

Interlocal Agreement For On-Line Bidding

This interlocal agreement ("Agreement") is by and between the City of College Station, Texas and Texas Municipal Power Agency (TMPA)(the "User") each acting by and through its Governing Body. The City of College Station and TMPA may be referred to herein as the "Parties").

WHEREAS, Chapter 791 of the Texas Government Code authorizes all local governments to contract with each other to perform governmental functions or services including administrative functions normally associated with the operation of government such as purchasing of necessary equipment, supplies and services;

WHEREAS, Chapter 252.0415 of the Texas Local Government Code, allows a municipality to receive bids or proposals through electronic transmission if the governing body of the municipality has adopted rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time;

WHEREAS, the City of College Station City Council has approved Ordinance 2635 (attached as Exhibit A) adopting policy rules and procedures to ensure the identification, security, and confidentiality of electronic bidding and reverse auctions.

WHEREAS, the Parties desire to enter into this Agreement for the purpose of sharing a common vendor database, sharing a common location for vendors to find opportunities for bids, proposals, and receive bids/proposals electronically;

WHEREAS, the City of College Station is a Home-Rule Municipal Corporation organized under the laws of Texas and is authorized to enter into this Agreement pursuant to ARTICLE II, SECTION 5 OF ITS CITY CHARTER;

WHEREAS, The Parties represent that each are independently authorized to perform the functions or services contemplated by this Agreement;

WHEREAS, each party has sufficient funds available from current revenues to perform the functions contemplated by this Agreement;

WHEREAS, it is deemed in the best interest of the Parties that said governments do enter into a mutually satisfactory agreement for the shared and common posting for bids, proposals, and other purchasing activity, including the receipt of electronic bids;

WHEREAS, the Parties are of the opinion that cooperation in the shared and common postings for bids, proposals, and other purchasing activity including the receipt of electronic bids will be beneficial to the taxpayers of the governments through the efficiencies and potential savings to be realized.

NOW THEREFORE, the Parties hereto, in consideration of the mutual covenants and conditions contained herein, promise and agree as to each of the other as follows:

TERMS

1. The City of College Station will be responsible for hosting and maintaining an on-line bidding system which will be able to:
 - Register interested bidders
 - Distribute bid and proposal documents electronically
 - Notify vendors automatically
 - Receive electronic bids/proposals using the Advanced Encryption Standard (AES) to ensure that the electronic bids or proposals remain effectively unopened until the proper time
 - Tabulate and publish bid results
 - Post Notice of Award
2. City of College Station will conduct regular backups of the information maintained on the site and will provide backup tapes as requested by TMPA.
3. The Parties agree to form an On-Line Bidding System User Group consisting of the purchasing manager, or their designee, for each party. The purpose of the User Group will be to: review requests from any party for enhancements to the On-Line Bidding System; prioritize and make recommendations regarding the requests for enhancements. The City of College Station will consider the recommendations of the User Group and shall have final approval authority for any recommended enhancement; provided, however, that such approval will not be unreasonably withheld.
4. Any costs for approved enhancements shall be paid by the participating parties in a manner and in an amount agreed to by all the parties.
5. The Parties agree that funds used to perform the functions contemplated by this agreement shall be available from current revenues.
6. Other parties may participate as users of the On-Line Bidding System upon the execution of this Agreement by the joining party.
7. Each party shall ensure that all applicable laws and ordinances have been satisfied.
8. **Effective Date and Term.** This Agreement shall be effective when signed by the last party whose signing makes the Agreement fully executed and will remain in full force and effect until September 30, 2005. This Agreement shall automatically renew for successive one-year terms unless sooner terminated in accordance with the provisions of this Agreement. The conditions set forth below shall apply to the initial term and all renewals. Notwithstanding this provision, any party may modify or terminate this Agreement as provided in Paragraph(s) 9 or 10.

9. **Modification.** The terms and conditions of this Agreement may be modified upon the mutual consent of all parties. Mutual consent will be demonstrated approval of each governing body of each party hereto. No modification to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of all parties.
10. **Termination.** This Agreement may be terminated at any time by any party without cause, upon thirty (30) days written notice to the other party in accordance with Paragraph 13 herein.
11. **Hold Harmless.** The Parties agree to hold each other harmless from and against any and all claims, losses, damages, causes of action, suits and liabilities of every kind, including all expenses of litigation, court costs and attorney's fees, for injury or death of any person, for damage to any property, or for any breach of contract, arising out of or in connection with the work done under this Agreement.
12. **Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.
13. **Written Notice.** Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein.

City of College Station: Fiscal Services - Purchasing Division
City of College Station
1101 Texas Ave.
P.O. Box 9960
College Station, Texas 77842

TMPA: Purchasing Department
Texas Municipal Power Agency
Address
City, State, Zip

14. **Entire Agreement.** It is understood that this Agreement contains the entire agreement between the parties and supercedes any and all prior agreements, arrangements, or understandings between the Parties relating to the subject matter. Nor oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.
15. **Amendment.** No Amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.
16. **Texas Law.** This Agreement has been made under and shall be governed by the laws of the State of Texas.

17. **Place of Performance.** Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.
18. **Authority to Enter Contract.** Each party has the full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.
19. **Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.
20. **Agreement Read.** The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.
21. **Assignment.** This Agreement and the rights and obligations contained herein may not be assigned by any party without the prior written approval of the other parties to this Agreement.
22. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

CITY OF COLLEGE STATION

TEXAS MUNICIPAL POWER AGENCY

BY: _____
 Ron Silvia, Mayor

BY: Gary Parsons
 Gary Parsons, General Manager

DATE:

DATE:
7/11/2005

ATTEST:

 Connie Hooks, City Secretary

ATTEST:
Wanda Callahan
 Wanda Callahan,
 Executive Assistant to General
 Manager

APPROVED:



Thomas E. Brymer, City Manager

Carla A Robinson
City Attorney

Jeff Kersten, Director of Finance
& Strategic Planning
