchasing Department at (409) 770-5371

Rufus G. Crowder, CPPO CPPB
Galveston County Purchasing Agent
722 Moody, Fifth (5th) Floor
Galveston, Texas 77550
E-mail: purchasing.bids@co.galveston.tx.us

Please excuse us for any inconvenience that this may have caused.

Sincerely,

Handwritten signature of Rufus G. Crowder in cursive script. The signature includes a small "RID" mark above the word "Crowder".

Rufus G. Crowder, CPPO CPPB
Purchasing Agent
Galveston County

AMENDED SPECIAL PROVISIONS
MOTOR FUELS, OILS, FLUIDS AND GREASES
GALVESTON COUNTY, TEXAS

The Special Provisions and the General Provisions of this Invitation to Bid and the Exhibits attached hereto are made a part of the agreement between the Parties. In the event of a conflict between the General Provisions and the Special Provisions, the terms of the Special Provisions shall control.

A. PURPOSE:

The County of Galveston requests bids for the purpose of selecting a vendor or vendors to supply regular unleaded gasoline, unleaded plus (mid-grade) gasoline, and #2 diesel fuel low sulfur with additive, and oils, fluids, and greases for use in Galveston County vehicles and equipment.

Separate awards may be made for Mainland, Galveston Island, and Port Bolivar Peninsula locations, however, this bid in its' entirety may be awarded to a single vendor, whatever is most advantageous to the County of Galveston.

Bidders must submit examples detailing the method of calculation of excise taxes, delivery fees, etc., of pricing on invoices delivered to the County. Bids for oils, fluids, and greases may be awarded separately.

B. BID GUARANTEE:

A bid bond is not a requirement of this solicitation request.

C. PERFORMANCE AND PAYMENT BONDS:

Performance and Payment bonds are not a requirement of this solicitation.

D. BEST AND FINAL OFFERS (BAFO):

The Best and Final Offer process is not applicable to this solicitation.

E. PROCUREMENT TIMELINE:

A timeline for this ITB and initial process are included below. Galveston County reserves the right to change these dates and will notify proposers of any changes via addendum:

Advertise ITB (first date of publication)	Thursday, January 31, 2019
Advertise ITB (second date of publication)	Thursday, February 7, 2019
Question Deadline	Thursday, March 7, 2019 by 5:00 p.m.
ITB's due from public/ITB Opening	Thursday, March 21, 2019 at 2:00 p.m.

The term of contract shall be one (1) year from date of acceptance and approval of bid by the Galveston Commissioners' Court with an option to continue for an additional two (2), one (1) year periods if mutually agreeable.

F. PERSONNEL TO CONTACT REGARDING THIS SOLICITATION:

Proposers desiring an explanation or interpretation relative to this solicitation, must request it in writing. Oral explanations or instructions will not be binding. Any information given to a proposer, which in the opinion of the County affects all proposers or would be prejudicial to other proposers if not communicated, shall be furnished to all other proposers as an addendum to the solicitation. Direct inquiries to the following:

Rufus G. Crowder, CPPO CPPB
Purchasing Agent
722 Moody (21st Street)
Galveston, Texas 77550
e-mail: purchasing.bids@co.galveston.tx.us

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Proposers must e-mail their inquiries (with the subject line “**Motor Fuels, Oils, Fluids, and Greases – ITB #B192008 - Questions**) for additional information and/or clarification to the address listed above. The request must include the proposer’s name and the ITB number and title. *Any request for additional information or clarification must be received in writing no later than seven (7) calendar days prior to the proposal due date.* Late requests or those not delivered to the proper address may not receive a reply. Proposers shall not attempt to contact the County by any other means.

The County will issue responses to inquiries and any other corrections or amendments, it deems necessary, in the form of a written addendum, issued prior to the Response Submission Date. The County, at its sole discretion, may not issue a response to an ITB submittal. Proposers should not rely on any oral or written representations, statements, or explanations, other than those made in this ITB or in any written addendum to this ITB. Where there appears to be conflict between the ITB and any issued addenda, the last addendum issued will prevail. Addenda will be posted and made available on the County’s procurement web page located at <http://www.galvestoncountytexas.gov/pu/Pages/BidListing.aspx>

The Proposer must acknowledge the receipt of all addenda on the forms provided. In the event a Proposer fails to acknowledge receipt of such addenda, the County may, at its sole discretion, determine that such failure to acknowledge any or all addendum does not materially affect the Response, waive the acknowledgement of one or more addenda.

Proposers who submit inquiries *after* the deadline date for receipt of questions indicated on the Procurement Timeline risk that its proposal will not be responsive or competitive because the County is not able to respond before the proposal receipt date or in sufficient time for the Proposer to prepare a responsive or competitive proposal.

All questions and responses as posted on the County website are considered as an addendum to, and part of, this ITB.

G. TYPE OF CONTRACT:

It is the intent of this solicitation to enter into a contract that meets federal guidelines. It is imperative that all responders seeking a contract under this ITB solicitation effort must familiarize and adhere to the procurement standards as referenced in 2 C.F.R. Part 200, Sections 200.317-200.326, and Appendix II, 2 C.F.R. Part 200. Sections 200.317–200.326 and Appendix II are attached hereto as **Exhibit A**.

The resultant contract consists of the following documents: Request for Qualification, General Provisions, Special Provisions, General Terms and Conditions (including specifications, drawings, and addenda), Proposal Sheets, contract award, and any other documents referenced herein or attached hereto for the work. Collectively these documents may also be referred to as the Plans and Specifications.

The initial term of the resultant contract shall be one (1) year with two (2) one (1) year options to renew, mutually agreeable by both parties. The total contractual period shall not exceed three (3) years unless otherwise superseded by the resultant contract language.

In an effort to satisfy cost reasonableness responsibilities at the time of each extension period, the County of Galveston reserves the right to obtain additional quotes and current pricing information from the successful contractor and other contractors to perform the work as stated per the specification listed herein and in the resultant. The solicited results may be used by the County to determine if the contract extensions will be considered or other service options be utilized.

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H. COLLATERAL CONTRACT:

The County reserves the right to provide by separate contract or otherwise, in such manner as not to delay its programs or damage said Contractor, all labor and material essential to the completion of the work that is not included in this contract.

Award prices include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the work. Whenever the Awardee is required or desires to use any design, device, material or process covered by letters of patent or copyright, the Awardee shall indemnify and save harmless the County, its officers, agents and employees from any and all claims for infringement by reason of the use of any such patented design, tool, material, equipment, or process, to be performed under the contract, and shall indemnify the County its officers, agents, and employees for any costs, expenses and damages which may be incurred by reason of any infringement at any time during the prosecution or after the completion of the work.

I. PROGRAM ADMINISTRATION

The County's Road & Bridge Department will designate a Program Administrator that will manage the work to be performed under the resultant contract, who for the purpose of this bid is:

Elizabeth Bryant
Fleet Administrative Manager
5115 Highway 3
Dickinson, TX 77539
Telephone: (281) 309-5025
Elizabeth.bryan@co.galveston.tx.us

The Galveston County Commissioners Court, and/or authorized designees will be responsible for negotiating with the successful Vendor the scope of work, the standards of performance, the specific technology provided, and the support services required for the proposed projects. All contractual amendments will be processed in accordance with Galveston County Purchasing Policies. Amendments will also be brought to Galveston County Commissioners Court for approval as deemed necessary. The approval process serves to ensure the project technology and/or service is within the scope of the resultant contract, and that pricing meets the agreed upon pricing methodology as specified in the contract, and that funds are available.

J. QUANTITIES:

During the term of this contract the County expects to purchase approximately 180,000 gallons of unleaded gasoline, 50,000 gallons of unleaded plus (mid-grade) gasoline and 75,000 gallons of #2 diesel fuel low sulfur with additive. Minimum quantities are not guaranteed. Additional quantities will be required for delivery to Port Bolivar and Crystal Beach locations. The County expects to purchase approximately 15,000 gallons of gasoline and approximately 15,000 gallons of low sulfur diesel fuel with additive at Port Bolivar. Deliveries will be between 500 and 6,000 gallons per delivery.

Award for these two locations may be separate from the award from the balance of the County. Minimum quantities at these two locations are not guaranteed and the County will only pay for fuel actually ordered and delivered.

K. DELIVERY AUTHORIZATION:

The ordering department will furnish vendor with a valid Galveston County Purchasing Order Number at the time the order is placed. Under no circumstances will the vendor accept an order for delivery to locations other than those on the attached bid sheets unless otherwise approved by the Galveston County Purchasing Agent.

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L. PRICES FOR LOCATIONS OTHER THAN PORT BOLIVAR AND CRYSTAL BEACH:

Bidders are required to bid a price differential above or below the average PAD 3 report for Houston, Texas: published by the Oil Price Information Service (OPIS). The bidder shall use the average price for regular, unleaded gasoline, unleaded plus (mid-grade) gasoline and #2 diesel fuel low sulfur with additive from the first listing of each calendar week. Adding or subtracting the bidder's price differential to the PAD 3 average BTDRack average price should establish a fixed price to be in effect from Wednesday to the following Tuesday of each week.

The successful bidder shall submit weekly a letter and/or Oil Price Information Service (OPIS) information to be received prior to Wednesday of each week that includes PAD 3 prices as stated above. This information should be directed to the Purchasing Agent.

M. PRICES FOR PORT BOLIVAR AND CRYSTAL BEACH:

Bidders are required to bid a price differential above or below the rack price per gallon on date or order for regular unleaded gasoline, (mid-grade) gasoline, or #2 diesel fuel low sulfur with additive. Successful bidder will show rack price on all invoices for fuel delivered to the County.

N. DELIVERIES:

Deliveries of fuels, oils, fluids, and greases ordered shall be completed between the hours of 7:30 A.M. and 4:00 P.M., Monday through Friday for all sites. Orders placed before noon shall be delivered no later than 4:00 P.M. the following workday. Trucks making deliveries shall be equipped with proper ticket printers, meters, or State of Texas certified truck markings to assure accurate measure. All delivery trucks must be equipped with a Vapor Recovery System and must be available for emergency deliveries.

Due to the difficulty in the delivery of these commodities to the Port Bolivar Peninsula, the County will entertain options detailing alternate delivery methods and pricing structure. These options shall be listed on a separate sheet of paper and included with your bid submittal.

If vendor is unable to comply with these requirements, the County reserves the right to purchase these commodities in the open market with all costs in excess of established price charged to the account of the vendor. Deliveries to sites other than those shown on the bid sheet are not allowed without authorization from the Purchasing Agent.

O. SUBCONTRACTING:

No part of this bid shall be subcontracted to another party for furnishing fuels without the written approval of the Galveston County Commissioners' Court.

P. INSURANCE:

During the term of this contract the vendor shall carry and pay the premiums for insurance of the types and limits as referenced in the general provisions, page 12, item #37, Proof of Insurance. No Purchase Order shall be issued without proof of coverage.

In addition, Automobile Liability Insurance is required covering all owned, hired, and non-owned automobiles used in this work, not less than \$500,000.00 per person and \$1,000,000.00 per occurrence for Bodily Injury; not less than \$100,000.00 for Property Damage.

Q. QUALITY ASSURANCE:

The County of Galveston shall have the right upon each delivery of gasoline or at any time to determine compliance with such standards by performing tests in accordance with the methods prescribed by the American Society for Testing Materials ("ASTM"). If the vendor questions or disputes the results of tests made by the County, the County shall have the right to appoint a chemist to make such tests as it may deem necessary.

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The expense of such tests shall be paid by the vendor if it is determined that any fuel failed to satisfy the quality standards set forth herein; and the County if it is determined that any gasoline tested satisfied such quality standards. The vendor agrees to replace any fuels not meeting the County's specifications at no cost to the County. The vendor further agrees to repair and make whole all engine damage resulting from the placement of such fuels in County vehicles.

R. TAXES:

Galveston County does not pay federal tax on gasoline. Vendor shall furnish any exemption certificates needed for Government records.

S. SPECIFICATION:

All unleaded fuels shall be produced in accordance with the "ASTM" Standard #D 439 including latest revision, as is applicable to the Galveston County Region. Regular unleaded gasoline shall have a minimum octane rating of 87 based on a formula where the research octane number (RON) and the motor octane number (MON) are added, then divided by 2. Unleaded plus (mid-grade) gasoline shall have a minimum octane rating of 89 using R+M divided by 2. Diesel fuel shall conform to the attached specifications for #2 diesel low sulfur with additive.

Since much of the fuel covered by the resultant contract will be used by Law Enforcement and Emergency response vehicles, the vendor must guarantee to honor all orders placed by the County within the scope of this bid.

T. DIESEL FUEL PROPERTIES:

Supplied diesel fuel must be a fuel oil suitable for use in diesel internal combustion engines, in trucks, tractors, dozers, cranes, graders, shovels, and similar equipment. The diesel fuel must be a completely distilled mineral oil meeting the requirements as listed herein. The diesel fuel must be low sulfur with additive.

The diesel fuel shall conform to the requirements specified herein when tested in accordance with ASTM-975. The physical properties are as stated on attachment "A".

Vendors responding to this solicitation shall perform their own in-depth research prior to submitting bids for the requested items. Galveston County assumes no responsibility for the documentation submitted and is found in error.

JET A – Aviation Fuel:

Successful vendor is required to furnish JET A aviation fuel to authorized Galveston County end user departments. JET A fuel shall conform to and meet the standards as specified by ASTM Standards ASTM D1655-07 - Standard Specification for Aviation Turbine Fuels.

ASTM International, formerly known as the American Society for Testing and Materials (ASTM), is a globally recognized leader in the development and delivery of international voluntary consensus standards.

This specification defines specific types of aviation turbine fuel for civil use in the operation and certification of aircraft and describes fuels found satisfactory for the operation of aircraft and engines. The specification can be used as a standard in describing the quality of aviation turbine fuels from the refinery to the aircraft.

This specification does not include all fuels satisfactory for aviation turbine engines. Certain equipment or conditions of use may permit a wider, or require a narrower, range of characteristics than is shown by this specification.

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The fuels shall be sampled and tested appropriately to examine their conformance to detailed requirements as to composition, volatility, fluidity, combustion, corrosion, thermal stability, contaminants, and additives.

Jet A is a similar kerosene type of fuel, produced to an ASTM specification and normally only available in the U.S.A. It has the same flash point as Jet A-1 but a higher freeze point maximum (-40°C). It is supplied against the ASTM D1655 (Jet A) specification.

Successful vendor shall supply JET A Aviation fuel per the following instructions:

- Provide at no cost to the County, 2000 gallons of portable stainless steel storage tanks; preferably in four (4) five hundred (500) gallon storage tanks;
- Minimum delivery quantity of 500 gallons;
- Delivery within 48 hours of placement of order;
- Ability to add fuel additive Prist* high flash, anti-icing aviation fuel additive as needed.

Excerpt from <http://www.pristaerospace.com/index.html>

All turbine aircraft fuels contain some dissolved water. It cannot be extracted because it does not exist as particulate water. When an aircraft rises to flight altitude, the fuel cools and its capacity to retain dissolved water is reduced. Some of the dissolved water separates out as discrete water that can form into ice crystals or remain as a super-cooled liquid. When super-cooled water strikes a tubing bend or a filter, it can freeze quickly and block a fuel line or filter. If suspended ice crystals are present, they can also block a filter.

**Prist Hi-Flash anti-icing aviation fuel additive is authorized by the United States Armed Forces under Military Specification Mil-DTL-85470(B), and by the ASTM under Standard D4171 for use in civilian jet fuels as a fuel system icing inhibitor. As part of its ASTM approval process, the formulation of Prist Hi-Flash additive was reviewed and approved by turbine engine and turbine aircraft airframe manufacturers worldwide.*

Prist Hi-Flash additive is recommended for every refueling at a dosage rate of .10% minimum to .15% maximum by volume.

Prist Hi-Flash additive has limited solubility in jet fuel, but is completely soluble in water. When dissolved water separates from the fuel, some amount of Prist Hi-Flash additive quickly leaves the fuel and preferentially dissolves in the water. This depresses the water's freezing point. As the fuel gets colder, and more water particles appear, more Prist Hi-Flash additive leaves the fuel and enters the water, and your aircraft's fuel lines stay clear.

U. MOTOR OILS, TRANSMISSION FLUIDS, AND GREASES:

All types of oil, fluids, and greases may be ordered for Galveston County departments. The types of oils, fluids, and greases on this bid are the types that Galveston County has been using. Any reference to types of manufacturers used in the bid specifications is descriptive, not restrictive. It is used to indicate the type and quality desired. Brands other than these specified may be bid if of equal value and effectiveness. Full descriptive literature is to be included with the bid. Suitability of such items will be determined by the Purchasing Agent and the head of the using department. The decision of the Galveston County Commissioners' Court will be final.

V. AUDIT & BOOKKEEPING:

Successful contractor shall provide the County of Galveston a line item report of quantities and expenditures on a monthly basis or at any time during the term of this contract for materials, commodities, or services rendered as requested by the Galveston County Purchasing Agent.

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Successful contractor shall keep full, complete, and proper books, records, and accounts of all gross receipts, both for cash and on credit, of each separate activity. Said books, records, and accounts that may be required by any government or governmental agency, shall at all reasonable times be open to inspection by the County or its authorized representatives or agents.

W. EXCEPTIONS:

Any exceptions to bid conditions should be listed on a separate sheet of paper, attached to bid submittal and submitted with bid at the specified date and time of bid opening.

No taxes are to be added as Galveston County is exempt by Statute.

X. PURCHASE ORDERS:

A purchase order(s) shall be generated by Galveston County to successful proposer for all orders placed. The purchase order MUST appear on all itemized invoices and packing slips. Galveston County will not be held responsible for any orders placed/delivered without a valid current purchase order number.

Packing slips or other suitable shipping documents shall accompany each shipment and shall show:

- a. Name and address of successful proposer
- b. Name and address of receiving department and/or delivery location
- c. Galveston County Purchase Order number
- d. Descriptive information as to the items delivered, quantity, number or containers, etc.

Y. INVOICES:

Invoices must be itemized indicating all repairs and all parts used. Invoices must be submitted to:

**Galveston County Auditor's Office
Attn: Accounts Payable
P.O. Box 1418
Galveston, Texas 77553**

Failure to submit invoices to the above address or failure to include the Purchase Order Number will result in delay in payment.

Z. DELIVERY:

All delivery and freight charges (FOB Galveton County designated location) are to be included in the bid price. Bidder must provide without charge, same delivery if requested and mutually understood to be within reason by both parties.

AA. DELIVERY TIME:

Bids shall show number of hours required to place items at the County's designated location. Failure to state delivery time may cause proposal to be rejected. Successful proposer shall notify the using department immediately if delivery schedule cannot be met. The County has the right to extend delivery time if reason appears valid. Successful proposer must keep the using department advised at all times of the status of the order.

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BB. NON STOCKED ITEMS:

It is understood that on occasion, requests will be made by Galveston County personnel to purchase items that are not normally stocked by vendor. In these extreme cases, vendor shall make a considerable effort to deliver said item(s) to Galveston County in a time period that is considered reasonable and mutually agreeable by both parties.

All proposers must include the following with their submittals:

CC. SIGNED CONTRACTS:

Contract documents are included with this Invitation to Bid. Bidders must sign three (3) original contracts and return with their proposal submittal. Upon approval and proper signature by the Commissioners' Court, the successful bidder will be forwarded an original signed contract and a notice to proceed. No service is to be rendered unless this procedure is followed and completed by both parties.

Delivery will be made to various locations in the County as shown on the attached bid sheets. The supplier selected shall furnish the necessary personnel, services, and facilities to provide and deliver fuels as ordered by various County departments. The fuels provided shall meet or exceed the specifications included or attached for regular unleaded, unleaded plus (mid-grade) gasoline, and #2 diesel fuel low sulfur with additive. No alcohol extenders or additives are allowed for gasoline products only.

End of Special Provisions Section

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EXHIBIT A
MOTOR FUELS, OILS, FLUIDS & GREASES
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PROCUREMENT STANDARDS

2 C.F.R. §§ 200.317 – 200.326 &
2 C.F.R. PART 200, APPENDIX II

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PROCUREMENT STANDARDS

2 C.F.R. §§ 200.317 – 200.326 &
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2 C.F.R. § 200.317. Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§ 200.318 General procurement standards through 200.326 Contract provisions.

69 FR 26280, May 11, 2004; 78 FR 78608, Dec. 26, 2013

2 C.F.R. § 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

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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.

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(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; 80 FR 45395, July 30, 2015

2 C.F.R. § 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

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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.

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

2 C.F.R. § 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.

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(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.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

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

(e) [Reserved]

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(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

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

2 C.F.R. § 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.

69 FR 26280, May 11, 2004; 78 FR 78608, Dec. 26, 2013, unless otherwise noted

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2 C.F.R. § 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

2 C.F.R. § 200.323. Contract cost and price.

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

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

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

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

69 FR 26280, May 11, 2004; 78 FR 78608, Dec. 26, 2013, unless otherwise noted

2 C.F.R. § 200.324. Federal awarding agency or pass-through entity review.

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

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

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

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

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

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

69 FR 26280, May 11, 2004; 78 FR 78608, Dec. 26, 2013, unless otherwise noted

2 C.F.R. § 200.325. Bonding requirements.

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

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

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(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

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

69 FR 26280, May 11, 2004; 78FR 78608, Dec. 26, 2013, unless otherwise noted

2 C.F.R. § 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.

69 FR 26280, May 11, 2004; 78 FR 78608, Dec. 26, 2013, unless otherwise note

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2 C.F.R. Part, 200, Appendix II

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, 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"). 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.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or

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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.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) 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 and subgrants 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). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(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 governmentwide 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.

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

(J) See §200.322 Procurement of recovered materials.

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

CERTIFICATION REGARDING LOBBYING
(31 U.S.C.A. § 1352)
This Certification must be completed, signed, dated and
returned to the Galveston County Purchasing Agent

Procurement Number and Description: _____

_____ Bid #B192008, Motor Fuels, Oils Fluids & Greases _____

Proposer **CERTIFIES**, to the best of its knowledge and belief, that:

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

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

Name of Organization/Corporation: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Signature of Authorized Signatory for Proposer: _____ Date Signed: _____

Title of Authorized Signatory of Proposer: _____