

**TEXAS DEPARTMENT OF TRANSPORTATION
TERMS AND CONDITIONS**

TABLE OF CONTENTS

PART 1. INTRODUCTION 1

 1.01 GENERAL 1

 1.02 STATUTORY AUTHORITY 1

 1.03 TITLE VI ASSURANCE 1

 1.04 ENVIRONMENTAL IMPACT 1

 1.05 COMPLIANCE WITH LAWS 1

PART 2. GENERAL INSTRUCTIONS 1

 2.01 SPECIFICATIONS 1

 2.02 RESPONSE SUBMISSIONS 2

 2.03 PRICING 3

 2.04 ADA CONSIDERATIONS AND NOTIFICATION 4

 2.05 RECEIPT OF PROPOSALS AND BID OPENINGS 4

 2.06 ALTERATIONS OR WITHDRAWAL OF RESPONSES 4

 2.07 DETERMINING AWARD 4

 2.08 PREFERENCES 5

 2.09 DELIVERY 5

 2.10 INSPECTIONS AND TESTS 6

 2.11 VENDOR PERFORMANCE 6

PART 3. RESPONDENT AFFIRMATIONS 6

 3.01 FALSE STATEMENTS 6

 3.02 REPRESENTATIONS, WARRANTIES, AND COVENANTS 6

 3.03 GRATUITIES 7

 3.04 CERTAIN BIDS AND CONTRACTS PROHIBITED 7

 3.05 ANTITRUST LAWS 7

 3.06 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES 7

 3.07 COLLUSION 7

 3.08 INELIGIBILITY UNDER FAMILY CODE 7

 3.09 CONTRACTING WITH EX-TXDOT EXECUTIVE DIRECTOR 8

 3.10 DEBT TO THE STATE 8

 3.11 RESPONDENT ELIGIBILITY 8

 3.12 NEPOTISM DISCLOSURE 8

 3.13 BOYCOTTING ISRAEL 9

 3.14 DISCLOSURE OF RESTRICTED EMPLOYMENT 9

 3.15 ANTI-TERRORISM OR TERRORIST ORGANIZATION PROHIBITED 9

 3.16 CONTRACTING INFORMATION RESPONSIBILITIES 9

 3.17 HUMAN TRAFFICKING PROHIBITION 9

 3.18 NO CONFLICTS OF INTEREST 9

PART 4. GENERAL TERMS AND CONDITIONS 9

 4.01 CONTRACTS 9

 4.02 FUNDING 10

 4.03 INVOICING 10

 4.04 PAYMENT 10

 4.05 INTELLECTUAL PROPERTY 11

 4.06 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS 11

 4.07 SITE VISITS 11

 4.08 NON-WAIVER OF RIGHTS 12

4.09 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS 12

4.10 VENUE AND JURISDICTION; APPLICABLE LAW..... 12

4.11 VENDOR ASSIGNMENTS 12

4.12 FORCE MAJEURE..... 12

4.13 RIGHT TO AUDIT 12

4.14 INDEMNIFICATION..... 13

4.15 DAMAGE TO TXDOT PROPERTY..... 14

4.16 PUBLIC INFORMATION ACT AND CONFIDENTIALITY 14

4.17 BUY TEXAS 14

4.18 COMPETENCE OF VENDOR..... 15

4.19 CHANGES IN WORK..... 15

4.20 IT SERVICE CONTRACTS SECURITY..... 15

4.21 NOTICES 15

4.22 PUBLIC DISCLOSURE..... 15

4.23 DISASTER RECOVERY PLAN..... 15

PART 5. INSURANCE 15

5.01 PRIOR TO CONTRACT AWARD 15

5.02 DURING TERM OF CONTRACT 15

5.03 WAIVER OF SUBROGATION ENDORSEMENT 15

5.04 WORKERS' COMPENSATION INSURANCE 15

5.05 WORKERS' COMPENSATION INSURANCE FOR BUILDING AND CONSTRUCTION SERVICES..... 15

5.06 COMMERCIAL GENERAL LIABILITY INSURANCE..... 17

5.07 COMMERCIAL AUTOMOBILE POLICY 17

PART 6. VENDOR PERSONNEL MANAGEMENT 18

6.01 INDEPENDENT CONTRACTOR 18

6.02 WORK HOURS..... 18

6.03 ALCOHOL, DRUG, AND SMOKE-FREE WORKPLACE..... 18

6.04 REPLACEMENT OF PERSONNEL 18

6.05 LABOR/MATERIAL/EQUIPMENT 18

6.06 ENGLISH-SPEAKING STAFF 18

6.07 FELONY CRIMINAL CONVICTIONS..... 18

6.08 SUBCONTRACTING REQUIREMENTS..... 18

6.09 PAYMENT OF SUBCONTRACTORS..... 18

6.10 VENDOR TITLE VI AFFIRMATIONS..... 19

6.11 E-VERIFY 20

PART 7. DISPUTE RESOLUTION 20

7.01 DISPUTE RESOLUTION..... 20

PART 8. CONTRACT TERMS..... 20

8.01 TERM OF CONTRACT 20

8.02 ORDER OF PRECEDENCE..... 20

8.03 TERMINATION OF A CONTRACT 21

8.04 SALE OR ASSIGNMENT..... 21

8.05 RENEWAL OF CONTRACT 21

8.06 EXTENSION OF CONTRACT..... 21

8.07 SEVERABILITY CLAUSE..... 21

8.08 AMENDING THE CONTRACT..... 22

8.09 THIRD-PARTY BENEFICIARIES..... 22

8.10 BINDING EFFECT AND SURVIVAL OF OBLIGATIONS 22

APPENDIX A 23

APPENDIX B 24

TEXAS DEPARTMENT OF TRANSPORTATION

TERMS AND CONDITIONS

PART 1. INTRODUCTION

1.01 GENERAL: These Terms and Conditions shall apply to the solicitation for goods and/or services [whether a Request for Quote (RFQ), Invitation for Bid (IFB), Request for Offer (RFO) or Request for Proposal (RFP)] offered by the Texas Department of Transportation (TxDOT) (“solicitation”) and any contract issued by TxDOT resulting from the solicitation (“purchase order” or “contract”). The term “response” or “bid” shall mean the proposal, quote, bid, or offer made to TxDOT in response to the solicitation. The term “respondent” or “bidder” shall mean the party who submits the response to the solicitation, including the vendor. The term “vendor” or “contractor” shall mean the party listed as vendor in the contract.

1.02 STATUTORY AUTHORITY: The solicitation and contract are authorized by Government Code Title 10, Subtitle D (the “Purchasing Act”). The solicitation and contract are subject to all applicable requirements of the Purchasing Act [in particular, Government Code Chapter 2151 (General Provisions), Chapter 2155 (Purchasing: General Rules and Procedures), Chapter 2157 (Purchasing: Purchase of Automated Information Systems), and Chapter 2161 (Historically Underutilized Businesses, “HUBs”)] and those requirements established by rule of the Texas Comptroller of Public Accounts (CPA), Statewide Procurement Division (SPD), as contained in Title 34, Chapter 20, of the Texas Administrative Code (“TAC”) and to other applicable federal and state statutes and rules herein cited. Any references in this contract to the “Government Code” mean the Texas Government Code.

1.03 TITLE VI ASSURANCE: TxDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and 49 C.F.R. Part 21 and 28 CFR Section 50.3 (for purposes of this Section and Section 6.10 only, the “Acts” and the “Regulations,” respectively), hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Nondiscrimination programs require that federal-aid recipients, sub-recipients, and contractors prevent discrimination and ensure nondiscrimination in all their programs and activities, whether those programs and activities are federally-funded or not.

1.04 ENVIRONMENTAL IMPACT: It is TxDOT’s intent to purchase goods, equipment, and services having the least adverse environmental impact within the constraints of statutory purchasing requirements, departmental need, availability, and sound economic considerations in accordance with 34 TAC §20.306 and 20.307.

1.05 COMPLIANCE WITH LAWS: Vendor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting contract performance, including, if applicable, laws and regulations regarding workers’ compensation, minimum and maximum salaries and wages, prompt payment, and licensing. Vendor shall maintain all licenses and certifications required by law or by the contract throughout the term of the contract. When required, vendor shall furnish TxDOT with satisfactory proof of its compliance.

PART 2. GENERAL INSTRUCTIONS

2.01 SPECIFICATIONS

- (a) Respondent shall carefully examine the solicitation. Respondent shall be responsible for securing any additional information from the TxDOT purchaser needed to gain a clear and full understanding of TxDOT’s requirements.

- (b) TxDOT will not be bound by any oral statement or representation contrary to the written specifications of the solicitation. Any revision, clarification, or interpretations pertaining to the solicitation will be in writing and issued by TxDOT as an addendum. Any changes or interpretation not in an addendum will not legally bind TxDOT. Any addendum must be issued through TxDOT's Procurement Division.
- (c) The goods furnished or services performed shall be in accordance with the specifications set forth in the solicitation and with these Terms and Conditions. TxDOT will provide clarifications of the specifications and determine the quality and acceptability of goods furnished or work performed. If the solicitation is for a service, TxDOT will determine the manner of performance, the rate of progress of the work, and whether vendor's performance of the service is acceptable.
- (d) Any catalog, brand name, or manufacturer's reference used in the solicitation is descriptive only (not restrictive) and is used to indicate type and quality desired. Responses on brands of like nature and quality will be considered unless advertised as proprietary or sole source under Government Code Section 2155.067. Respondent shall show manufacturer, brand or trade name, and other description of the product offered in response to the solicitation. If offer is for other than example(s) shown in the solicitation, include illustration(s) and complete description(s) of product(s) in the response to the solicitation. If respondent takes no exception to specifications or reference data in the response, vendor will be required to furnish brand names, numbers, etc., as specified.
- (e) Unless otherwise specified, all goods offered shall be new and in first-class condition, including shipping and storage containers. Verbal agreements to the contrary will not be recognized.
- (f) Manufacturer's standard warranty shall apply unless otherwise stated in this solicitation.
- (g) All electrical items shall meet all applicable OSHA standards and regulations and bear the appropriate listing from UL, FMRC, or NEMA.
- (h) Any iron or steel product produced through a manufacturing process and used in the project must be produced in the United States, to the extent required by Government Code Chapter 2252, Subchapter F. That Subchapter generally applies to contracts to (A) construct, remodel, or alter a building, a structure, or infrastructure; (B) supply a material for a project described by subsection (A); or (C) finance, refinance, or provide money from funds administered by a governmental entity for a project described by subsection (A).

2.02 RESPONSE SUBMISSIONS

- (a) Response shall be submitted in the format and quantity noted in the solicitation. If submitting multiple responses, each response shall be placed in a separate envelope or on a separate flash drive and correctly identified with the solicitation number and opening date.
- (b) Response must be time stamped in TxDOT's mail room or hand-delivered to the address on the solicitation before the hour and date specified for the solicitation opening. Late responses will not be considered under any circumstances and will be returned unopened to respondent.
- (c) Documentation provided with the response should be complete and comprehensive. TxDOT will not be responsible for locating or securing information not included in the response. Failure to furnish required documentation with the response may result in the response being deemed incomplete and non-responsive, resulting in rejection. TxDOT will not be responsible for any expenses relating to responses or development of documentation that may result from this solicitation.
- (d) Failure to sign the solicitation manually will disqualify the response. The person signing the response must have authorization to contractually bind the company. The solicitation response shall include an Employer Identification Number (EIN), full firm name and address. The EIN should be entered in the space provided on the solicitation.

- (e) Facsimile (FAX) responses may be submitted to the FAX number provided in the solicitation for procurements less than \$25,000, unless otherwise stated in the solicitation. For procurements \$25,000 and greater, FAX responses will not be considered unless otherwise stated in the solicitation. Fax responses must be received before the hour and date specified for the solicitation opening. TxDOT will not be responsible for failure of electronic equipment or operator error. Responses that are late, illegible, incomplete, or otherwise non-responsive will not be considered.
- (f) Email responses may be accepted if stated on the solicitation. Email responses must be received before the hour and date specified for the solicitation opening and be in portable document format (pdf), signed by respondent, and attached to the email to be considered for award.
- (g) **RESPONDENT EXCEPTIONS OR CONDITIONED RESPONSES:** Exceptions taken by respondent to TxDOT's Terms and Conditions or respondent's Terms and Conditions attached to a response will not be considered unless specifically referred to and clearly identified as such within the response, including without limitations, exceptions related to software maintenance and usage or equipment maintenance services. TxDOT may reject a response that takes exception to TxDOT's Terms and Conditions.
- (h) TxDOT reserves the right to accept or reject all or any part of any response, waive minor technicalities, and make an award to best serve the interests of the state. TxDOT reserves the right to reject any response not prepared and submitted in accordance with the solicitation requirements.
- (i) Response should indicate number of days required to deliver goods or begin service (if required) at TxDOT's designated location. Failure to indicate delivery time obligates vendor to complete delivery in fourteen (14) calendar days.
- (j) Samples, when requested, must be furnished at no cost to TxDOT. TxDOT may perform tests on samples. If not destroyed in testing, samples will be returned upon request at respondent's expense. Each sample shall be marked with respondent's name and address and TxDOT solicitation number. Samples shall not be enclosed or attached to a response unless specified in the solicitation.
- (k) The response is irrevocable for 120 calendar days following the hour and date specified for the solicitation opening. TxDOT may extend this period with respondent's written agreement.

2.03 PRICING

- (a) TxDOT's automated purchasing system requires pricing to be submitted per unit, multiplied by the quantity and extended. Unit prices shall govern in the event of extension errors. If a trade discount is offered on the solicitation response, it should be deducted and net line extensions should be shown.
- (b) All prices shall be firm for thirty (30) days from the solicitation response date unless otherwise stated in the solicitation. "Discount from list" pricing is not acceptable unless requested. Cash discounts are acceptable but are not considered in making an award.
- (c) All purchases are on a firm, fixed price basis unless otherwise stated in the solicitation.
- (d) Price(s) shall not increase during the term of the contract unless otherwise stated in the solicitation. Vendor shall give price reductions to TxDOT that result from reduced cost to vendor during the term of the contract.
- (e) All prices shall be F.O.B. destination, freight prepaid and allowed. This means vendor shall prepay and include the freight charges in the unit price.
- (f) Purchases made for state use are exempt from state and local sales tax and federal excise tax. Do not include tax in response pricing unless otherwise specified in the solicitation. State Sales Tax and Federal Excise Tax Exemption Certificates will be furnished by TxDOT on request.

- (g) The contract may contain a “Total Cost Not to Exceed” statement. Vendor shall not perform any work that may exceed either the contract total or the not-to-exceed total without prior written authorization from TxDOT.
- (h) Consistent and continued tie response pricing may lead to rejection of the response by TxDOT and investigation for antitrust violations.

2.04 ADA CONSIDERATIONS AND NOTIFICATION: Persons with special needs or disabilities who plan to attend any pre-response conference or bid opening and who require auxiliary aids or service should contact the purchaser noted on the solicitation as the point of contact a minimum of three (3) days prior to the meeting so arrangements can be made.

2.05 RECEIPT OF PROPOSALS AND BID OPENINGS

- (a) **NEGOTIATED SOLICITATIONS:** At the time of opening for RFOs or RFPs, only the names of respondents will be announced. Prices will not be disclosed.
- (b) **NON-NEGOTIATED SOLICITATIONS:** At the time of opening for RFQs and IFBs, names of respondents will be announced. Prices will be disclosed.
- (c) **DISCLOSURE OF RESPONSE:** Information submitted in an accepted response will not be returned to respondent. Government Code Chapter 552 (the “Public Information Act”) allows the public to have access to information in the possession of a governmental body through an open records request. Therefore, respondent shall clearly identify in the response any confidential or proprietary information. Proprietary information identified by respondent in the response will be kept confidential by TxDOT to the extent permitted by state law. TxDOT will use best efforts to give respondent or vendor an opportunity to present to the Office of the Attorney General its arguments for non-disclosure of its identified confidential or proprietary information.

2.06 ALTERATIONS OR WITHDRAWAL OF RESPONSES

- (a) Any alterations to a response made before the opening date and time shall be initialed by respondent or authorized agent. Response cannot be altered or amended after the opening date and time.
- (b) A response may be withdrawn if requested in writing prior to the opening or closing date and time. A response may be withdrawn from consideration after the opening date only with the approval of TxDOT based on respondent’s written, acceptable reason. The response will not be considered for award but will be retained by TxDOT according to the response information confidentiality provision referenced in Section 2.05 (c).

2.07 DETERMINING AWARD: A response to a solicitation is an offer to contract with TxDOT based upon the terms, conditions, and specifications contained in the solicitation. Responses do not become contracts unless and until they are accepted through an authorized TxDOT designee by issuance of a contract. In determining the best value for the state, the purchase price, and whether the goods or services meet specifications are the most important considerations, unless otherwise stated in the solicitation.

- (a) **BEST VALUE CRITERIA FOR PURCHASE OF GOODS OR SERVICES:** When specified in the solicitation, the factors listed in Government Code Section 2155.074 will be considered in making a best value award. This section allows TxDOT to apply best value criteria to obtain goods and services that provide the best value for TxDOT. Under these guidelines, a respondent is not automatically awarded a contract if they submit the lowest bid response. TxDOT will be the sole judge as to which response is the most advantageous and in the best interest of TxDOT.

Factors, other than price, that may be considered in making an award:

- (1) Life cycle costs.
- (2) Quality and reliability of goods and services.
- (3) Delivery terms.
- (4) Indicators of probable vendor performance.

- (5) Cost of employee training associated with a purchase.
 - (6) The effect of a purchase on agency productivity.
 - (7) Other factors relevant to determining best value for the state set forth in the solicitation.
- (b) **ADDITIONAL BEST VALUE CRITERIA FOR RFO PURCHASES:** Additional best value criteria will be used on all information technology equipment or service purchases including but not limited to:
- (1) Compatibility to facilitate exchange of existing data.
 - (2) Capacity for expansion and upgrading to more advanced levels of technology.
 - (3) Quantitative reliability factors.
 - (4) Level of training required to bring end-users to a stated level of proficiency.
 - (5) Technical support requirements for maintenance of data across a network platform and management of the network hardware and software.
 - (6) Items, features, etc., which are in addition to requirements listed, as well as factors which, in TxDOT's opinion, add value to the product or service but are not specifically required within the solicitation.
- (c) **NEGOTIATIONS FOR RFO AND RFP PURCHASES:** TxDOT reserves the right to conduct formal negotiations with respondent(s) judged to have the best offer pertaining to price, goods, services, and terms.
- (d) TxDOT reserves the right to reject a response from a respondent whose goods or services to TxDOT or other state agencies have been documented as unsatisfactory in providing the same goods or services.
- (e) **TIE RESPONSES:** In case of tie responses, one or more preferences described in Government Code Chapter 2155 and 34 TAC §20.306 will be used to make an award. Tie responses which cannot be resolved by application of one or more preferences shall be made by drawing lots.

2.08 PREFERENCES: A respondent may claim a preference under 34 TAC §20.306. To claim a preference, a respondent shall identify the preference on the solicitation or on the response to the solicitation. If the appropriate area on the solicitation or response is not marked, a preference will not be granted unless other documents included in the response show a right to the preference.

2.09 DELIVERY: No substitutions or cancellations will be permitted without written approval from TxDOT. Approval must be issued in the form of a purchase order change notice issued by TxDOT's Procurement Division.

- (a) If delay is foreseen, vendor shall give written notice to TxDOT. TxDOT has the right to extend delivery or service date if reasons appear valid. Vendor shall keep TxDOT advised at all times of the status of the order. Default in promised delivery or service date (unless vendor has received a written extension of the delivery or service date which has been signed by TxDOT) or failure to meet specifications authorizes TxDOT to purchase goods or services elsewhere and charge the full increase, if any, in cost and handling to defaulting vendor.
- (b) Delivery shall be made between 8 AM and 4 PM, Monday through Friday, except on regularly-observed state or federal holidays, unless prior approval has been obtained from TxDOT or otherwise stated in the solicitation.
- (c) Receipt of goods or services does not constitute acceptance.
- (d) Goods and materials shall be properly packaged. Damaged goods and materials will not be accepted. If the damage is not readily apparent at the time of delivery, the goods shall be returned to vendor at no cost to TxDOT. TxDOT reserves the right to inspect goods at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the goods at the time of delivery.

2.10 INSPECTIONS AND TESTS: TxDOT may test and inspect goods and services purchased under the contract to ensure compliance with the specifications of the contract. TxDOT may also test and inspect goods and services before they are purchased under the contract. Goods and services will be subject to inspection and test by TxDOT to the extent practicable at all times and places, including without limitation, vendor's place of business. To the extent practical, the inspections will not disrupt vendor's daily operations. Tests will be performed on samples taken from regular shipment. In the event samples tested fail to meet all conditions and requirements of the specification, TxDOT may, at its option, reject the goods in whole or in part. The cost of the sample used and the cost of the testing shall be borne by vendor. Goods which have been delivered and rejected in whole or in part may, at TxDOT's option, be returned to vendor or held for disposition at vendor's risk and expense. Latent defects may result in cancellation of the contract at no expense to TxDOT. Acceptance of services shall be based on attainment of performance in accord with specifications and the contract.

2.11 VENDOR PERFORMANCE: State agencies shall report a vendor's performance on any purchase of \$25,000 or more from contracts administered by the CPA/SPD or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D, or a purchase exempt from CPA/SPD procurement rules and procedures.

Past Performance: A respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of Government Code Sections §2155.074, 2155.075, 2156.007, 2157.003, and 2157.125. Respondents may fail this selection criterion for any of the following conditions:

- (a) Having a letter grade score below 'C' in the Vendor Performance System, or a score of "legacy unsatisfactory" for historic reports submitted prior to the implementation of the current rating system.
- (b) Being currently under a Corrective Action Plan through the CPA.
- (c) Having repeated negative Vendor Performance Reports for the same reason.
- (d) Having purchase orders that have been cancelled or terminated in the previous twelve (12) months for non-performance (i.e., late delivery, etc.).

Vendor performance information is located on the CPA website at <http://www.txsmartbuy.com/vpts>.

TxDOT may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 TAC §20.115), TxDOT may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TxDOT and any negative findings, as determined by TxDOT, may result in non-award to respondent.

PART 3. RESPONDENT AFFIRMATIONS

3.01 FALSE STATEMENTS: Respondent represents and warrants that all statements and information in its submitted response are current, complete, true, and accurate. Submitting a response to the solicitation with a false statement or making material misrepresentations during the performance of a contract is a material breach of contract and may void the submitted response and any resulting contract and may result in removal of respondent from the Centralized Master Bidders List.

3.02 REPRESENTATIONS, WARRANTIES, AND COVENANTS: Respondent represents, warrants, and covenants that:

- (a) Competent, knowledgeable, and experienced personnel in the types of services to be provided under the contract shall perform such services in a professional and workmanlike manner consistent with industry standards, and such services shall meet all specifications set forth in the contract provided, however, that where the contract specifies a particular standard or criteria for performance more particular than the foregoing, this warranty is not intended to and does not diminish that standard or criteria for performance. Further, in any case where detailed requirements for a service are not mutually agreed upon or set forth in the contract, such services shall be fit and sufficient for the purposes expressed in, or reasonably to be inferred from, such contract.

- (b) All goods and services furnished in connection with the contract shall be of good and merchantable quality, shall strictly conform in all respects to the terms of the contract including any drawings, specifications, or standards incorporated herein, and shall be free from any defects (latent or otherwise) in materials, workmanship, and design. In addition, respondent warrants that goods and services are suitable and sufficient for, and will perform in accordance with, the purposes for which they are intended.

3.03 GRATUITIES: Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with respondent's submitted response.

3.04 CERTAIN BIDS AND CONTRACTS PROHIBITED: Under Government Code Section 2155.004, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or solicitation on which the bid or contract is based. If respondent is not eligible, then any contract resulting from the solicitation shall be immediately terminated. Under Government Code Section 2155.004, respondent certifies that the individual or business entity named in the bid or contract is eligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

3.05 ANTITRUST LAWS: Respondent represents and warrants that, in accordance with Government Code Section 2155.005, neither respondent nor the firm, corporation, partnership, or institution represented by respondent, or anyone acting for such firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15, of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated the contents of the response directly or indirectly to any competitor or any other person engaged in the same line of business as respondent.

3.06 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES: Respondent represents and warrants that it has not been the subject of allegations of deceptive trade practices violations under Business & Commerce Code Chapter 17 or the subject of allegations of any unfair business practice in any administrative hearing or court suit, and that respondent has not been found to be liable for such practices in such proceedings. Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of deceptive trade practices violations or the subject of allegations of any unfair business practices in an administrative hearing or court suit and such officers have not been found to be liable for such practices in such proceedings.

3.07 COLLUSION: Respondent has not colluded with, nor received any assistance from, any person who was paid by TxDOT to prepare specifications or a solicitation on which a respondent's bid is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract awarded.

3.08 INELIGIBILITY UNDER FAMILY CODE: Under Section 231.006, Family Code, respondent certifies that respondent and any other individual or business entity named in the contract, bid, or application are eligible to receive the specified grant, loan, or payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Any respondent subject to Section 231.006 must include in the response the names and social security numbers of each person holding at least a 25% ownership interest in the business entity submitting the response.

3.09 CONTRACTING WITH EX-TXDOT EXECUTIVE DIRECTOR: Under Government Code Section 669.003, respondent certifies that:

- (a) All the following are true:
 - (1) Respondent is not the executive director of TxDOT.
 - (2) Respondent was not the executive director of TxDOT at any time during the past four years.
 - (3) Respondent does not employ a current or former executive director of TxDOT.

OR

- (b) Respondent has disclosed its employment of any former executive director of TxDOT in its response.

Respondent acknowledges that the contract can be terminated at any time and payments withheld if this certification is false. If Section 669.003 applies, respondent must provide the following information as an attachment to the solicitation response: name of former TxDOT executive director, date of separation from TxDOT, position with respondent, and date of employment with respondent.

3.10 DEBT TO THE STATE: Respondent agrees that any payments due under the contract shall be applied toward any debt or delinquency that is owed to the state of Texas.

3.11 RESPONDENT ELIGIBILITY

- (a) Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subject to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity.
- (b) Respondent certifies that respondent is in compliance with the state of Texas statutes and rules relating to procurement.
- (c) Respondent certifies that respondent is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control.
- (d) Under Government Code Sections [2155.006](#) and [2261.053](#), respondent certifies that the individual or business entity named in the bid or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
- (e) Respondent certifies that it is not:
 - (1) A person required to register as a lobbyist under Government Code Chapter 305.
 - (2) A public-relations firm.
 - (3) A government consultant.

3.12 NEPOTISM DISCLOSURE

- (a) In this section, the term "relative" means:
 - (1) A person's great grandparent, grandparent, parent, aunt or uncle, sibling, niece or nephew, spouse, child, grandchild, or great grandchild.
 - (2) The grandparent, parent, sibling, child, or grandchild of the person's spouse.

- (b) A notification required by this section shall be submitted in writing to the person designated to receive official notices under the contract and by first-class mail addressed to Contract Services Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The notice shall specify vendor's firm name, the name of the person who submitted the notification, the purchase order number, the district, division, office or regional service center of TxDOT that is principally responsible for the contract, the name of the relevant vendor employee, the expected role of the vendor employee on the project, the name of the TxDOT employee who is a relative of the vendor employee, the title of the TxDOT employee, and the work location of the TxDOT employee.
- (c) By signing the solicitation, respondent is certifying that respondent does not have any knowledge that any of its employees or any employees of a subcontractor who are expected to work under the contract has a relative who is employed by TxDOT unless respondent has notified TxDOT of each instance as required by subsection (b).
- (d) If vendor learns at any time that any of its employees or that any of the employees of a subcontractor who are performing work under the contract have a relative who is employed by TxDOT, vendor shall notify TxDOT under subsection (b) of each instance within thirty (30) days of obtaining that knowledge.
- (e) If vendor violates this section, TxDOT may terminate the contract immediately for cause, may impose any sanction permitted by law, and may pursue any other remedy permitted by law.

3.13 BOYCOTTING ISRAEL: Pursuant to Government Code Section 2271.002, respondent certifies that either (i) respondent meets an exemption criteria under Section 2271.002, or (ii) respondent does not boycott Israel and will not boycott Israel during the term of the contract. Respondent shall state any facts that make it exempt from the boycott certification in its response.

3.14 DISCLOSURE OF RESTRICTED EMPLOYMENT: Respondent acknowledges that under Government Code Section 572.069, a former state officer or employee of a state agency who, during the period of state service or employment, participated in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.

3.15 ANTI-TERRORISM OR TERRORIST ORGANIZATION PROHIBITED: Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Government Code Section 2252.152.

3.16 CONTRACTING INFORMATION RESPONSIBILITIES: Respondent represents and warrants that it will comply with the requirements of Government Code Section 552.372(a). Except as provided by Government Code Section 552.374(c), the requirements of Subchapter J, Chapter 552, of the Government Code may apply to the contract, and respondent agrees that the contract can be terminated if respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

3.17 HUMAN TRAFFICKING PROHIBITION: Under Government Code Section 2155.061, respondent certifies that the individual or business entity named in the response or contract is eligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

3.18 NO CONFLICTS OF INTEREST: Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

PART 4. GENERAL TERMS AND CONDITIONS

4.01 CONTRACTS

- (a) Only authorized TxDOT purchasers have the authority to issue contracts for goods and services. Contracts must be issued by a TxDOT purchaser prior to vendor providing the goods or services. The only exceptions are payment card orders and bona fide emergencies. In the case of an emergency, the TxDOT Procurement Division will confirm such orders with a signed contract.

- (b) Vendor acceptance of a purchase order and delivery of goods or services without an approved purchase order number or release number issued by TxDOT may result in the rejection of delivery, return of goods at vendor's cost, and non-payment.

4.02 FUNDING: Any contract resulting from the solicitation is contingent upon the continued availability of state funds and is subject to termination without penalty, either in whole or in part, if funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations. In the event of a termination under this section, TxDOT will not be liable to respondent for any damages that are caused or associated with such termination, and TxDOT will not be required to give prior notice.

4.03 INVOICING

- (a) Invoices must be submitted not later than the 15th day of the month after the goods have been delivered or services have been provided. No payment shall be made under the contract without the prior submission of detailed, correct invoices which comply with the requirements set forth in this Section 4.03. Invoices must be sent to the address shown on the purchase order. Vendor may receive more detailed instructions on invoicing after award.
- (b) The invoice must, at a minimum, show the following:
 - (1) Vendor name as it appears on the purchase order.
 - (2) Remit-to address.
 - (3) Employer Identification Number (EIN) Federal Tax I.D.
 - (4) Complete PO number.
 - (5) Telephone number.
 - (6) Description of item or service as it appears on the PO in the same order as listed on purchase order. Item numbers must correspond with the item numbers on the PO.
 - (7) Unit, unit price, and extended price of each line item.
 - (8) Grand total.
 - (9) Shipment date of merchandise or date of service.
 - (10) Any additional requirements as stated in the solicitation or specification.

4.04 PAYMENT: Payment for goods or services purchased with state-appropriated funds is made by warrants or by direct deposit from state funds. Direct deposit is the preferred method of payment. No penalty for late payment will be incurred by TxDOT if payment is made in thirty (30) days or less from receipt of goods, services, or a correct invoice, whichever is later. Payments under this contract are subject to the availability of appropriated funds. Vendor acknowledges and agrees that payments for services provided under this contract are contingent upon TxDOT's receipt of funds appropriated by the Texas Legislature.

Additional information and a Direct Deposit Authorization application may be found at <https://comptroller.texas.gov/programs/systems/direct-deposit/>.

Payment will be made in accordance with Government Code Chapter 2251:

- (a) On a monthly basis and within thirty (30) days from receipt of a correct invoice for TxDOT-accepted goods or services.

OR

- (b) The service was completed to the satisfaction of TxDOT and within thirty (30) days from receipt of a correct invoice or billing statement.

OR

- (c) As otherwise stated in the solicitation.

NOTE: Texas Department of Transportation (TxDOT) offers an opportunity to participate in its Early Payment Program to accelerate payments in exchange for a discount. Additional information may be found at the following website: <http://www.txdot.gov/business/vendors/epp.html> or the Priority Invoice and Early Payment Program form (Appendix B).

4.05 INTELLECTUAL PROPERTY

- (a) All intellectual property developed and created in the course of the services rendered pursuant to the contract are works for hire, and all intellectual property rights, including but not limited to publication rights, copyrights, trademarks, patents, and trade secrets to all products and materials developed and created pursuant to the contract shall be exclusively owned by TxDOT. Vendor shall provide TxDOT all assistance required to perfect such intellectual property rights without any charge or expense beyond those amounts payable for services rendered under the contract. To the extent that title to any work created under the contract is held by operation of law to not vest exclusively in TxDOT, such work is hereby irrevocably assigned to TxDOT.
- (b) Vendor shall ensure that TxDOT's intellectual property rights, including but not limited to publication rights, copyrights, trademarks, patents, and trade secrets, are secured from all suppliers, contractors, and subcontractors.
- (c) When applicable, each vendor shall obtain necessary licenses, copyrights, trademarks, or patents for TxDOT's use.
- (d) Vendor shall not assert rights at common law or in equity or establish any claim to TxDOT's intellectual property, including, but not limited to, licenses, claiming common law ownership of intellectual property, obtaining registrations for copyrights, trademarks, trade secrets, or patents for any intellectual property developed in performance of the services authorized.
- (e) VENDOR AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND TXDOT AND THE STATE FROM CLAIMS INVOLVING INFRINGEMENT OF THIRD PARTIES' LICENSES, TRADEMARKS, COPYRIGHTS, PATENTS, TRADE SECRETS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS AS SET FORTH IN SECTION 4.14 BELOW.

4.06 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS: As required by 1 TAC Chapter 213:

- (a) Effective September 1, 2006, state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Vendor represents and warrants that technology to be provided to TxDOT and for TxDOT is in compliance with these requirements.
- (b) Vendor shall provide Texas Department of Information Resources with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product or service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide the Texas Department of Information Resources with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

4.07 SITE VISITS: Prior to and after award of the contract, designated TxDOT representatives may conduct unannounced visits to inspect vendor's and its subcontractor's facilities during normal business hours to monitor compliance in accordance with TxDOT specifications or carry out performance audits of the service.

4.08 NON-WAIVER OF RIGHTS: Nothing in this contract shall be construed as a waiver of the state's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the state of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the state of Texas under this contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TxDOT does not waive any privileges, rights, defenses, or immunities available to TxDOT by entering into this contract or by its conduct prior to or subsequent to entering into this contract.

4.09 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS: Vendor shall have no authority to act for or on behalf of TxDOT or the state of Texas except as expressly provided for in this contract. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the state of Texas or TxDOT.

4.10 VENUE AND JURISDICTION; APPLICABLE LAW: Venue for any suit concerning the solicitation and any resulting contract is fixed in any court of competent jurisdiction in Travis County, Texas. The solicitation and any resulting contract shall be governed by and construed in accordance with the laws of the state of Texas.

4.11 VENDOR ASSIGNMENTS: Vendor hereby assigns TxDOT any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States (15 U.S.C.A. Chapter 1) and which arise under the antitrust laws of the state of Texas (Business & Commerce Code, Title 2, Chapter 15).

4.12 FORCE MAJEURE: TxDOT may grant relief for time only from performance of the contract if vendor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of vendor (any such event or cause referred to herein as "force majeure"). The burden of proof for the need of such relief shall rest upon vendor. To obtain relief based on force majeure, vendor shall file a written request with TxDOT describing the events, dates, and effect of the events on vendor's ability to perform according to the contract. Vendor must inform TxDOT in writing within three (3) business days of the existence of such force majeure; failure to do so will waive the defense provided in this Section 4.12. Upon an event of force majeure, vendor shall use commercially reasonable efforts to commence performance whenever and to whatever extent possible without delay.

4.13 RIGHT TO AUDIT

- (a) The state auditor may conduct an audit or investigation of vendor or any other entity or person receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, vendor or any other entity that is the subject of an audit or investigation by the state auditor shall provide the state auditor access to any information the state auditor considers relevant to the investigation or audit.
- (b) TxDOT's internal auditors shall have the right to conduct an audit or investigation of vendor or any other person receiving funds directly under the contract or indirectly through a subcontract under the contract. TxDOT has the right to audit vendor's books and records pertaining to the service during normal work hours. Vendor or any other entity that is the subject of an audit or investigation by TxDOT shall provide TxDOT's internal auditor access to any information TxDOT considers relevant to the investigation or audit.
- (c) Vendor will ensure that this section concerning the authority of the state auditor and TxDOT to audit funds received indirectly by subcontractors through vendor and the requirement to cooperate is included in any subcontract it awards.

4.14 INDEMNIFICATION: Acts or Omissions

VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TXDOT, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY'S FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM, ANY ACTS OR OMISSIONS OF VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT IS NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Infringement:

- (A) VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TXDOT, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL CLAIMS INVOLVING VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE AND SERVICE MARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF VENDOR PURSUANT TO THE CONTRACT; (2) ANY DELIVERABLE WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED UNDER THE CONTRACT; AND/OR (3) TXDOT'S AND/OR VENDOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TXDOT BY VENDOR OR OTHERWISE TO WHICH TXDOT HAS ACCESS AS A RESULT OF VENDOR'S PERFORMANCE UNDER THE CONTRACT. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEY'S FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT ARE NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. IN ADDITION, VENDOR WILL REIMBURSE TXDOT AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES, OR OTHER AMOUNTS, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES, ARISING FROM ANY SUCH CLAIM. IF TXDOT DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF VENDOR, OR IF TXDOT IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TXDOT WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND VENDOR WILL PAY ALL REASONABLE COSTS OF TXDOT'S COUNSEL.
- (b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by:
 - (1) Any intellectual property right owned by or licensed to TxDOT.
 - (2) Any use of the product or service by TxDOT that is not in conformity with the terms of any applicable license agreement between vendor and TxDOT.
- (c) If vendor becomes aware of an actual or potential claim, or TxDOT provides vendor with notice of an actual or potential claim, vendor may (or in the case of an injunction against TxDOT, shall), at vendor's sole option and expense:
 - (1) Procure for TxDOT the right to continue to use the affected portion of the product or service.

- (2) Modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that TxDOT's use is non-infringing.

Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

- (a) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TXDOT AND/OR THE STATE SHALL NOT BE LIABLE TO VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.
- (b) VENDOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS TXDOT, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY'S FEES, AND EXPENSES RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION, AND/OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY IN OR ARISING OUT OF ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEY'S FEES AND COURT COSTS. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT IS NAMED AS A DEFENDANT IN ANY LAWSUIT, AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

4.15 DAMAGE TO TXDOT PROPERTY: Vendor shall be liable for damage to TxDOT's equipment, workplace, and its contents resulting from vendor's or vendor's subcontractor's work or negligence in performance of the work by vendor's or subcontractor's personnel or equipment.

4.16 PUBLIC INFORMATION ACT AND CONFIDENTIALITY: Information, documentation, and other material in connection with the solicitation or any resulting contract may be subject to public disclosure pursuant to the Public Information Act. All information created by or accessible to a vendor while providing a good or service for TxDOT shall be treated by vendor as confidential. If applicable to a service, upon award of the contract, vendor may be required to complete and sign TxDOT Form 1828b, Information Resource Security Compliance and Confidentiality Agreement. Vendor, its employees or subcontractors shall not divulge any information related to TxDOT business at any time to a third party without the prior written approval of TxDOT. Vendor will notify TxDOT within 24 hours of receipt of any third-party requests for information that were provided by TxDOT for use in performing the contract, including the contract itself. Vendor is required to make any information created or exchanged with the state pursuant to the contract, and not otherwise excepted from disclosure under the Public Information Act, available in a format that is accessible by the public at no additional charge to the state. Upon request by TxDOT, vendor agrees to promptly provide any information created or exchanged with the state pursuant to the contract to TxDOT in any format reasonably required by TxDOT including, without limitation, portable document format (pdf) and HTML.

4.17 BUY TEXAS: In accordance with Government Code Section 2155.4441, vendor agrees that during the performance of a contract for services, vendor shall purchase products and materials produced in the state of Texas when such products and materials are available at a comparable price and in a comparable period of time when compared to products and materials produced outside the state.

4.18 COMPETENCE OF VENDOR: To be entitled to consideration, vendor shall have available the necessary organization and facilities to fulfill all the requirements under the contract. Only personnel trained to perform the solicited services or, if applicable, licensed to perform such services shall be employed under and for the contract. Vendor shall, at its own cost, obtain any other licenses, certifications, and permits required for the performance of the service.

4.19 CHANGES IN WORK: If TxDOT determines it necessary to require corrections to completed work due to errors made by vendor, vendor shall correct the work at no additional cost to TxDOT. For negotiated contracts, if TxDOT requires changes in previously-approved and completed work, vendor shall make such changes as directed by TxDOT and will be compensated for such at the same rates established by vendor's hourly rates. Any changes must be approved in advance in writing through a purchase order change notice issued by TxDOT's Procurement Division.

4.20 IT SERVICE CONTRACTS SECURITY: Vendor will implement appropriate administrative, physical, and technical safeguards which reasonably and appropriately protect the confidentiality, integrity, and availability of services provided to TxDOT. Vendor will immediately report to TxDOT any security incident of which it becomes aware. Vendor will submit for approval by TxDOT and conform its policies and procedures relating to the implementation of security safeguards to comply with TxDOT's information resources security program pursuant to 1 TAC § 202.

4.21 NOTICES: Any notices required under the contract will be in writing and sent by hand delivery or by U.S. Mail, certified, return receipt requested, to vendor at vendor's address specified on Page 1 of the purchase order; to TxDOT at 125 E. 11th Street, Austin, TX 78701-2483. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this section by written notification to the other party.

4.22 PUBLIC DISCLOSURE: No public disclosures or news releases pertaining to this contract shall be made without prior written approval of TxDOT.

4.23 DISASTER RECOVERY PLAN: If required in the solicitation, respondent shall provide to TxDOT descriptions of its business continuity and disaster recovery plans in accordance with 13 TAC §6.94(a)(9).

PART 5. INSURANCE

5.01 PRIOR TO CONTRACT AWARD: Vendor shall provide the required TxDOT insurance form upon written notice from TxDOT. Vendor shall not perform services under the contract until this form is received by TxDOT. Failure to provide proof of insurance within the time frame requested by TxDOT may result in vendor's response being declared non-responsive and the contract being awarded to the next responsive, responsible respondent.

5.02 DURING TERM OF CONTRACT: Vendor shall maintain all required insurance coverage throughout the term of the contract. Vendor shall provide a correct TxDOT insurance form each time its insurance is renewed or updated. Failure to provide this form promptly may be cause for discontinuance of the work and termination of the contract.

5.03 WAIVER OF SUBROGATION ENDORSEMENT: Vendor's workers' compensation insurance policy shall have a waiver of subrogation endorsement in favor of TxDOT. TxDOT will allow deductible policies. Vendor shall pay the deductible amount.

5.04 WORKERS' COMPENSATION INSURANCE: Amounts of coverage are minimums and notice provisions are statutory (Texas Labor Code Chapter 406 and 28 TAC Chapter 110). Vendor is responsible for both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. The state of Texas is not liable to vendor or its employees for any unemployment or workers' compensation coverage or any federal or state withholding requirements.

5.05 WORKERS' COMPENSATION INSURANCE FOR BUILDING AND CONSTRUCTION SERVICES
Vendor is responsible for providing workers' compensation insurance for building and construction services. Building or construction includes:

- (a) Erecting, or preparing to erect, a structure including a building, bridge, roadway, public utility facility, or related appurtenance.

- (b) Remodeling, extending, repairing, or demolishing a structure.
- (c) Otherwise improving real property or an appurtenance to real property through similar activities.

Vendor shall provide workers' compensation insurance for building and construction services in accordance with 28 TAC §110.110(c)(7).

(a) Definitions (applicable only to this Section 5.05):

- (1) Certificate of coverage ("certificate") – A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84) showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
 - (2) Duration of the project – Includes the time from the beginning of the work on the project until vendor's/person's work on the project has been completed and accepted by the governmental entity.
 - (3) Persons providing services on the project ("subcontractor" in Texas Labor Code §406.096) – Includes all persons or entities performing all or part of the services vendor has undertaken to perform on the project, regardless of whether that person contracted directly with vendor and regardless of whether that person has employees. This includes, without limitation, independent vendors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- (b) Vendor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44), for all employees of vendor providing services on the project, for the duration of the project.
 - (c) Vendor must provide a certificate of coverage to TxDOT prior to being awarded the contract.
 - (d) If the coverage period shown on vendor's current certificate of coverage ends during the duration of the project, vendor must, prior to the end of the coverage period, file a new certificate of coverage with TxDOT showing that coverage has been extended.
 - (e) Vendor shall obtain from each person providing services on a project, and provide to TxDOT:
 - (1) A certificate of coverage prior to that person beginning work on the project so TxDOT will have on file certificates of coverage showing coverage for all persons providing services on the project.
 - (2) No later than seven (7) days after receipt by vendor, a new certificate of coverage showing extension of coverage if the coverage period shown on the current certificate of coverage ends during the duration of the project.
 - (f) Vendor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
 - (g) Vendor shall notify the governmental entity in writing by certified mail or personal delivery within ten (10) days after vendor knew or should have known of any change that materially affects the provision of coverage of any person providing services on the project.

- (h) Vendor shall post on each project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered and stating how a person may verify coverage and report lack of coverage.
- (i) Vendor shall contractually require each person with whom it contracts to provide services on a project to:
 - (1) Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44), for all its employees providing services on the project for the duration of the project.
 - (2) Provide to vendor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project for the duration of the project.
 - (3) Provide vendor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
 - (4) Obtain from each other person with whom it contracts and provide to vendor:
 - (a) A certificate of coverage prior to the other person beginning work on the project.
 - (b) A new certificate of coverage showing extension of coverage prior to the end of the coverage period if the coverage period shown on the current certificate of coverage ends during the duration of the project.
 - (5) Retain all required certificates of coverage on file for the duration of the project and for one year thereafter.
 - (6) Notify TxDOT in writing by certified mail or personal delivery within ten (10) days after the person knew, or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
 - (7) Contractually require each person with whom it contracts to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- (j) By signing the purchase order or providing or causing to be provided a certificate of coverage, vendor is representing to TxDOT that all employees of vendor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject vendor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (k) Vendor's failure to comply with any of these provisions is a breach of contract by vendor which entitles TxDOT to declare the contract void if vendor does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity.

5.06 COMMERCIAL GENERAL LIABILITY INSURANCE: Bodily Injury/Property Damage. Required coverage shall, at a minimum, be inclusive of the limits listed on the insurance form noted on the solicitation.

5.07 COMMERCIAL AUTOMOBILE POLICY: Required coverage shall, at a minimum, be inclusive of the limits listed on the insurance form noted on the solicitation.

PART 6. VENDOR PERSONNEL MANAGEMENT

6.01 INDEPENDENT CONTRACTOR: It is expressly understood and agreed to by both parties that TxDOT is contracting with vendor as an independent contractor. As such, vendor understands and agrees that individuals performing services in connection with the contract are not state employees, and that vendor shall be responsible and liable for the safety, injury, and health of its and its subcontractor's working personnel while its employees or subcontractor's employees are performing work for TxDOT. Should vendor subcontract any of the services required in the contract, vendor expressly acknowledges and agrees that TxDOT is in no manner liable to any subcontractor of vendor. In no event shall this provision relieve vendor of the responsibility for ensuring that all services rendered under all subcontracts are rendered in compliance with the contract.

6.02 WORK HOURS: All work by vendor shall be performed between the hours of 8:00 AM and 5:00 PM, Monday through Friday, except on regularly-observed state or federal holidays unless otherwise specified in the solicitation.

6.03 ALCOHOL, DRUG, AND SMOKE-FREE WORKPLACE: TxDOT is committed to maintaining an alcohol and drug-free workplace. Possession, use of, or being under the influence of alcohol or controlled substances by vendor's employees while in the performance of any service is prohibited. Violation of this requirement shall constitute grounds for termination of the contract. Vendor's employees shall comply with TxDOT's policy prohibiting smoking in TxDOT buildings.

6.04 REPLACEMENT OF PERSONNEL: If TxDOT determines that an employee or subcontractor of vendor performing any part of vendor's work under this contract is unable to perform the work in accordance with the service requirements or to communicate effectively or is, in the opinion of TxDOT, otherwise objectionable, vendor shall immediately remove that employee or subcontractor.

6.05 LABOR/MATERIAL/EQUIPMENT: Vendor shall provide all labor, material, and equipment necessary to furnish the goods or perform the service(s) throughout the term of the contract. All employees of vendor shall be a minimum of seventeen (17) years of age and experienced in the type of work to be performed. No visitors, wives, husbands, children, or other relatives of vendor's employees will be allowed on state property during working hours, unless they are bona fide employees of the vendor.

6.06 ENGLISH-SPEAKING STAFF: Vendor shall at all times have a minimum of one English-speaking employee on the job. All employees shall be well-groomed and appropriately dressed when on TxDOT property.

6.07 FELONY CRIMINAL CONVICTIONS: Vendor represents and warrants that neither vendor nor any of vendor's employees have been convicted of a felony criminal offense, or that, if such a conviction has occurred, vendor has fully advised TxDOT as to the facts and circumstances surrounding the conviction and vendor agrees to defend, hold harmless, and indemnify TxDOT from any loss or claim due to any such employees.

6.08 SUBCONTRACTING REQUIREMENTS: In accordance with Government Code Sections 2161.181-182 and pursuant to the CPA Historically Underutilized Business (HUB) Rules and Transportation DBE/HUB/SBE Rules (relating to Disadvantaged Business Enterprises, HUB and Small Business Enterprises, DBE/HUB/SBE), all state agencies entering into a contract with an expected value of \$100,000 or more over the life of the contract (including renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine if it is probable for subcontracting opportunities under the contract. If subcontracting opportunities are probable, the state agency will state such probability in its bids, proposals, offers, or other applicable expression of interest and require the submission of a HUB Subcontracting Plan (HSP). The HSP, if acceptable to the agency, will be a provision of the contract. The HSP, if required, may be found at: <https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>.

6.09 PAYMENT OF SUBCONTRACTORS: As provided by Government Code Section 2251.022, vendor shall pay a subcontractor the appropriate share of any payment vendor receives from TxDOT not later than the 10th day after the date the vendor receives the payment. The appropriate share is overdue on the 11th day after the date vendor receives the payment.

6.10 VENDOR TITLE VI AFFIRMATIONS: Vendor represents and warrants the following with regard to the work performed by it under the contract:

- (a) Vendor and its subcontractors shall not discriminate on the grounds of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, or disability in the performance of this contract, including without limitation in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Vendor shall not participate either directly or indirectly in any discriminatory employment practices. Failure by vendor to carry out these requirements is a material breach of any contract awarded and may result in the termination of the contract or such other remedy as TxDOT deems appropriate.
- (b) In any solicitations for subcontractors, including procurements of materials or leases of equipment and in all solicitations either by competitive bidding or negotiation made by vendor for work to be performed under a subcontract, each potential subcontractor or supplier shall be notified by vendor of vendor's and subcontractor's obligations under its contract relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- (c) During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to collectively in this subsection (c) as the "contractor") agrees as follows:
 - (1) Compliance with Regulations: The contractor will comply with the acts and the regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
 - (2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by the acts and the regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
 - (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the acts and the regulations relative to nondiscrimination on the grounds of race, color, or national origin.
 - (4) Information and Reports: The contractor will provide all information and reports required by the acts, the regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by TxDOT or the Federal Highway Administration (FHWA) to be pertinent and to ascertain compliance with such acts, regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor will so certify to TxDOT or the FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
 - (5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the nondiscrimination provisions of this contract, TxDOT will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a) Withholding payments to the contractor under the contract until the contractor complies.
 - (b) Cancelling, terminating, or suspending a contract in whole or in part.

- (6) **Incorporation of Provisions:** The contractor will include the provisions of paragraphs (1) through (6) in every subcontract including procurements of materials and leases of equipment unless exempt by the acts, the regulations, and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as TxDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided that if the contractor becomes involved in litigation with, or is threatened with litigation by, a subcontractor or supplier because of such direction, the contractor may request TxDOT to enter into any litigation to protect the interests of TxDOT. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (d) The contractor agrees to comply with the provisions of Appendix A attached hereto, which is incorporated by reference and made a part hereof.

6.11 E-VERIFY: Pursuant to Executive Order RP-80, vendor certifies and ensures that for all contracts for services, vendor shall, to the extent permitted by law, utilize the United States Department of Homeland Security's E-Verify system during the term of this agreement to determine the eligibility of:

- (a) All persons employed by vendor during the term of this agreement to perform duties within the state of Texas.
- (b) All persons, including subcontractors, assigned by vendor to perform work pursuant to this agreement within the United States of America.

Violation of this provision constitutes a material breach of this agreement.

PART 7. DISPUTE RESOLUTION

7.01 DISPUTE RESOLUTION: The dispute resolution process provided for in Government Code Chapter 2260 and 43 TAC §§9.1 and 9.2 shall be used by TxDOT and the vendor to resolve disputes arising under the contract. Notwithstanding any provision of the contract to the contrary, unless otherwise agreed in writing by TxDOT, vendor shall continue performance and shall not be excused from performance during the period of contract claim or dispute is pending; however, vendor may suspend performance during the pendency of such claim or dispute if vendor has complied with all provisions of Government Code Section 2251.051, and such suspension of performance is expressly applicable and authorized under that law.

PART 8. CONTRACT TERMS

8.01 TERM OF CONTRACT: The term of the contract shall be as stated on the purchase order.

8.02 ORDER OF PRECEDENCE: In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the order specified on the purchase order.

8.03 TERMINATION OF A CONTRACT

- (a) **FOR CAUSE:** If vendor fails to provide a good or service according to the provisions of the contract or fails to comply with any term or condition of the contract, or if any representation or certification made in the contract or any related document is false, incomplete, or inaccurate, TxDOT may immediately terminate all or any part of the contract upon written notice to vendor. TxDOT may, at its option, re-solicit or award the contract to the next lowest responsive and responsible respondent. The defaulting vendor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work unless the specification or scope of work is significantly changed. If vendor defaults on the contract, TxDOT may purchase the goods or service elsewhere and charge any increase in cost to the defaulting vendor. TxDOT may impose sanctions, debar, or suspend vendor for abandonment or default(s) on the contract. Termination is not an exclusive remedy, but will be in addition to any other remedies TxDOT may have by law, in equity, or under the contract. TxDOT may exercise any other right, remedy, or privilege which may be available to it under applicable law or may proceed by appropriate court action to enforce the provisions of the contract. The exercise of any of the foregoing remedies will not constitute a termination of the contract unless TxDOT notifies vendor in writing prior to the exercise of such remedy. Vendor shall be responsible for all costs and expenses, including court costs, incurred by TxDOT with respect to the enforcement of any of the remedies listed herein.
- (b) **FOR CONVENIENCE:** The contract may be terminated by TxDOT in whole or in part, without penalty, by providing thirty (30) days written notice. In the event of such termination, vendor shall, unless otherwise agreed in writing, cease all work immediately upon the effective date of termination. TxDOT will be liable only for payments for goods or services ordered before the termination date. With regard to services, TxDOT will pay vendor the contract price prorated for acceptable service performed up to the date specified in the notice of termination. Termination under this paragraph shall not relieve vendor of any obligation or liability that has occurred prior to termination. Vendor shall refund any balance of unused prepaid funds.

8.04 SALE OR ASSIGNMENT: Vendor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from TxDOT. Any attempted assignment in violation of this provision is void and without effect. Vendor shall provide written notification of changes to company name, address, telephone number, and other contact information to TxDOT as soon as possible but not later than thirty (30) days from the date of change.

8.05 RENEWAL OF CONTRACT: The contract may be renewed by TxDOT, in its sole discretion, for up to three (3) additional like periods of time at the same terms and conditions with prior written notice to vendor, or as otherwise stated in the solicitation,

8.06 EXTENSION OF CONTRACT

- (a) TxDOT reserves the right to extend a contract for time only for a period not to exceed 180 days past the stated term to allow vendor to complete the requirements or to accommodate unanticipated events or requirements prior to the expiration of the contract.
- (b) A contract in its final renewal period may be further extended for time and money for a period up to ninety (90) days at the option of TxDOT.
- (c) Vendor may request a time-only extension of a contract by submitting written justification to TxDOT. TxDOT will approve or decline the request for extension in writing. An extension will be effective only if it is issued by the TxDOT Procurement Division in the form of a purchase order change notice.

8.07 SEVERABILITY CLAUSE: In the event that any provision(s) of this contract may later be determined to be invalid, void, or unenforceable, then the remaining provisions of this contract shall remain in full force and effect.

8.08 AMENDING THE CONTRACT: All alterations, additions, or deletions to the contract must be in writing and mutually agreed upon by both parties and put into effect with a purchase order change notice issued by TxDOT. Vendor will not be entitled to payment for any additional services, work or products that are not authorized by a properly executed purchase order change notice. All alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without a purchase order change notice hereto, and shall become effective on the date designated by such law or by regulation.

8.09 THIRD-PARTY BENEFICIARIES: The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

8.10 BINDING EFFECT AND SURVIVAL OF OBLIGATIONS

- (a) By executing this contract, vendor binds itself, its respective successors, and assignees to the faithful performance of the Terms and Conditions and provisions of the contract.
- (b) Expiration or termination of the contract for any reason shall not release vendor from any liabilities or obligations set forth in the terms and conditions and contract or any work order that are expressly stated to survive any such expiration or termination or which by their nature are intended to be applicable following such expiration or termination, including any and all provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification. Upon expiration or termination of the contract for any reason, TxDOT shall retain ownership of all associated work products and documentation obtained from or created by vendor under the contract. Vendor shall deliver all documents or other work product to TxDOT upon request, including original versions if so specified in the request.
- (c) The term of service stated on the purchase order is binding on vendor regardless of the term on the originating agency contract.

Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to in this Appendix A as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Appendix B



EARLY PAYMENT PROGRAM

TxDOT has partnered with Oxygen Finance Americas, Inc. to offer all bidders and active TxDOT vendors the opportunity to enroll in the Early Payment Program (EPP). The EPP gives vendors more flexibility and control of their business and finances. Benefits include:

- Electronic invoice submissions sent to one email address for all TxDOT divisions
- Invoices are time-stamped upon receipt
- Rejection notices are usually sent within 1 business day with instructions on how to revise & resubmit for payment
- Payments are typically made within 10 business days*, providing you cash sooner
- Monthly remittance statements are provided to EPP vendors for reconciliation
- Live supplier support specialists are available to help EPP vendors through all stages of invoicing and payments

Please fill out the information below and return this form with your completed response

Company: _____	Tax ID/EIN: _____
Contact Name: _____	Title: _____
Address: _____	
Email: _____	Phone: _____
Billing Contact: _____	Title: _____
Address: _____	
Email: _____	Phone: _____

OPTIONS (Please check one):

- Yes, I would like to enroll in the EPP with the following terms for all future invoices: _____ % / 10 Days / Net 30 **
 Texas State Agencies are allowed to make early payments to vendors, but are required to take a discount in return. (Texas Government Code, Chapter 2155.382). TxDOT allows EPP vendors to determine the invoice discount rate (%) that best suits their business needs.
- I confirm that I am an authorized representative of this company and that if TxDOT pays any Invoiced Debt owed to the aforementioned company under or in connection with any Contract prior to the date by which such payment would otherwise be required to be made under the terms of that Contract, TxDOT shall be entitled to deduct and retain from that Invoiced Debt, for its own benefit, an Early Payment Discount which it will deduct and retain from that Invoiced Debt. These terms will apply to all invoices unpaid as of the date of signature as printed on this form. Early payment discounts are dynamically calculated, with a target payment date of 10 days from the date of invoice acceptance. The final discount taken is proportionate to the number of days the payment is accelerated. A discount is taken ONLY if payment is made before 30 days from the date of invoice acceptance.
 - I confirm that I am an authorized representative of this company and agree to the Oxygen Network Supplier Terms of Use found at <http://ftp.dot.state.tx.us/pub/txdot-info/fin/early-pmt/oxygen-network-terms.pdf>
- I'm interested in the EPP, but would like a supplier support specialist to call me at this number _____
- I am already enrolled in the EPP
- No, I am not interested at this time

Printed Name _____ Signature _____ Date _____

*Please note: Direct deposits post 1-3 business days after the payment date and paper checks could take up to 5 business days to receive

**TxDOT reserves the right to approve or reject any proposed rates.

To learn more about the program and its benefits, visit www.txdot.gov/business/vendors/epp.html

To speak with a supplier support specialist, call 844.893.8837 or email at earlypay@txdot.gov

THIS PAGE SHOULD BE RETURNED WITH YOUR COMPLETED RESPONSE