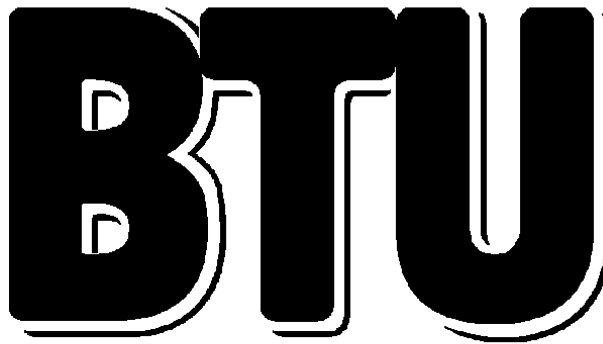


BRYAN TEXAS UTILITIES



**THE ENERGY TO SERVE YOU SINCE 1919**

BRYAN TEXAS UTILITIES

Procurement Office

205 East 28th Street

Bryan, TX 77803

(979) 821-5860 fax: (979) 821-5747

*Description:*

**Contract and Specifications To  
Remove Approx. 2.4 Miles of Idle 69 KV  
Transmission Line**

**RFP 053-06-10**

**SEALED BIDS TO BE SUBMITTED BY:  
2:00 PM, Thursday, March 25, 2010**



## **Important Disclosure Requirements**

Chapter 176 of the Texas Local Government Code mandates the public disclosure of certain information concerning persons doing business or seeking to do business with Bryan Texas Utilities, including affiliations and business and financial relationships such persons may have with Bryan Texas Utilities officers. An explanation of the requirements of Chapter 176, applicable forms and a complete text of the new law are available at: <http://www.btutilities.com/news/disclosure.aspx>.

If you are unable to obtain such information online, please contact the BTU Purchasing Agent at 821-5715 or mail to: [BTUPurchasing@btutilities.com](mailto:BTUPurchasing@btutilities.com) for further assistance regarding Chapter 176.

**BY DOING BUSINESS OR SEEKING TO DO BUSINESS WITH BRYAN TEXAS UTILITIES, YOU ACKNOWLEDGE THAT YOU HAVE BEEN NOTIFIED OF THE REQUIREMENTS OF CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE AND THAT YOU ARE SOLELY RESPONSIBLE FOR COMPLYING WITH THEM.**

## **NOTICE TO BIDDERS**

Mailed sealed proposals addressed to Bryan Texas Utilities for the construction of certain electric distribution facilities will be received in the office of the Procurement Specialist, Bryan Texas Utilities, 205 E. 28th Street, Bryan, Texas, until 2:00 p.m., March 25, 2010.

Proposals will be publicly read aloud in the main conference room of Bryan Texas Utilities at 2:00 p.m. on the same date. Any bid received after the above closing time will not be accepted and will be returned to the bidder upon request of the bidder.

Proposals must be completed and submitted on the forms found within the Specifications. Incomplete bid proposal forms will invalidate the bid proposal and the bid will be rejected and returned to the bidder. The right to accept any bid or to reject any or all bids and to waive all formalities is hereby reserved by Bryan Texas Utilities.

### **NONDISCRIMINATION IN EMPLOYMENT**

Bidders on this work will be required to comply with the President's Executive Order #11246. The requirements for bidders and contractors under this order are explained in the specifications.

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## **I. General**

### **Rights Reserved**

The Owner reserves the right to accept or reject any or all bids, to waive any formalities and technicalities, to accept the offer considered most advantageous, and to award the bid to the lowest, most responsible Bidder. Additionally, all Bidders are hereby notified that the Owner shall consider all factors it believes to be relevant in the selection of the lowest responsible Bidder including, but not limited to, the proximity of the Bidder as it relates to his ability to perform the contract.

### **Term of Contract**

The term of the contract shall be for a period of approximately three months beginning on or about April 26, 2010 and terminating on or about July 26, 2010. The completion date shall be contingent upon the Project Manager's determination of the project's progress.

### **Extension of Contract**

There shall be no extension of this contract unless approved by an authorized BTU employee.

## II. Instructions to Bidders

### Bidder Qualifications

In order for their proposals to be considered, Bidders must demonstrate that they are qualified to satisfactorily perform the specified work. The Bidder shall submit written evidence of his qualifications to the Owner with their proposal. Such evidence shall include all information necessary to certify that the Bidder:

- Maintains a permanent place of business;
- Has available the qualified personnel and equipment to work on energized 7.2/12.5kV overhead and underground distribution system in order to perform necessary work. Successful bidder must provide letter, describing qualifications of personnel to be dedicated to this project. Successful bidder will move crews into the BTU service area to commence work desired and will maintain sufficient resources dedicated to BTU. Contractor shall not release any crews dedicated to BTU without prior written approval from BTU;
- Has technical knowledge and practical experience in the work type specified;
- Has an on-going safety program that complies with all applicable state and federal laws;
- Has adequate financial status to meet the financial obligations incident to the work;
- Has no just or proper claims pending against him or his work; and
- Has experience with similar projects that require working in confined areas in close proximity to many physical features (fences, utility poles, guy lines, underground electrical lines, cable TV, gas lines and meters, sewer manholes, and clean-outs, etc.) which will require the Contractor to plan his work efforts and equipment needs with these limitations in mind. These qualifications shall be demonstrated by providing to BTU a list of at least three (3) other facilities of similar type and of equal or greater size and complexity constructed within the last three (3) years. The evidence shall consist of a listing of the facilities constructed indicating the Owner's name, location, approximate dollar value, type of facilities, and the date of completion. This list shall include the names of supervisors and types of equipment used to perform this work. Failure to submit this evidence shall be just cause for disqualification of the bid.

### Proposal Documents

Prospective Bidders who intend to make a direct proposal to the Owner may request copies of the specifications and documents. A duplicating charge of \$50 will be required for each set requested. Payment will be by cash, cashier's check, or money order. Cashier's checks or money orders shall be payable to *Bryan Texas Utilities*.

Any technical questions pertaining to these specifications shall be addressed to:

Tom Brent  
Bryan Texas Utilities  
205 E. 28<sup>th</sup> Street  
Bryan, TX 77803  
(979) 821-5773

All proposal documents are the property of the Owner and shall not be reproduced by the Bidders. The Owner reserves all rights to the proposal documents.

## Proposals

The original of each proposal shall be prepared and submitted in accordance with these Instructions to Bidders. Proposals which are not prepared and submitted in accordance with these instructions will imply that the Bidder does not intend to comply with all of the contract conditions and such proposals will be considered irregular and are subject to rejection.

If the prospective Bidder declines to bid, he shall give written notice to the Owner not later than the date proposals are due. The Bidder should specify the reason he has declined to bid to avoid hazarding the Bidder's future position.

### 1. Preparation

Proposal shall be carefully prepared using the proposal and proposal data forms included with the specifications and documents.

Entries on the proposals and proposal data forms shall be typed using dark black ribbon or legibly written in black ink. All prices shall be stated in figures only.

All blank spaces in the form shall be correctly filled in and the Bidder shall state the prices, written in ink or typed, in numerals and, where applicable, in words, for which he proposes to do the work contemplated. Such prices shall be written legibly.

### 2. Exceptions

A bid which contains exceptions or is otherwise inconsistent with the bid documents and specifications may be rejected. The purpose of the attached specifications is to fully specify the requirements of the Contractor. Each Bidder shall carefully check these requirements and shall plainly set forth all features and specifications wherein any equipment or services offered do not fully meet these specifications. Such exceptions as are made shall be listed by page number in the following blanks and shall be plainly marked in ink on the pages of these specifications and more fully explained in an attached letter. Failure to outline such exceptions in this manner shall require the successful Bidder to meet these specifications.

### Exceptions to Specifications – pages:

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3. Addendums

All addendums shall be signed and included with the proposal; failure to do so will result in an automatic disqualification of the bid.

4. Signature

(a) Each Bidder shall sign the proposal with an authorized signature and shall give his full business address. The Bidder's name stated on the proposal shall be the exact legal name of the firm. The names of all persons signing shall also be typed or printed below the signatures.

(b) Proposals by partnerships shall be signed with the partnership name followed by the signature and designation of one of the general partners or other authorized representative. A complete list of the partners shall be included with the proposals.

(c) Proposals by a corporation shall be signed in the official corporate name of the corporation, followed by the signature and designation of the president, secretary, or other person authorized to bind the corporation.

(d) A proposal by a corporation, which is signed by a person who affixes to his signature the word "President", "Secretary", "Agent", or other designation, without disclosing his principal, may be rejected. Satisfactory evidence of the authority of the officer signing on behalf of the corporation shall be furnished. Bidding corporations shall designate the state in which they are incorporated and the address of their principal office.

5. Submittal

Proposals shall be submitted not later than the date and time stipulated in the "Notice to Bidders".

Phebe Mosley  
Office of the Procurement Specialist (979-821-5860)  
Bryan Texas Utilities  
RFP 053-06-10  
205 E. 28<sup>th</sup> Street  
Bryan, TX 77803

A single proprietary interest shall not submit multiple proposals for the same work even though the individual proposals are submitted under different names. The Owner reserves the right to reject all proposals so submitted. Informal or separate copies of proposals shall not be given to any employee of the Owner.

6. Withdrawal

A Bidder's proposal may be withdrawn provided the request in writing to do so is in the hands of the officials indicated in the Notice to Bidders by the time set for opening of proposals. A Bidder may change the unit prices in his proposal provided the request to do so is submitted in writing and is in the hands of the Procurement Specialist prior to the time set for opening of proposals. Requests

by telephone or telegraph for changes in bid prices or for withdrawal of proposals will not be considered.

7. Irregular Proposals

Proposals will be considered irregular if they show any omissions, alterations of form, additions, or conditions not called for, unauthorized alternate bids, or irregularities of any kind. However, the Owner reserves the right to waive any irregularities and to make the award in the best interests of the Owner.

8. Opening Proposals

The proposals filed with the Procurement Specialist will be publicly read aloud as provided for in the Notice to Bidders, and shall thereafter remain on file with the Procurement Specialist. No contract will be entered into based on such proposals no sooner than two days after bid opening. Bidders or their agents are invited to be present.

9. Disqualification Of Bidder

Bidders may be disqualified and their proposal not considered for any of the following specific reasons:

- (a) Reasonable grounds for believing collusion exists among the Bidders.
- (b) Reasonable grounds for believing that any Bidder has a financial interest in more than one proposal for the work contemplated.
- (c) The Bidder being a party in any litigation against the City or BTU.
- (d) The Bidder being in arrears on any existing contract or having defaulted on a previous contract with the City or BTU.
- (e) Lack of competency as revealed by the financial statement, experience and equipment, questionnaires, etc.
- (f) Uncompleted work that in the judgment of BTU will prevent or hinder the prompt completion of additional work if awarded.
- (g) Proposals in which prices are obviously unbalanced.

**Information to be submitted with Proposal**

In addition to the information required in Paragraphs A and C of this Section, each Bidder shall submit with his proposal pertinent information concerning proposed equipment and construction organization.

1. Equipment

Each Bidder shall submit all specifications or similar descriptive information necessary to completely describe the equipment he proposes to use on this project.

2. Contractor's Field Organization

Each Bidder shall submit with his proposal an organizational chart showing the names of field management, supervisory and technical personnel, and technical organization he proposes to use for this project. Bidders shall submit a Statement of Qualification of all personnel submitted. BTU reserves the right to select required personnel for selected crew (crews). Statement shall also include any license or testing status that verifies or substantiates individuals' titles. Contractor must respond to BTU's request within seventy-two (72) hours.

Personnel must be qualified to work on energized 7.2/12.47kV overhead distribution systems in order to perform necessary work. Successful bidder must provide letter, describing qualifications of personnel to be dedicated to this project.

3. Consideration Of Bids

After proposals are opened, the proposals will be tabulated for comparison on the basis of the bid prices. Until final award of the contract, the Owner reserves the right to reject any or all proposals, to waive technicalities, and to re-advertise for new bids, or proceed to do the work otherwise in the best interests of the Owner.

4. Award of Contract

The award of the contract, if it were awarded, will be to the lowest responsible Bidder providing the overall best value. The Owner reserves the right to withhold the award of the contract for a period of 30 calendar days from date of opening proposals and no award will be made until after investigations are made as to the responsibilities of the low Bidder. In no case will contract be awarded until at least two days shall have elapsed from time of opening proposals. The Owner reserves the right to award the bid in its best interest and will seek the best combination of the bid schedules and the individual Bidders.

5. Local Conditions

Each Bidder shall visit the Bryan Texas Utilities service area and thoroughly inform him of all conditions and factors which would affect (1) the prosecution and completion of the work (2) availability and cost of labor and (3) facilities for transportation, handling, and storage of materials and equipment. It must be understood and agreed that all such factors have been properly investigated and considered in preparation of every proposal submitted. The Owner will permit no claims for financial adjustment to any contract awarded for the work, which are based on the lack of such prior information or its effect on the cost of the work.

6. Invoicing

The Contractor's invoices must reference the appropriate work order numbers, as set up by Owner. All invoices shall be sent to Phebe Mosley in BTU purchasing.

7. Performance Bond and Payment Bond

If the proposed labor cost for this project exceeds \$50,000, contractor shall provide a performance bond and a payment as outlined below.

Within ten (10) days after written notification of the award of the contract the Contractor shall file with the Owner a good and sufficient performance bond in an amount equal to one hundred per cent (100%) of the total amount of the contract, as evidenced by the proposal, guaranteeing the full and faithful execution of the work and performance of the contract, and for the protection of the Owner and all other persons against damage by reason of negligence of the Contractor, or improper execution of the work, or the use of inferior materials or equipment.

This performance bond shall guarantee the payment for all labor, materials, and equipment used in the construction of the work, and shall remain in full force and effect for one year after written notice of acceptance of the completed work is received from the Owner.

A Power Of Attorney certified to include the date of execution of the bond evidencing the authority of the individual executing the bond on behalf of the surety shall accompany the bond.

The cost of the bond shall be included in the proposal price. All provisions of the bond shall be complete. The bond shall be made on forms furnished by the Owner, and shall be executed by an approved surety company authorized to do business in the State of Texas, acceptable to the Owner and in accordance with Chapter 2253 of the Texas Government Code. An agent resident in the State of Texas shall sign the bond on the date of execution of the contract by the Owner.

No sureties will be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation against the City of Bryan, Texas or the Owner.

Should any surety on the contract be determined unsatisfactory at any time by the Owner, notice will be given the Contractor to that effect and the Contractor shall immediately provide a new surety satisfactory to the Owner within ten (10) days after notice to do so. In default thereof, the contract may be suspended and all payments on monies due to the Contractor withheld.

Any unexpected balance of Cash Allowance shall revert to the Owner in the final settlement of the contract.

8. Proposal Pricing

Firm price proposals shall be submitted on a project basis. Any changes in the total project amount due to additional work or reduction of work shall be based on the unit prices, as submitted with this proposal.

9. Proposal on Unit Basis

- (a) **The Contractor understands and agrees that the various construction units considered in this proposal are made on a project basis but that the Owner may specify any number or combination of construction units the Owner may deem necessary.** If construction units for which prices are not established in this proposal are necessary, the prices of such additional units shall be as agreed upon in writing by the Owner and the Contractor prior to the time of installation. The unit labor prices herein set forth are applicable to work performed on de-energized lines. For units installed on energized lines prices shall be increased by the percentage supplied by the Contractor on the bid sheets. Energized construction, for the purposes of this contract, is defined to be any work performed directly on, at the same level, or above energized electric line phase conductors. Installed assembly units, which directly connect to energized line phase conductors, shall be treated as energized construction units. All work performed at a level below any energized electric line phase conductors shall be treated as de-energized construction. Energized conductors shall refer to all electric line phase conductors in excess of 600 volts phase-to-phase.
- (b) In addition to the furnishing of assembly unit prices, each Bidder shall complete the bid sheet. **The Bidder shall take note of the fact that these construction units are established for bid evaluation purposes only, and are not necessarily intended to represent the total construction units to be performed on this contract. The quantities and types of units may be increased, decreased or modified as determined by the Owner.**
- (c) Unit prices shall include all necessary labor, any miscellaneous Contractor furnished material, equipment, vehicles, tools, supervision, fuel, maintenance, travel time, and any associated expense involved in construction of that assembly unit.

### **Beginning of Work**

The Contractor shall not begin work until notified in writing by the Project Manager to do so.

### **Retainage**

As security for the faithful and satisfactory completion of the work by the Contractor, the Owner may retain ten percent (10%) of the total dollar amount of work completed on all contracts until acceptance by Owner's Representative.

### **Accidents**

The Contractor must report, in writing, to BTU all accidents whatsoever arising out of, or in connection with the performance of the work, whether on, or adjacent to, the site, which caused death, personal injury, or property damages, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are

caused, the accident shall be reported immediately by telephone or messenger to the Project Manager or to BTU Dispatch at (979) 821-5805

## **Particular Undertakings of the Bidder**

### Protection to Persons and Property

The Contractor shall at all times take all reasonable precautions for the safety of employees on the work site and of the public, and shall comply with all applicable provisions of Federal, State, Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations. The following provisions shall not limit the generality of the above requirements.

1. All construction work must be accomplished with a minimum of service interruption. Conductors transporting power at nominal primary voltage (12,470 volts phase-to-phase, 7,200 volts phase to ground distribution) will not normally be de-energized for construction work on this project. The Contractor shall have linemen and supervision experienced and trained in working on and/or near energized conductors.
2. The Contractor shall so conduct the construction as to cause the least possible obstruction of public roadways.
3. The Contractor shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances, and regulations, or by local conditions.
4. The Contractor shall do all things necessary and expedient to properly protect any and all parallel, converging and intersecting lines, joint line poles, highways, and any and all property of others from damage. In the event that any such parallel, converging and intersecting lines, joint line poles, highways, or other property are damaged in the course of construction, the Contractor shall **(at its own expense)** restore any or all of such damaged property immediately to as good a state as before such damaged occurred.
5. The Contractor shall be responsible for contacting all underground utilities, pipelines, and all other interests with underground facilities to verify all pole holes and anchors to be "clear" of all underground obstructions **before** drilling holes or setting anchors.
6. The Contractor shall limit the movement of his crews and equipment so as to minimize the damage to property and shall endeavor to avoid marring the lands. All fences, which are necessarily opened or moved during construction, shall be replaced in as good condition as they were found, and precautions shall be taken to prevent the escape of livestock. The Contractor shall not be responsible for loss of or damage to property (other than livestock) on the right-of-way necessarily incident to construction and not caused by negligence or inefficient

operation of the Contractor. However, Contractor shall be responsible for all other loss of or damage to property or livestock, whether on or off the right-of-way, caused by construction.

7. The Contractor shall make good and fully repair all injuries and damages to any portion thereof under the control of the Contractor by reason of any act of God or other casualty of cause whether or not the same shall have occurred by reason of the Contractor's negligence. The Contractor shall hold the Owner harmless from any and all claims for injuries to persons or for damage to property happening by reason of any negligence on the part of the Contractor or any of the Contractor's agents or employees during construction by the Contractor or any part thereof.
8. Any and all excess earth, rock, debris, underbrush, and other useless materials shall be removed by the Contractor from the construction sites as rapidly as practicable.
9. Upon violation by the Contractor of any of the provisions of this section, written notice of such violation shall be given to the Contractor by the Owner or Owner's representative. The Contractor shall immediately cease work upon safe completion of any ongoing work and correct such violation. Upon failure of the Contractor to do so, the Owner may correct such violation **at the Contractor's expense**. Notwithstanding the previous sentence, the Owner may, if it deems it necessary or advisable, correct such violation at the Contractor's expense without such prior notice to the Contractor.
10. The Contractor shall notify the Owner or Owner's representative immediately for accidents involving electrical contact. In addition, the Contractor shall submit to the Owner monthly reports in duplicate of all accidents giving such data as may be prescribed by the Owner.
11. All switching to remove equipment for construction and re-energizing equipment after construction, and blocking of reclosing of automatic line devices or substation breakers for construction work on energized facilities, will be done by and coordinated with the Owner and Contractor. The Contractor shall perform all installation and disconnection of safety grounds and mechanical disconnection and reconnection of each piece of equipment for construction.
12. Contractor agrees to and shall indemnify and hold harmless Owner, its officers, agents, and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind (including all expenses of litigation, court costs, and attorney's fees) for injury to or death of any person or for damage to any property arising out of or in connection with the work done by the Contractor under this contract including, but not limited to, the following specific instances:
  - (a) In the event Owner is damaged from the act, omission, mistake, or fault or default of the Contractor, the Contractor shall indemnify and hold Owner harmless for such damage.

- (b) Contractor shall indemnify and hold Owner harmless from any claims of material suppliers, mechanics, laborers, or other subcontractors.
  - (c) Contractor shall indemnify and hold Owner harmless from any and all injuries to or claims of adjacent property owners caused by Contractor, his agents, employees, and representatives.
13. Any injury or damage to Contractor caused by an act of God, natural cause, a party or entity not privy to this contract, or other force majeure shall be assumed and borne by the Contractor.
14. Contractor further agrees to handle and defend at his own expense on behalf of Owner and in the Owner's name, any claim or litigation in connection with such injury, death, or damage.

**Any exception taken to the indemnification provisions of the contract by the Bidder may constitute sufficient basis for disqualification of the bid proposal.**

### **Insurance**

1. The Contractor, before starting work for BTU, must furnish BTU a Certificate of Insurance or other acceptable evidence from a reputable insurance company or companies with an A.M. Best rating of "A" (such companies to be acceptable to BTU) licensed to write insurance in the State of Texas. Certificates of insurance shall be prepared and executed by the insurance company or its authorized agent and shall warrant the following provisions: (a) that the insurance company is licensed and admitted to do business in the State of Texas; (b) that the insurance policy is underwritten on forms provided by the Texas State Board of Insurance or ISO; (c) all endorsements and coverage's are in accordance with the requirements of this Contract; (d) that the form of notice of cancellation, termination, or change in coverage provisions will be provided to BTU; and (e) that the original endorsements affecting coverage required by this Contract shall be furnished to BTU. Contractor must show coverage as follows:

Statutory Workers' Compensation Insurance, with Employers' Liability Insurance in the amount of \$500,000. In the event any work is sublet, the Contractor shall require the subcontractor similarly to provide the same coverage and shall himself acquire evidence of such coverage on behalf of the subcontractor. Waiver of subrogation is required.

Commercial General Liability Insurance with a \$1,000,000 Combined Single Limit. The policy shall be on the current Standard ISO version occurrence form, and shall include coverage for acts of independent contractors, and shall name the City of Bryan as an additional insured. No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance. No "claims made" policies are acceptable without prior approval by the City Attorney.

Automobile Public Liability Insurance with a \$1,000,000 Combined Single Limit on all self-propelled vehicles used in connection with the contract, whether owned, non-owned or hired. BTU shall be named as an additional insured.

Owner's Protective Liability with a \$1,000,000 Combined Single Limit, naming Bryan Texas Utilities as the insured. **NOTE: This insurance is only required for labor amounts of \$50,000 and above.**

The Certificates of Insurance furnished to Bryan Texas Utilities shall contain a provision that coverage under such policies shall not be cancelled or materially changed until at least thirty (30) days prior written notice has been given to BTU.

BTU reserves the right to require additional lines of insurance on a case-by-case basis, depending upon the subject matter of the contract and the attendant risks involved in the completion of the contractual work.

2. The Certificate of Insurance furnished to BTU should contain a provision that coverage under such policy shall not be cancelled or materially changed until at least thirty (30) days prior written notice has been given to BTU. City shall be listed as an additional insured on all insurance policies. Insurance policies should be kept in effect for the entire term of the Agreement.

### **III. Contractor's Responsibilities and Rights**

#### **Supervision**

1. Contractor shall supervise and direct the work efficiently and with his best skill and attention. He shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction used. He shall not be solely responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence, or procedure of construction specifically called for in the bid documents or drawings.
2. Contractor shall keep in the Bryan Texas Utilities service area while any work is in progress, a competent superintendent and any necessary assistants against whom Owner has no reasonable objection.
3. No superintendent or Contractor employee shall be relieved except with the consent of Owner unless he proves to be unsatisfactory to Contractor or ceases to be in his employ. When a superintendent is on vacation or otherwise absent, a substitute against whom Owner has no reasonable objection shall be provided.
4. Each superintendent shall represent Contractor in his absence, and all communications to him will be as binding as if given to Contractor.

#### **Safety and Protection**

1. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. He shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- (a) all employees on the job and other persons who may be affected thereby;
  - (b) all the work and all equipment and materials to be incorporated therein, whether in storage on or off the sites;
  - (c) other property at the sites or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities except as designated for removal, relocation or replacement as part of the work.
2. Contractor shall comply with all applicable federal, state and local safety laws and building codes.
  3. Contractor shall provide an OSHA approved first aid station at each job site.

### **Communications**

1. Contractor shall furnish his superintendent a two-way radio tuned to the Bryan Texas Utilities frequency to keep with him for the duration of this contract.
2. At the request of BTU, Contractor shall furnish to each job site, two-way communications capable of talking to Bryan Texas Utilities Dispatch Office anywhere in Bryan Texas Utilities service area.
3. Contractor shall have adequate communications equipment in work vehicles so superintendent may contact each work crew.
4. Contractor shall equip his superintendent with a cellular telephone so that Owner may contact him at any time throughout the duration of this contract.

### **Labor, Equipment, Materials, and Workmanship**

1. Unless otherwise specified, any materials supplied by the Contractor shall be new and of good quality. All workmanship shall be of good quality and free from defects.
2. All equipment and materials incorporated in the work shall be designated to meet the applicable safety standards of federal, state, and local laws and regulations.
3. Contractor shall, if required, furnish satisfactory evidence as to the source, kind and quality of materials furnished.
4. Contractor shall furnish proper tools and equipment and the services of all mechanics, laborers, and other employees necessary in the construction and execution of the work.
5. All equipment and materials shall be applied, installed, connected, constructed, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, or processor, except as otherwise provided in the contract document.

6. Employees of Contractor shall be competent and willing to perform the work required of them. Any employee who is disorderly, intemperate, incompetent, or who neglects or refuses to perform his work shall be discharged and shall not be re-employed except with consent of the Owner. Contractor shall discharge any employee found incompetent by the Owner.
7. Contractor shall not make any claim for an increase in the contract price by reason of jurisdictional disputes or other labor troubles of any kind by his employees, supplier, or manufacturer.

### **Materials**

1. At or prior to the commencement of construction, the Owner shall make available to the Contractor an allotment of materials. The Contractor may, from time to time, receive additional allotments of materials from the Owner as needed.
2. The Contractor or his authorized representative will give to the Owner a receipt, in a form approved by the Owner, for all materials furnished by the Owner to the Contractor.
3. The Contractor shall, at Contractor's expense, obtain a facility located within the Bryan Texas Utilities service area to securely store materials. This area may also serve as Contractor's field office while working on this contract.
4. Concrete shall have a minimum compressive strength of 3500 psi at twenty-eight (28) days. Absolute water-cement ratio shall not exceed 0.45. Slump shall not exceed four (4) inches without the approval of the Owner. Maximum nominal course aggregate size shall not exceed one (1) inch. A minimum of six (6) bags of cement per yard of mix shall be used.

Owner shall be notified at time of bid if concrete cannot consistently be delivered and discharged within one (1) hour from introduction of water to cement. With these conditions, Owner may require all water to be added at the jobsite.

Contractor shall be required to make a set of compressive test specimens, each set consisting of three (3) compressive test cylinders made in accordance with ASTM C31. One set of compressive test cylinders shall be taken from each concrete truck. The Contractor, through an approved qualified testing laboratory acceptable to the Owner, shall handle testing of the cylinders. All testing and re-testing costs shall be borne by the Contractor. Contractor shall require the laboratory to send the compressive tests reports to the Owner. One sample shall be tested at seven (7) days and one (1) at twenty-eight (28) days. The seven (7) day break shall yield at least 85% of minimum compressive strength. If not, it shall be considered a low break. In the event of a low break, one cylinder shall be held for a forty-five (45) day break. The Contractor shall identify low breaks.

## **Identification**

1. Contractor's personnel shall at all times wear an article that clearly identifies the company the person is employed with. This may be a uniform, marked hardhat or other approved means.
2. Contractor's work vehicles shall be clearly marked to identify the Contractor.

## **Laws to be Observed**

The Contractor shall at all times observe and comply with all Federal and State laws and City Ordinances and regulations, which in any manner affect the conduct of the work, and shall observe and comply with all orders, laws, ordinances and regulations which exist or which may be enacted later by bodies having jurisdiction or authority for such enactment.

No plea of misunderstanding or ignorance thereof will be considered. The Contractor and his sureties shall indemnify and save harmless Bryan Texas Utilities and all its officers, agents and employees against any claims or liability arising from or based on the violation of any such law, ordinance, regulation or order whether by himself or his employees, or subcontractors.

## **Conformity with Plans**

All work shall conform to the lines, grades, details and dimensions shown on the Plans. Any deviation from the Plans that may be required by the contingencies of construction will be determined and authorized by the Project Manager.

## **Existing Structures**

The Plans show the locations of some surface structures, however, the location of many gas mains, water mains, conduits, sewers, etc. is unknown, and the Owner assumes no responsibility for failure to show any or all these structures on the Plans or to show them in their exact location. It is mutually agreed such failure will not be considered sufficient basis for claims for additional compensation for extra work or for increasing the pay quantities in any manner whatsoever, unless the obstruction encountered is such as to necessitate changes in the routing of the electrical lines, or require the building of special work, provisions for which are not made in the Plans and Proposal, in which case, at the decision of the Project Manager, the provisions in these specifications for extra work shall apply.

The Contractor shall exercise caution while working at a location where proposed construction crosses or comes into proximity with an underground telephone cables, gas line, waterline, sewer line or any other utility line. EXTREME CAUTION shall be taken when working around petroleum pipeline or high pressure gas lines.

It shall be the Contractor's responsibility to contact the utility at least two (2) working days (excluding Saturday, Sunday and Holidays) prior to construction and obtain exact location of all underground utility lines and appurtenances where possibility of a conflict exists. Unnecessary damage to utilities or appurtenances within and outside the limits

of construction shall be repaired at the Contractor's expense. The Contractor will be responsible for all re-locates once the initial locates expire.

It is the Contractor's responsibility to notify and coordinate any repair of utilities required for the proper construction of this project, including Owner's utilities and utilities owned by BTU.

### **State and City Sales Taxes**

The Contractor's attention is directed to Texas House Bill 11 (72nd Legislature, 1st C.S.), which amended the Texas Tax Code Section 151.311. This amendment provides that by the Contractor entering into a separate contract, the Contractor will become a seller of materials purchased for the project, which will obviate paying taxes on materials incorporated into the project.

As a seller, the Contractor purchases materials and issues a resale certificate instead of paying the sales tax at the time of purchase. The Owner, as an exempt entity, will provide the Contractor with an exemption certificate at the time of the "sale" of the materials to the Owner, thereby precluding the Owner, and Contractor, from paying the sales tax on the materials.

Services are not tax exempt. The Contractor will be required to pay all appropriate taxes for all services as set forth herein.

For purpose of these Contract Documents, the following definitions are provided for materials and services:

Materials: Materials are those items that are tax exempt and are physically incorporated into the facility constructed for the Owner.

Services: Services are those items that are not tax exempt and are items used by the Contractor but that are not physically incorporated into the Owner's facility and/or are items which are consumed by construction. Services include, but are not limited to items, such as supplies, tools, temporary storage buildings, the purchase or rental or lease of equipment, skill and labor, etc.

For further information concerning taxes as they related to materials and services, the Contractor shall refer to House Bill 11 and/or contact the Texas Comptroller of Public Accounts, Austin, Texas.

### **Special Conditions**

#### **1. Permits And Right-Of-Way**

BTU will provide all necessary rights-of-way for the purpose of construction without cost to the CONTRACTOR by securing permits in areas of public dedication or by obtaining easements across privately owned property. It shall be the responsibility of the CONTRACTOR, prior to the initiation of construction on easements through private property, to inform the property owner of his intent to begin construction. Before beginning construction in areas of public dedication, the CONTRACTOR shall inform the agency

having jurisdiction in the area forty-eight (48) hours prior to initiation of the work.

**2. Property Lines And Monuments**

The CONTRACTOR shall protect all property corner markers, and when any such marker or monuments are in danger of being disturbed, they shall be properly referenced and if disturbed shall be reset at the expense of the CONTRACTOR.

**3. During Construction**

During construction of the work, the CONTRACTOR shall at all times, keep the site of the work and adjacent premises as free from material, debris, and rubbish, as is practicable, shall remove same from any portion of the site, if in the opinion of BTU, such material debris, or rubbish constitutes a nuisance or is objectionable.

The CONTRACTOR shall remove from the site all of his surplus materials and temporary structures when no further need therefore develops.

**4. Accidents**

The CONTRACTOR must report in writing to BTU all accidents whatsoever arising out of, or in connections with the performance of the work, whether on, or adjacent to, the site, which caused death, personal injury, or property damages, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to BTU.

If any claim is made by anyone against the CONTRACTOR or any subcontractor on account of any accident, the CONTRACTOR shall promptly report the facts in writing to BTU giving full details of the claim.

**5. Protection Of Trees**

No trees shall be cut except upon the specific authority of BTU. Trees adjacent to the work shall be protected from all damage by the construction operations.

**6. Removal of Trees, Fences, Etc.**

Removal of trees, stumps, brush, etc. including disposal will be measured and paid for as provided in the proposal, or as directed by the Project Manager. Fences within the right-of-way of this project shall be kept in good repair and closed at all times, except when it is necessary to move machinery and equipment through the fence. Gates shall be closed immediately after use. When the project is complete, the CONTRACTOR shall repair all fences and gates that have been moved or damaged as a result of construction. Fences shall be left in repair equal to the original condition. No separate compensation shall be made for this work.

Where surface drainage channels are disturbed or blocked during construction, they shall be restored to their original condition of grade and cross section after the work of construction is completed.

The CONTRACTOR shall not be held liable for unavoidable damage to crops provided such damage occurs within the construction easement provided by BTU.

**7. Existing Structures**

Where applicable the plans show the locations of all known surface and subsurface structures. However, BTU assumes no responsibility for failure to show any or all surface and subsurface structures on the plans, or to show them in their exact location. It is mutually agreed that such failure shall not be considered sufficient basis for claims for additional compensation for extra work or for increasing the pay quantities in any manner whatsoever, unless the obstruction encountered is such as to necessitate changes in the lines or grades, or requires the building of special work, provisions for which are not made in the plans and proposal, in which case the provisions in these specifications for extra work shall apply.

**8. Construction In Texas Highway Department Right-Of-Way**

Where the work encroaches upon any right-of-way of the Texas Highway Department, BTU will secure the necessary permits for the work. Where highways are crossed, the CONTRACTOR shall observe all the regulations and instructions of the Texas Highway Department as to methods of doing the work, or precautions for safety of property and the public. All negotiations with the Texas Highway Department, except for permits, shall be made by the CONTRACTOR. The Texas Highway Department shall be notified by the CONTRACTOR not less than five (5) days previous to the time of his intention to begin work.

**9. Barricades, Lights And Watchmen**

Where the work is carried on in or adjacent to any street, alley or public place, the CONTRACTOR shall at his own cost and expense furnish and erect such barricades, fences, battery type flasher-markers and danger signals, shall provide such watchmen, and shall provide such other precautionary measures for the protect of persons or property and of the work as are necessary. UNLESS OTHERWISE INDICATED, ALL SIGNS, BARRICADES, AND TRAFFIC CONTROL DEVICES SHALL BE PLACED AND MAINTAINED IN ACCORDANCE WITH THE LATEST EDITION OF THE TEXAS MANUAL FOR UNIFORM TRAFFIC CONTROL DEVICES (MUTCD). From sunset to sunrise, the CONTRACTOR shall furnish and maintain at least one battery type flasher-marker at each barricade and sufficient number of barricades shall be erected to keep vehicles from being on or into any work under construction. The CONTRACTOR shall furnish watchmen in sufficient numbers to protect the work.

Should the CONTRACTOR need to contract an additional outside source for barricading, the invoice for additional barricading shall be submitted to BTU with no additional costs and only after approval by BTU.

The CONTRACTOR will be held responsible for all damage to the work due to failure of barricades, signs, lights, and watchmen to protect it, and whenever evidence is found of such damage, BTU may order the damaged portion immediately removed and replaced by the CONTRACTOR at his cost and expense. The Contractor's responsibility for the maintenance of barricades, signs and lights, and for providing watchmen shall not cease until the project shall have been accepted by BTU.

During the prosecution of the work, the CONTRACTOR shall obstruct public travel as little as possible and in no case shall there be less than twelve (12) feet in width of unobstructed roadway for the use of traffic. Materials and equipment stored in or near the path of traffic shall be protected with red flags during the day and with lights during the night.

**10. Salvaged Materials**

All materials, with the exception of poles, cross arms, braces, insulators and miscellaneous materials, removed during the construction of the project shall be removed, hauled, and neatly stacked at the designated BTU warehouse area. Salvaged materials shall remain the property of BTU. The CONTRACTOR is responsible for all costs (including tipping fees) associated with the legal disposal of surplus material.

**11. Final Clean-Up**

Upon completion of the work and before acceptance and final payment, the CONTRACTOR shall clean, remove rubbish, unused materials and temporary structures from the limits of the project and restore in a manner acceptable to the Project Manager, all property, both public and private, that has been damaged during the prosecution of the work, and shall level and grade all portions of the work where the surface of the natural ground or street surface has been disturbed during construction and shall leave the site of the work in a neat and presentable condition, free from ruts and holes.

Material cleared from the limits of the project and deposited on adjacent property will not be considered satisfactory unless prior approval is obtained from the property owner involved, and the work is accomplished to the satisfaction of BTU.

**12. Liens**

Neither the final payment nor any part of the retained percentage shall become due until the CONTRACTOR, if required, shall deliver to BTU a complete release of all liens arising out of this Contract, or receipt in full in lieu thereof and, if required in either case, an affidavit that so far as he has knowledge or information the releases and receipts include all the labor

and material for which a lien could be filed; but the CONTRACTOR may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to BTU, to indemnify BTU against any lien. If any lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to BTU all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fees.

**13. Private Property Access**

The CONTRACTOR shall not enter upon or use private property except as allowed by easements shown on the Contract Documents or if the CONTRACTOR obtains specific written permission from the property owner.

**14. Company Logo**

All equipment used on the project shall be clearly marked with the Contractor's name and LOGO.

**15. Right To Audit**

BTU shall have the right to examine and audit the books and records of the CONTRACTOR at any reasonable time. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payment required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

**IV. Owner's Responsibilities and Rights**

**Communications with Contractor**

All communications of Owner with Contractor pertaining to performance of the work will be issued through the Project Manager or his designated representative.

**Right-of-Way Clearing**

All right-of-way clearing (including trees, brush, etc.) will be the responsibility of BTU. Contractor shall make all initial contacts with customers regarding clearing and shall coordinate with Owner's Forester, Ted Fox, at (979) 821-5825.

**Owner's Right to Correct or Complete Work**

If Contractor should neglect to prosecute the work properly or fail to perform any provision of this contract, Owner (after ten days written notice to Contractor) may without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

**Owner's Right to Suspend Work**

1. Owner may at any time and without cause, suspend the work or any portion thereof for a period or successive periods of not more than ninety (90) days in the aggregate by notice in writing to Contractor which will fix the date on which the work shall be resumed. Contractor shall resume the work on the date so

fixed. Contractor shall be allowed to increase in the contract price or an extension of the contract by Owner without cause if he makes a claim therefore as provided in these general conditions.

2. Pending settlement of disputes on any point of controversy, Owner may suspend action on all or any part of the work. Contractor shall not be entitled to any claim for loss or damage by reason of such delay nor to extension of the contract time, although such extension of time may be recommended by BTU if it is deemed to be in BTU's best interest to do so.

### **Owner's Right to Terminate Contract**

1. Owner, upon the certification that good cause exists to justify such action may, without prejudice to any other right or remedy, and after giving Contractor and his surety ten (10) days written notice, terminate the services of Contractor and take possession of any or all sites and all equipment, materials, tools, and construction equipment thereon and finish the work by whatever method he may deem expedient. "Good Cause" may exist in the following situations, or other situations not listed:
  - (a) if a trustee or receiver is appointed for the Contractor or for any of his property;
  - (b) if he persistently or repeatedly refuses or fails, except in cases for which extension of the contract time is provided, to supply proper supervision, acceptable equipment or materials, or enough properly skilled workmen, tools, and construction equipment;
  - (c) if he fails to make prompt payments to suppliers or manufacturers for equipment or materials;
  - (d) if he persistently disregards laws, ordinances, or the authority of the Owner's representative;
  - (e) If he is guilty of a violation of any provision of the contract documents.
2. In such case, the Contractor shall not be entitled to receive any further payment until the contract is completed by Owner or Owner's agents.

### **Authority of the Project Manager**

All work shall be performed under the supervision of the Project Manager in a workmanlike manner and to his satisfaction and in accordance with the contract, plans and specifications. He shall decide all questions which arise as to the quality and acceptability of materials furnished, work performed, manner of performance, rate of progress of the work, sequence of the construction, interpretation of the plans and specifications, acceptable fulfillment of the contract, compensations, and suspension of the work. He shall determine the amount and quality of the work performed and materials furnished, and his decisions and estimates shall be final. His estimate of the

amount of work done shall be a condition precedent to the right of the Contractor to receive money due him under the contract.

## **Payment**

### **1. Scope of Payment**

The determination of quantities of work acceptably completed under the terms of the contract, or as directed by the Project Manager in writing, will be made by the Project Manager.

The Contractor shall receive and accept the compensation, as herein provided, in full payment for furnishing all labor, tools, materials, equipment and incidentals; for performing all work contemplated and embraced under the contract; for all loss or damage arising out of the nature of the work, or from the action of the elements; for any unforeseen defects or obstruction which may arise or be encountered during the prosecution of the work, and before its final acceptance by the Project Manager; for all risks of whatever description connected with the prosecution of the work; for all expense incurred by or in consequence of suspension or discontinuance of such prosecution of the work as herein specified; for any infringement of patents, trademarks, or copyrights, and for completing the work in an acceptable manner according to the plans and specifications. The payment of any current or partial estimate prior to final acceptance of the work by the Owner shall in no way constitute an acknowledgment of the acceptance of the work, nor in any way prejudice or affect the obligation of the Contractor to repair, correct, renew, or replace, at his own expense, any defects or imperfections in the construction, or in the strength or quality of the materials used in or about construction of the work under contract and its appurtenances nor any damage due or attributed to such defects, which defects, imperfections, or damage shall have been discovered on or before the final inspection and acceptance of the work. The Project Manager shall be the sole judge of such defects, imperfections, or damage, and the Contractor shall be liable to the Owner for failure to correct the same, as provided herein.

Any item of work not covered in the proposal will not be paid for directly, but shall be considered as subsidiary to a regular bid item.

### **2. Partial Estimates**

By the 15<sup>th</sup> day and the last day of each month, the Contractor will make an approximate estimate of the value of the work performed during the previous two weeks under these specifications and submit the estimate to the Owner for review. Whenever the said estimate or estimates of work done since the last previous estimate exceeds five hundred dollars (\$500) in amount, a percentage of such estimated sum will be paid the Contractor on or before the 25th day of the month following.

The percent retained by the Owner will be ten percent (10%) on all partial estimates of the total amount of work completed. Five percent (5%) will be retained by the Owner on all partial estimates if the contract amount is four

hundred thousand dollars (\$400,000) or more. The Contractor shall furnish the Owner such detailed information as requested to aid in evaluating partial estimates. It is understood that the partial monthly estimates and payments will be subject to review and correction by the Owner of the estimate rendered following discovery of an error in the current and any previous estimate, and no such estimate shall in any respect be taken as an admission of the Owner of the amount of work done or of its quality of sufficiency nor as an acceptance of the work or the release of the Contractor of any of his responsibility under the contract.

**3. Final Acceptance**

Whenever the improvement provided for by the contract shall have been completely performed on the part of the Contractor, the Contractor shall notify the Project Manager that the improvements are ready for final inspection. The Project Manager will then make such final inspection, and if the work is satisfactory and in accordance with the Specifications and Contract, he will give the Contractor a written Letter of Acceptance.

**4. Final Payment**

Whenever the improvements provided for by the contract shall have been completely performed on the part of the Contractor as evidenced by the Project Manager in the Letter of Acceptance, a final estimate showing the value of the work will be prepared by the Project Manager as soon as the necessary computations can be made. All prior estimates upon which payments have been made are subject to necessary corrections or revisions in the final payment. The amount of this final estimate less any sums previously paid under the provisions of the contract, will be paid the Contractor within thirty (30) days after final acceptance provided the Contractor has furnished the Owner satisfactory evidence that all sum of money due for any labor, materials, apparatus, fixtures, or machinery furnished for and used in the prosecution of the work, or that the person or persons to whom the same may respectively be due have consented to such final payment. The acceptance by the Contractor of the last payment as aforesaid shall operate as and shall release the Owner from all claims and liabilities under the contract or for any act or neglect of said Owner relating to or connected with the contract.

**5. Guarantee of Work**

The Contractor shall guarantee the work which he does against defective materials and workmanship for a period of one (1) year from the date of a letter of final acceptance by the Owner. Should defective workmanship occur, the Contractor shall have seven (7) working days, after written notice of same is given to him by the Owner, to make any and all repairs at his own expense? If the Contractor fails to correct the defect within the seven (7) working days, then the Owner may make the necessary repairs and charge the Contractor with the actual cost of all labor, materials and equipment time required.

## **V. Equal Employment Opportunity**

The Contractor agrees to comply and cause each subcontractor, if any, to comply with the latest federal and state laws, regulations and directives pertaining to equal opportunity employment in connection with this contract including (but not limited to) employment, procurement of materials, and lease of equipment therefore.

### **Contractor's Representations**

The Contractor represents that it has \_\_\_\_\_, does not have \_\_\_\_\_, 100 or more employees (and if it has) that it has \_\_\_\_\_, has not \_\_\_\_\_, furnished the Equal Employment Opportunity/Employer's Information Report EEO-1 (Standard form 100) required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Contractor agrees that it will obtain to the award of any subcontract for more than \$10,000 hereunder to a subcontractor with 100 or more employees, a statement signed by the proposed subcontractor that the proposed subcontractor has filed a current report on Standard Form 100.

The Contractor agrees that if it has 100 or more employees and has not submitted report on Standard Form 100 for the current reporting year and that if this contract will amount to more than \$10,000, the Contractor will file such report as required by law and notify the Owner in writing of such filing prior to the Owner's acceptance of this proposal.

### **Equal Opportunity Clause**

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, or national origin. The Contractor will take affirmative action to ensure that applicants are employed and are treated during employment without regard to their race, color, religion, sex, 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 and/or apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this Equal Opportunity Clause.
- (2) In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The Contractor will send to each labor union or worker's representative, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the Contractor's commitments under this section, and shall post copies of this notice in conspicuous places available to employees and applicants for employment.

- (4) 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.
- (5) 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 its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.
- (6) In the event of the Contractor's noncompliance with the Equal Opportunity Clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, 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, or by rules, regulations, or order of the Secretary of Labor or as provided by law.
- (7) The Contractor will include this Equal Opportunity clause in every subcontract or purchase order unless exempted by the rules, regulations, or order 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.

#### **Americans with Disability Act**

The Contractor agrees that they will comply with the terms of the "American with Disabilities Act."

#### **Certificate of Nonsegregated Facilities**

The Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, as that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor certifies further that it will not maintain nor provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained.

#### **Subcontractors**

The undersigned proposes that he will perform all of the work at each site with his own forces and that no portion of the work will be subcontracted.

SUPPLEMENT A

**IMPORTANT NOTE:** It is BTU’s intent to utilize Bidder’s crews and equipment from time to time for storm restoration and other after-hours work, as needed.

Therefore, **Bidder MUST attach additional sheet(s) signed by an authorized representative of the bidding firm along with this bid package showing hourly charges for labor and equipment.** This shall include all applicable overtime rates for such additional work. These hourly charges as quoted shall become a binding part of this contract and a firm price for the duration of this contract. A separate PO number will be issued to be used for billing purposes on all hourly work requested by the owner and will be called supplement A to the original contract.

UNIT DESCRIPTION	HOURLY RATE
2-Man Bucket Truck	
Digger – Derrick Truck	
Crew leader	
Journeyman Lineman	
Helper	

NOTE: All pole installations include loading and hauling pole from BTU pole yard (2200 Fountain) to the job site location, digging hole with dirt auger, checking with all entities to clear possible underground interferences, setting pole, and tamping backfill with air or hydraulic equipment.

All pole removals include pulling pole, backfilling hole and tamping, removing ground wire and miscellaneous hardware and disposing of pole or delivering to The COOP located on N. Texas Ave. at Simms in Bryan, Texas. (not sawing at ground).

**Proposal**

The undersigned proposes to perform the materials construction in the quantities requested by Owner throughout the duration of this contract.

**Bid Price**

The total unit price is the total cost to remove all listed units and top or remove poles as stated.

<b>POLE NO.</b>	<b>UNIT DESCRIPTION</b>	<b>Total unit price</b>
1	Remove framing and conductor from existing concrete dead-end structure.	
2	Remove framing, (2) down guys, (2) anchors and top pole 1' above street light circuit.	
3	Remove framing, (4) overhead span guys, (3) down guys and (2) anchors on guy stub pole. Top pole 1' above distribution underbuilt.	
4	Remove framing, (2) down guys and (1) anchor. Top pole 1' above street light circuit.	
5	Remove framing and top pole 1' above street light circuit.	
6	Remove framing and top pole 1' above street light circuit.	
7	Remove framing and top pole 1' above street light circuit.	
8	Remove framing and top pole 1' above distribution underbuilt.	
9	Remove framing and top pole 1' above distribution underbuilt.	
10	Remove framing and top pole 1' above distribution underbuilt.	
11	Remove framing and top pole 1' above distribution underbuilt.	
12	Remove framing and top pole 1' above distribution underbuilt.	
13	Remove framing and top pole 1' above distribution underbuilt.	
14	Remove framing and top pole 1' above distribution underbuilt.	
15	Remove framing and top pole 1' above distribution underbuilt.	
16	Remove framing and top pole 1' above distribution underbuilt.	
17	Remove framing and top pole 1' above distribution underbuilt.	
18	Remove framing and top pole 1' above distribution underbuilt.	
19	Remove framing, leave concrete pole as is.	
20	Remove framing leave concrete pole as is.	
21	Remove framing leave concrete pole as is.	
22	Remove framing leave concrete pole as is.	
23	Remove framing and top pole 1' above distribution underbuilt.	
24	Remove framing and top pole 1' above distribution underbuilt.	
25	Remove framing and top pole 1' above distribution underbuilt.	
26	Remove framing, (2) down guys and (2) anchors. Top pole 1' above distribution underbuilt.	
27	Remove framing and top pole 1' above distribution underbuilt.	
28	Remove framing and 60' class 2 wood pole.	
29	Remove framing and 60' class 2 wood pole.	
30	Remove framing and 60' class 2 wood pole.	
31	Remove framing and 60' class 2 wood pole.	

32	Remove framing and 60' class 2 wood pole.	
33	Remove framing and 60' class 2 wood pole.	
34	Remove framing and 60' class 2 wood pole.	
35	Remove framing and 60' class 2 wood pole.	
36	Remove framing and 60' class 2 wood pole.	
37	Remove framing and 60' class 2 wood pole.	
38	Remove framing and 60' class 2 wood pole.	
39	Remove framing and 60' class 2 wood pole.	
40	Remove framing and 60' class 2 wood pole.	
41	Remove framing and 60' class 2 wood pole.	
42	Remove framing and 60' class 2 wood pole.	
43	Remove framing, 60' class 2 wood pole, (2) storm guys, (2) anchors and stub pole.	
44	Remove framing and 60' class 2 wood pole.	
45	Remove framing and 60' class 2 wood pole.	
46	Remove framing and 60' class 2 wood pole.	
47	Remove framing and 60' class 2 wood pole.	
48	Remove framing and 60' class 2 wood pole.	
49	Remove framing and 60' class 2 wood pole.	
50	Remove framing, leave dead-end pole as is.	
	<b>SUB-TOTAL FOR POLE AND HARDWARE REMOVAL =</b>	<b>\$</b>

UNIT DESCRIPTION	QUANTITY	UNIT PRICE	EXTENDED PRICE
Remove and return to BTU warehouse 2/0 ACSR three phase conductor, per foot.	39,225'		
Remove and return to BTU warehouse 3/16" steel static wire, per foot.	13,075'		

<b>SUB-TOTAL FOR WIRE REMOVAL =</b>	<b>\$</b>
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Description	Total
<b>TOTAL BID AMOUNT</b>	<b>\$</b>

**A) It is understood the Contractor is responsible for ensuring that any existing utilities are properly located prior to digging and shall make a reasonable effort not to damage any existing utilities. All locating expenses shall be included in the unit prices.**

**B) If additional work, other than what's specified in this contract, becomes necessary to perform, the Contractor shall have this work approved by an authorized BTU employee prior to executing. The amount of work and price shall be agreed upon in writing on a Contingency Approval Form or payment will not be made.**

**C) The unit price is the total sum the Contractor agrees to invoice BTU to complete all work as described on the Rotten Pole Replacement sheets, including any listed changes to be made.**

**D) BTU will make one major material drop at a location designated by the Contractor. All poles or additional material shall be picked up by the Contractor at the BTU warehouse located at 2200 Fountain – Bryan, Texas and shall be included in the unit prices. Unless otherwise specified BTU shall furnish all material.**

**E) The Contractor shall dispose of all wood poles removed from this project or deliver to the Coop located at N. Texas Ave. and Simms in Bryan, Texas. All hardware and wire removed shall be stripped and returned to BTU warehouse for proper disposal. This shall be included in the unit prices.**

**F) Dirt will have to be hauled in to tamp and backfill all holes where poles are to be removed. This shall be included in each appropriate unit price.**

**G) All work will be performed on a City street and appropriate ‘Men Working’ signs and cones shall be displayed at all times while a crew is working.**

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**(Bidder’s Signature)**



\_\_\_\_\_  
(Legal Firm or Company Name)

\_\_\_\_\_  
(Firm's Representative and Title)

\_\_\_\_\_  
(Firm or Company Legal Address)

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

(Signature)

\_\_\_\_\_

(Printed or typed)

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

Attest: \_\_\_\_\_  
\_\_\_\_\_

(Signature)

(Printed or typed)

Complete business address of Bidder:

\_\_\_\_\_  
\_\_\_\_\_

State of incorporation: \_\_\_\_\_

Complete address of principal office:

\_\_\_\_\_  
\_\_\_\_\_

Name, address, and telephone number of person to contact regarding this proposal  
**(include mailing, email and physical address):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Telephone): \_\_\_\_\_

## BID BOND REQUIREMENTS

A certificate or cashier's check on a state or national bank of the State of Texas, or a Bidder's Bond from an acceptable surety company, authorized to transact business in the State of Texas, in the amount of no less than five percent (5%) of the total bid must accompany each proposal as a guarantee that, if awarded the bid, the bidder will within ten (10) calendar days after award of bid enter into contract and execute a bond on the forms provided in the contract documents, if applicable. Reimbursement of Cashier Check Bid Bonds will be made within fifteen (15) working days from the date Bryan Texas Utilities and the successful bidder enters into the contract

### VII. Bid Bond

1. Know all men that we,

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As Principal, and

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as Surety, are held and firmly bound unto the Bryan Texas Utilities (hereinafter called the "Owner") in the penal sum of 5% referred to in paragraph 3 below, as hereinafter set forth and for the payment of which sum will and truly to be made we bind ourselves, our executors, administrators, successors and assigns, jointly and severally, by these presents:

2. WHEREAS, the Principal has submitted a bid to the Owner for the construction of electric power distribution facilities.
3. NOW THEREFORE, the condition of this obligation is such that if the Owner shall accept the bid of the principal, and
  - (a) the principal shall execute such contract documents, if any as may be required by the terms of the bid and give such Contractor's bond or bonds for the performance of the contract and for the prompt payment of labor and material furnished for the project as may be specified in the bid, or
  - (b) in the event of the failure of the principal to execute such contract documents, if any, and such Contractor's bond or bonds, if the principal shall pay to the Owner the difference, not to exceed the penal sum hereof, between the amount specified in the bid and such larger amount for which the Owner may in good faith contract with another party to construct the electric power facilities, then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Bidder \_\_\_\_\_

(SEAL)

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

(Signature)

\_\_\_\_\_

(Printed or typed)

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

Attest: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Printed or typed)

**VIII. Performance Bond**

(For bids with labor amount of \$50,000 or greater – needed after contract is awarded)

- 1. Know all men that we,

\_\_\_\_\_
As Principal, and

surety, are held firmly bound unto the Bryan Texas Utilities (hereinafter called the "Owner") and unto all persons, firms, and corporations who or which may furnish materials for or perform labor on the construction project known as electric power distribution facilities construction and to their successors and assigns, in the penal sum

\_\_\_\_\_ (\$ \_\_\_\_\_ )
(Amount in words)

as hereinafter set forth and for the payment of which sum well and truly to made we bind ourselves, our executors, administrators, successors, and assigns jointly and severally by these presents. Said project is described in a certain construction contract (hereinafter called the "construction contract") between the Owner and the principal, dated \_\_\_\_\_, 2010.

- 2. The condition of this obligation is such that if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of the construction contract and any amendments thereto, whether such amendments are for additions, decreases, or changes in materials, their quantity, kind or price, labor costs, mileage, routing or any other purpose whatsoever and whether such amendments are made with or without notice to the surety, and shall fully indemnify and save harmless the Owner from all cost and damages which they shall suffer or incur by reason of any failure so to do, and shall fully reimburse and repay the Owner for all outlay and expense which they or either of them shall incur in making good any such failure of performance on the part of the principal, and shall promptly make payment to all persons working on or supplying labor or materials for use in the construction of the project contemplated in the construction contract and any amendments thereto, in respect of such labor or materials furnished and used therein, to the full extent thereof, and in respect of such labor or materials furnished but not so used, to the extent of the quantities estimated in the construction contract and any amendments thereto to be required for the construction of the project, and shall well and truly reimburse the Owner, as their respective interest may appear, for any excess in cost of construction of said project over the cost of such construction as provided in the construction contract and any amendments thereto, occasioned by any default of the principal under the construction contract and any amendments thereto, then this obligation shall be null and void, but otherwise shall remain in full force and effect.
- 3. It is expressly agreed that this bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon any amendment to the construction contract, so as to bind the principal and the surety to the full and faithful performance of the construction contract as so

amended, provided only that the total amount of all increases in the cost of construction shall not exceed 20% of the amount of the maximum price set forth in the construction contract. The term "amendment" wherever used in this bond and whether referring to this bond, the construction contract shall include any alteration, addition, extension, modification, amendment, rescission, waiver, release, or annulment, or any character whatsoever.

4. It is expressly agreed that any amendment which may be made by agreement or otherwise between the principal and the Owner in the terms, provisions, covenants and conditions of the construction contract or the granting by the Owner to the principal of any extension of time for the performance of the obligations of the principal under the construction contract or the failure or refusal of the Owner to take any action, proceeding or step to enforce any remedy or exercise any right under either the construction contract or the taking of any action, proceeding or step by the Owner, acting in good faith upon the belief that the same is permitted by the provisions of the construction contract, shall not in any way release the principal and the surety or either of them or their respective executors, administrators, successors or assigns from liability hereunder. The surety hereby acknowledges receipt of notice of any amendment, indulgence or forbearance made, granted, or permitted.
  
5. This bond is made for the benefit of all persons, firms, and corporations who or which may furnish or perform any labor for or on account of the construction to be performed under the Construction Contract and any amendments thereto, and they and each of them are hereby made obliges hereunder with the same force and effect as if their names were written herein as such, and they and each of them may sue hereon.

Performable and enforceable in Brazos County, Texas.

In witness whereof the undersigned have caused this instrument to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this \_\_\_\_\_ day of \_\_\_\_\_, 2010

_____	_____
(Principal)	(Surety)
By: _____	By: _____
Title: _____	Title: _____
Address: _____	Address: _____
_____	_____

The name and address of the Resident Agent of Surety is:

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Corporation Seal if Corporation.  
Bonding Company Seal if Bonding Company.

Signatures: The Performance Bond must be signed with the full name of the Contractor. If the Contractor is a partnership, the Performance Bond must be signed in the partnership name by a partner. If the Contractor is a corporation, the Performance Bond must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the secretary of the corporation. A typewritten copy of all such names and signatures shall be appended.

Power of Attorney: The Performance Bond must be accomplished by a Power of Attorney authorizing execution on behalf of the Surety and, in jurisdictions so requiring, should be countersigned by a duly authorized resident agent of the Surety.

**IX. Payment Bond**

(For bids with labor amount of \$50,000 or greater – needed after contract is awarded)

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_ of the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_, as principal, and \_\_\_\_\_ authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the Bryan Texas Utilities of Brazos County, Texas (Owner), in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to \_\_\_\_\_ which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code, Vernon's Texas Codes Annotated, and all liabilities on this bond shall be determined in accordance with the provisions of said Code to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed hereunder, or the plans, specifications, or drawings accompanying the same, shall in anywise affect its obligation of this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed hereunder. Performable and enforceable in Brazos County, Texas.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

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

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

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The name and address of the Resident Agent of Surety is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Signatures:** The Payment Bond must be signed with the full name of the Contractor. If the Contractor is a partnership, the Bond must be signed in the partnership name by a partner. If the Contractor is a corporation, the Bond must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the secretary of the corporation. A typewritten copy of all such names and signatures shall be appended.

**Power of Attorney:** The Payment Bond must be accomplished by a Power of Attorney authorizing execution on behalf of the Surety and, in jurisdictions so requiring, should be countersigned by a duly authorized resident agent of the Surety.

## **X. Indemnification Agreement**

The Contractor agrees to indemnify, hold harmless and defend Bryan Texas Utilities, its officers, agents and employees, both past and present, from and against liability for any and all claims, liens, suits, demands, and actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, (including court costs, attorney's fees and other reasonable costs of litigation) arising out of or resulting from Contractor's work and activities conducted in connection with or incidental to this Contract and from any liability arising out of or resulting from intentional acts or negligence of the Contractor, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part upon the negligent or intentional acts or omissions of Contractor, including but not limited to its officers, agents, employees, subcontractors, licensees, invitees, and other persons.

It is the express intention of the parties hereto, both Bryan Texas Utilities and the Contractor, that the indemnity provided for in this Contract indemnifies and protects Bryan Texas Utilities from the consequences of Bryan Texas Utilities' own negligence.

The Contractor further agrees that it shall at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, subcontractors, licensees, invitees and other persons, as well as their property, while in the vicinity where the work is being done. It is expressly understood and agreed that City shall not be liable or responsible for the negligence or other fault of the Contractor, its officers, agents, employees, subcontractors, licensees, invitees, or other person associated with the Contractor.

The Contractor agrees to indemnify and save Bryan Texas Utilities harmless from all claims growing out of any demands of subcontractors, laborers, workers, mechanics, material men, and furnishers of supplies, equipment, financing, or any other goods or services, tangible or intangible. When Bryan Texas Utilities so desires, the Contractor shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid discharged or waived.

### **Independent Contractor**

Contractor acknowledges that Contractor is an independent contractor of Bryan Texas Utilities and that Contractor is not an employee, agent, official or representative of Bryan Texas Utilities. Contractor shall not represent, either expressly or through implication, that Contractor is an employee, agent, official or representative of Bryan Texas Utilities. Any income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Contractor.

Nothing contained in this Contract shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Contract.

I understand that the indemnification and Independent Contractor provisions are requirement of all Bryan Texas Utilities Contracts. I have read the provisions agree to the terms of these provisions.

_____	_____
<b>Company Name</b>	<b>Title</b>
_____	_____
<b>Signature</b>	<b>Date</b>

**XI. Certification of Bid**

**Re: Remove Approx. 2.4 Miles Idle 69 KV Transmission Line.**

**RFP 053-06-10**

As an authorized representative of the bidding firm, I the undersigned hereby certify that this firm is willing, capable and does qualify to comply with all the provisions specified herein for completion of the services requested at the terms and conditions as quoted.

Representative's Name: \_\_\_\_\_  
(Please print or type)

Representative's Signature: \_\_\_\_\_

Representative's Title: \_\_\_\_\_

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

Bidding Firm Name and Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Bid Approvals**

**Date:**

BTU Buyer: \_\_\_\_\_

BTU Div. Mgr. \_\_\_\_\_

BTU Group Mgr. \_\_\_\_\_

BTU General Mgr. \_\_\_\_\_