



Request for Proposal

**Marketing and Advertising Services for Litter  
Prevention Support Program**

Solicitation No. 601440000032648

NIGP Class-Item: 915-03

Purchaser: Stacie S. Collins, CTCD,  
CTCM

<b>Solicitation Calendar of Events</b>	
<b>Solicitation Open Date:</b>	<b>02/22 /2022</b>
<b>Pre-Response Conference:</b>	<b>03/01/2022, 10:00 AM Central Time</b>
<b>Deadline for submission of questions:</b> NOTE: For assistance in submitting questions through Bonfire use this link: <a href="https://support.gobonfire.com/hc/en-us/articles/115015333227-How-do-I-contact-the-Project-Owner-">https://support.gobonfire.com/hc/en-us/articles/115015333227-How-do-I-contact-the-Project-Owner-</a>	<b>03/02/2022</b>
<b>TxDOT Response to Questions to be posted by:</b>	<b>03/11/2022</b>
<b>Solicitation Close Date:</b>	<b>03/24/2022, 10:00 AM Central Time</b>
<b>Tentative Date for Contract Award:</b>	<b>08/01/2022</b>

1. Description of Services: This solicitation is to establish a contract for services to provide support programs and services to assist the TxDOT Travel Information Division in maintaining and meeting the objectives of the Statewide Litter Reduction and Prevention programs.
2. Term of Service: The initial term of one year commences upon the issuance of a purchase order by TxDOT and expires on August 31, 2023 with the option to renew for three one-year periods at TxDOT's sole discretion. TxDOT will provide an intent to renew notice, in writing, 30 calendar days prior to expiration of the current term.

1 <sup>st</sup> Renewal Option	September 1, 2023 through August 31, 2024
2 <sup>nd</sup> Renewal Option	September 1, 2024 through August 31, 2025
3 <sup>rd</sup> Renewal Option	September 1, 2025 through August 31, 2026

NOTE: The dates are estimated based on the anticipated award.

3. Electronic State Business Daily (ESBD): A notification of this solicitation and any updates are posted on the ESBD. The solicitation, addenda, or additional information are posted on Bonfire. It is the responsibility of the interested parties to periodically check the ESBD and Bonfire for updates to the procurement prior to submitting a response.  
<https://www.txsmartbuy.com/esbd>

<https://txdot.bonfirehub.com>

4. Order of Precedence: In the event of any conflict, terms contained in the document shall prevail in the order as listed below:

- Solicitation No. 601440000032648
- Statement of Work (SOW), TxDOT 915-03-32648, Dated February 2022.
- TxDOT Terms and Conditions, August 2021
- Payment will be made in accordance with Part 4, Para. 4.04 (a)
- Pricing Schedule
- Execution of Proposal
- HUB Subcontracting Plan

5. Work Hours:

Work hours may be flexible, based on type of work and TxDOT requirements. All work performed by the respondent must be in accordance with a TxDOT-approved work schedule. Respondent employees must be available to work on an as needed basis.

6. Insurance Requirements: The respondent must provide to TxDOT an executed Certificate of Insurance for Services, Form 1950, per TxDOT Terms and Conditions, paragraph 5, within seven business days of request by TxDOT.

7. Estimated Quantities:

Quantities are estimates only to be used for the purpose of comparing responses. The respondent must enter their unit price on Pricing Schedule. Total price will be evaluated by

multiplying the unit price for each line by the estimated quantities listed on Pricing Schedule.

TxDOT will issue blanket purchase order releases (BPOR) based on the amount needed to satisfy TxDOT's operating requirements. BPOR may be up to the aggregate contract amount subject to further allocation of funds, and there is no guarantee any BPOR will be issued under this contract.

8. Price Adjustments:

Prices may be adjusted annually, when correlated with index below at successful respondent request; acceptance is at the sole discretion of TxDOT. Successful respondent must provide supporting documentation to justify all price increase requests. Any request submitted by the successful respondent that fails to use the formula as indicated below for calculating the price increase will not be considered a complete, properly-submitted price increase request. Unless otherwise indicated, the price index below is the specified index as published by the Bureau of Labor Statistics, Washington, DC 20212.

Index to be used: Urban Wage Earners and Clerical Worker CPI-W

BLS website: <https://www.bls.gov/data/>

When using the most recent monthly information from the index, the following applies:

A = Index from the month of the due date for the response, or of the month of last price increase.

B = Current or latest baseline index posted at the time of successful respondent request or TxDOT decision to adjust price.

The allowable percent change must be calculated as follows:

$(B-A) \div A \times 100 = \text{Percent of allowable price increase.}$

The allowable percent change shall be rounded to the nearest one-hundredth of one percent and shall be the maximum unit price adjustment permitted, except that the successful respondent may offer price decreases in excess of the allowable percent change.

The successful respondent may offer price decreases in excess of the allowable percent change at any time during the term of the contract.

9. Texas HUB Subcontracting Plan:

TxDOT has determined that subcontracting opportunities are probable in connection with this solicitation (Reference Attachment A).

10. Disclosure of Interested Parties:

The contract resulting from this solicitation is estimated to exceed \$1 million. The vendor must provide to TxDOT an executed Texas Ethics Commission, Form 1295, Disclosure of Interested Parties, within seven business days of request. Failure to provide an executed Form 1295 may result in the vendor's response being declared non-responsive and the contract being awarded to the next responsive, responsible respondent.

The vendor must use the application available at the TEC website noted below to enter the information required on Form 1295. This website also contains frequently asked questions, instructions, and information regarding the rules. For questions regarding completion of this form or the rules, please contact the Texas Ethics Commission.

<https://www.ethics.state.tx.us/File/>

The Disclosure of Interested Parties is mandated by Government Code §2252.908 and 1 Tex. Admin. Code §46.5.

11. Contact Information:

The individuals listed below are the only authorized TxDOT contacts. **Contacting any other TxDOT personnel regarding this solicitation, may result in the respondent being disqualified.** Any changes as a result of questions will be made by TxDOT in the form of an addendum to the solicitation; no oral changes will be considered.

For clarification or questions regarding this solicitation, respondents may contact:

Primary Contact: Stacie S. Collins, CTCD, CTCM

Phone: 936-633-4339

Email: [stacie.collins@txdot.gov](mailto:stacie.collins@txdot.gov)

Secondary Contact: Tonya Myrick, CTCD, CTCM

Phone: (903) 510-9233

Email: [tonya.myrick@txdot.gov](mailto:tonya.myrick@txdot.gov)

12. Pre-Response Conference:

TxDOT will conduct a non-mandatory pre-response conference for all interested respondents to familiarize them with the requested goods and/or services and to give all potential respondents an opportunity to seek answers to any questions which they may have concerning the solicitation.

Respondents should arrive not later than the scheduled start time stated in the solicitation. TxDOT will not be responsible for repeating information already provided.

Respondent should have a representative attend the pre-response conference. Respondent's representative must sign a register.

Any changes to the solicitation requirements resulting from the pre-response conference will be made by TxDOT in the form of an addendum to the solicitation.

All personnel attending the pre-response conference must log in to WebEx using the following steps:

Respondent must list their name and company when attending the WebEx, as shown below:

Example: John Doe – TxDOT

Meeting number (access code): 2314 833 2609

Meeting password: rPSz4M2cVD9

Show actual link to the WebEx

WebEx Link:

<https://txdot.webex.com/txdot/j.php?MTID=m1c854e6c8fc3523fcd91c5bd8e7a55d3>

Call-in number: 1-415-655-0003 (US TOLL)

**IMPORTANT NOTICE:** Please note that this WebEx service allows audio and other information sent during the session to be recorded, which may be discoverable in a legal matter. By joining this session, you automatically consent to such recordings. If you do not consent to being recorded, discuss your concerns with the host, or do not join the session.

13. Logo License: The awarded vendor will be granted a non-exclusive, limited, royalty-free license and revocable right to use the department's trademark and service mark known as the "Flying T" (the "Mark"), as provided by the department, only on deliverables prepared under the terms and conditions of the contract. The right and license granted by the contract automatically terminates on the expiration or termination of the contract, or upon vendor's breach of the terms and conditions of the contract.
  
14. Response Submission:
  - 14.1 GENERAL FORMAT: The respondent must submit one signed and dated response to include the documentation required per response paragraph 14.3 through the Bonfire system: <https://txdot.bonfirehub.com/>  
 NOTE: Any response sent to TxDOT personnel via email - whether directly, courtesy copy (cc), or blind copy (bcc) - will be considered non-responsive. For hand delivery or courier service, United States Postal Service, Federal Express, United Parcel Service, or other mail service, contact the purchaser for assistance.
  - 14.2 The respondent shall not encrypt or password protect response or embed documents within the response; each section must be its own separate document.
  - 14.3 RESPONSE: Failure by the respondent to submit the documentation listed below will result in the response being considered non-responsive. The response submission must be submitted with each section named with the "Section #" and brief description not to exceed 30 total characters as a separate document in the following format:
    - 14.3.1 Section 1 – Pricing Schedule: must be received in Excel form
    - 14.3.2 Section 2 – Execution of Proposal
    - 14.3.3 Section 3 – Vendor Qualifications and Experience Schedule: Complete and return detailing respondent qualifications and experience.
    - 14.3.4 Section 4 – Vendor Personnel Qualifications, Experience and References Schedule: Complete and return for each proposed key or respondent personnel position.
    - 14.3.5 Section 5 – Texas Family Code Schedule
    - 14.3.6 Section 6 – Demonstration of Capability: The respondent's approach and ability to meet the service requirements as specified in the solicitation must be demonstrated. The response should be specific and address all requirements described in the solicitation in the order presented in Paragraph 7 of the SOW to include but not limited to the below key topics:
    - 14.3.7 Training strategy and education on Litter Prevention organization and how it will be delivered to the public.
    - 14.3.8 A detailed description of how a successful event will be organized and promoted, to include reports, for the following categories:
      - 14.3.8.1 General Audiences
      - 14.3.8.2 Youth
      - 14.3.8.3 Culturally Diverse – Adults
      - 14.3.8.4 Culturally Diverse Youth

- 14.3.9 A detailed description on administration and promotion of the Governor's Community Achievement Awards program and competition for landscape grants.
- 14.3.10 A detailed description to promote Don't Mess with Texas Trash Off to the public.
- 14.3.11 Provide a detailed description of how materials will be made available for each program, to include:
  - 14.3.11.1 Items requested.
  - 14.3.11.2 Promoted.
  - 14.3.11.3 Distributed.
  - 14.3.11.4 Delivered.
- 14.3.12 Staffing Plan: Submit a proposed staffing plan to demonstrate staff qualification and experience, including subcontractors. This plan should describe (SOW Paragraph 7.)
  - 14.3.12.1 The number of staff proposed for this project
  - 14.3.12.2 The functions they will perform
  - 14.3.12.3 The percentage of time they will be assigned to the project during the contract term.
- 14.3.13 Budget: Provide a detailed budget. A strong SOW budget supporting the objective, performance measures, and proposed activities to effectively execute the SOW. The proposed budget shall be realistic and reasonable, allowable, and necessary, and shall include only cost-eligible line items. Include as much specific information as possible for all costs in the four major categories of Vendor Labor, Paid Media, Contractual Services/Miscellaneous, and Travel (SOW Paragraph 7.23.).
 

NOTE: Detailed budget must be a narrative of how the vendor determined their pricing structure on the Pricing Schedule. Pricing must not be included in this section.
- 7.8.1. When formulating budget, unless noted otherwise, vendor(s) shall translate all public-facing materials for TxDOT campaigns for historically marginalized or underserved communities, for non-native English speakers.
  - 14.3.13.1 Examples of information to be included in the detailed budget are:
    - 14.3.13.1.1 Number of Personnel
    - 14.3.13.1.2 Estimated means and length of travel
    - 14.3.13.1.3 Contractual Services
    - 14.3.13.1.4 Details of other miscellaneous
- 14.4 Section 7 – Business Continuity and Disaster Recovery Plan: Respondent must submit a business continuity and disaster recovery plan detailing how the respondent proposes to meet the specifications in the event the respondent's service is interrupted. The plan must detail the respondent's backup and recovery process (Reference Paragraph 11. SOW).

- 14.5 Section 8 – Assumptions: The respondent must provide a comprehensive listing of all assumptions made in preparing its response to this solicitation. All respondent assumptions must reference the solicitation section and/or paragraph number. The respondent must propose the services as requested within the solicitation and must not de-scope the services that are being requested. No price data may be included in the assumptions. If respondent does not have assumptions to the solicitation, please provide a statement “No Assumptions” for this section.
- 14.6 Section 9 – Exceptions: If the respondent takes exceptions to any portion of the solicitation, these exceptions must be specifically and clearly identified by paragraph in the response and the respondent’s proposed alternative must also be provided for consideration. The respondent must not take a ‘blanket exception’ to the entire solicitation. If respondent does not have exceptions to the solicitation, please provide a statement “No Exceptions” for this section.
- 14.7 Section 10 – HUB Subcontracting Plan
- 14.8 Section 11 – Respondent References Schedule: The respondent must submit a minimum of three references to substantiate the qualifications and experience requirements for similar services completed for three years within the past five years. References must illustrate respondent’s ability to provide the services outlined in the SOW.
- 14.9 Section 12 – Addenda (if applicable)
- 15 Evaluation:
- 15.1 TxDOT will consider best value for the state as directed by Texas Government Code when awarding a contract to a respondent.
- 15.2 TxDOT reserves the right to omit oral presentations, discussions, negotiations or not make an award.
- 15.3 Respondent is strongly encouraged to provide its best proposal in the response. TxDOT makes no guarantee there will be any opportunity to make oral presentations, attend discussions or to negotiate at any point during the evaluation process. TxDOT may seek additional information, negotiate and solicit Best and Final Offers (BAFO) from respondents determined to be in the competitive range.
- 15.4 Evaluation of Responses: Only a complete response with the listed required submittal documents and meeting minimum qualifications will be considered. Failure to meet the minimum qualifications and submit the required documents will result in a response being declared non-responsive. TxDOT reserves the right to conduct studies and other investigations as necessary to evaluate any response.
- 15.5 Evaluation Criteria:
- Pass/Fail Criteria: In addition to the point scale criteria, TxDOT will review responses based on the Pass/Fail criteria as follows:
- 15.5.1 All Documents in response submission section above are included in the response.
- 15.5.2 Financial review – The determination of whether the respondent has the financial capability to carry out the responsibilities as described in this solicitation is in TxDOT’s sole discretion.
- 15.5.3 Vendor performance rating through the CPA Vendor Performance Report: <http://www.txsmartbuy.com/vpts> - Reference Terms and Conditions paragraph 2.11.



15.5.4 HUB Subcontracting Plan

15.6 A TxDOT evaluation committee will evaluate and score each response based on the established criteria described in this solicitation. Respondents must not contact members of the evaluation team. Responses will be evaluated according to the respondent's ability to best satisfy TxDOT requirements. Submissions will be evaluated and scored on a point scale system to determine the response offering the best value.

15.6.1 Only responses that pass the criteria referenced in Pass/Fail will be reviewed and scored.

15.6.2 Written responses will be evaluated as indicated below:

Respondent qualifications and experience	15 points
Respondent's approach to meeting the requirements detailed in the Statement of Work (SOW)	75 points
Pricing	5 points
Respondent's approach to provided budget	5 points

15.7 The respondent's detailed project budget will be evaluated for reasonableness to include but not limited to:

15.7.1 Spread of budget throughout campaign activities.

15.7.2 Present practical ideas of what can be achieved within the campaign scope, requirements, and vendor deliverables.

15.7.3 Strong details for the campaign including how the budget supports objectives, performance measures, and activities.

15.8 TxDOT reserves the right to check references and include in scoring of the next evaluation phase.

15.9 Definitions Oral Presentation, Discussion, Revised Proposal, Negotiations:

15.9.1 Oral Presentation – A visual representation of the respondent's proposal which should highlight the strengths and unique aspects of the respondent's proposal and may include a site visit or a demonstration of the proposed solution and must provide answers to clarification questions from the evaluation team. The presentation must be drafted based on the agenda format provided and time allocated by TxDOT.

15.9.2 Discussion – A conversation between the respondent(s) and TxDOT to discuss the proposal. This meeting is to resolve outstanding or unanswered questions and for clarifications by both parties; will not include negotiations.

15.9.3 Revised Proposal – A revision to the original proposal based on clarifications and questions answered in the discussion phase.

15.9.4 Negotiations – This phase will include only those items that require finalizing. The negotiations may include, but not be limited to: Exceptions to the terms and conditions, pricing, or additional items within the scope of work based on the respondent's proposal.

15.10 Oral Presentations:

- 15.10.1 TxDOT reserves the right to down select and invite the highest scoring respondents to participate in oral presentations.
- 15.10.2 If oral presentations are requested, TxDOT will advise each respondent in writing of the location, date, and time of the scheduled oral presentation. A minimum of 7 business days' notice will be given to the respondent(s) selected for the oral presentation phase. Attendance at the oral presentation is mandatory. Failure to attend the oral presentation at the location, date, and time designated by TxDOT will disqualify the response submitted by the respondent.
- 15.10.3 TxDOT may provide the respondent with a list of proposed key personnel required to attend and participate in the meeting.
- 15.10.4 Oral presentations, if conducted, will be evaluated as indicated below and scores will replace the written response scores:

Respondent references and clarifications on qualifications and experiences	15 Points
Respondent's approach to meeting the requirements detailed in the Statement of Work (SOW)	75 Points
Pricing from respondent's original written proposal	5 Points
Respondent's approach to provided budget	5 Points

15.11 Discussions:

- 15.11.1 TxDOT reserves the right to down select and invite the highest scoring respondents to participate in discussions and may request revised proposals.
- 15.11.2 If discussions are requested, TxDOT will advise each respondent in writing of the location, date and time of the scheduled discussion. A minimum of 7 business days' notice will be given to the respondent(s) selected for the discussion phase. Attendance at the discussion meeting is mandatory. Failure to attend the discussion meeting at the location, date and time designated by TxDOT will disqualify the response submitted by the respondent.
- 15.11.3 TxDOT may provide the respondent with a list of proposed key personnel required to attend and participate in the meeting.
- 15.11.4 When a revised proposal is requested, respondents must submit one clean and one red-lined version as instructed by TxDOT.
- 15.11.5 Discussions, if conducted and no revised proposal was requested, will be evaluated as indicated below and scores will replace the oral response scores. If TxDOT requests a revised proposal, it will be evaluated in conjunction with the discussions held as indicated below and scores will replace the oral response scores:

Respondent's revised approach to meeting the requirements detailed in the Statement of Work (SOW)	90 Points
Respondent's revised pricing	5 Points
Respondent's approach to provided budget	5 Points

- 16 Negotiations: TxDOT reserves the right to select and invite the highest scoring respondent(s) to participate in negotiations and may request a BAFO. TxDOT will conduct negotiations at a designated location and mutually agreed to date(s) and time for the meeting(s).
- 17 Post Award Meeting: The successful respondent(s) may be required to attend a post award meeting with TxDOT within 10 business days after the award. If a post award meeting is scheduled, TxDOT will advise each respondent in writing of the location, date, and time. The purpose of the meeting is to discuss the terms and conditions of the award and to provide additional information regarding the contract. The awarded vendor and TxDOT shall identify specific goals, strategies, and activities planned for meeting program area objectives.
- 18 Debriefing Meeting: A respondent who responded to the solicitation may request a debriefing meeting within 30 calendar days of the award being posted to the ESBD. Respondent must request this meeting in writing from the purchaser listed on the solicitation.

LITTER PREVENTION SUPPORT PROGRAMS AND SERVICES  
PUBLICATION

This statement of work (SOW) is a product of the Texas Department of Transportation (TxDOT). This SOW may not be sold for profit or monetary gain. If this document is altered in any way, the header and any and all references to TxDOT must be removed. TxDOT does not assume nor accept any liability when this specification is used in the procurement process by any other entity.

1. **SCOPE:** This SOW is for services to provide litter prevention support programs and services to assist the Texas Department of Transportation (TxDOT) Travel Information Division (TRV) in maintaining and meeting the objectives of the Statewide Litter Reduction and Prevention Program by:
  - 1.1. Administering and promoting the Governor’s Community Achievement Awards competition and program.
  - 1.2. Promoting cleanup, litter prevention, and beautification along state-maintained highways.
  - 1.3. Administering and promoting TxDOT cleanup and litter prevention programs.
  - 1.4. Administering and promoting youth education programs on litter prevention.
  - 1.5. Supporting TxDOT litter prevention and beautification programs through public information channels and public affairs, community education, and grassroots volunteer services programs.
2. **DEFINITIONS OF TERMS AND ACRONYMS:**
  - 2.1. BPOR – Blanket Purchase Order Release – A written authorization to perform work under the contract listing the items of work to be performed and the cost based on the prices established in the BPO.
  - 2.2. Contract – Any Purchase Order (PO) or Blanket Purchase Order (BPO) resulting from this solicitation as listed in the Order of Precedence in the resulting PO or BPO.
  - 2.3. DMWT – Don’t Mess with Texas
  - 2.4. GCAA – Governor’s Community Achievement Awards
  - 2.5. KAB – Keep America Beautiful
  - 2.6. KTB- Keep Texas Beautiful
  - 2.7. PM – Project Manager
  - 2.8. POC – Point-of-Contact
  - 2.9. SOW – Statement of Work
  - 2.10. TxDOT – Texas Department of Transportation

3. **APPLICABLE LAWS AND STANDARDS:** The vendor shall provide the specified service requirements in accordance with all federal, state, and local applicable laws, standards, and regulations necessary to perform the services, including, but not limited to:
  - 3.1. Title 42 U.S.C. §§ 2000d-2000d-7, with the exception of sections 2000d-5 and 2000d-6, also known as – Title VI of the Civil Rights Act of 1964, including any amendments.
  - 3.2. Title 49 CFR Subtitle A – Office of the Secretary of Transportation, Parts 1-99, including any amendments.
  - 3.3. 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards – Office of Management and Budget Circular relating to Cost Principles for state, local, and Indian tribal governments, including any amendments.
4. **BACKGROUND:** TxDOT has proudly supported the KTB affiliate network and sponsored the Governor’s Community Achievement Awards for over three decades. To ensure program health in the coming years, TxDOT seeks a strategy that reaches a diverse audience in all phases of the program. This strategy must support the current affiliate base while connecting with the untapped communities and demographics around the state.

TxDOT seeks to better define the efforts it supports, the method of support, and the limits of reimbursement that will be provided. TxDOT will continue to support the KTB and KAB affiliate network as it applies to the network of state maintained roadways to ensure the program administration is compliant with current policy and practice, and ultimately better stewardship of funding.

Youth Programs: TxDOT has supported recognition and rewarding youth litter prevention efforts through awards since the 1980s. In addition, the agency has and will continue to support making curriculum available to educators that empowers youth to reduce litter and waste, and to beautify their communities. The target audience for litter prevention has been determined to be males and females between 16 and 24 years of age.
5. **VENDOR QUALIFICATIONS:** The vendor must:

Be a company engaged, or whose partners are engaged in the business of providing litter support services including but not limited to litter abatement, beautification assistance and affiliate certification programs for a minimum of three years within the past five years. Years of experience of an individual(s) or partner(s) with a minimum of 25% ownership of businesses do not meet the requirements of this solicitation.

NOTE: A start-up business is defined as a new company that has no previous operational history or expertise in the relevant business.
6. **VENDOR PERSONNEL QUALIFICATIONS AND REQUIREMENTS:** The vendor must provide the following personnel with the listed qualifications:
  - 6.1. PM must:
    - 6.1.1 Have a minimum of two years’ experience within the past five years in project management for similar services.
    - 6.1.2 Be primarily responsible for the day-to-day operation of the service in accordance with the requirements of the contract.

- 6.1.3 Be a permanent staff employee and serve as a constant primary point of contact for TxDOT.

NOTE: TxDOT PM will approve key personnel.

- 6.2 TEAM MEMBERS: Team members with a minimum of one years' experience within the past three years in the services referenced in Para. 8 and must have the knowledge to develop and implement the service requirements in this solicitation.

- 6.2.1 Team members and Key Personnel must have extensive experience in:

- 6.2.1.1 Planning.

- 6.2.1.2 Implementing innovative.

- 6.2.1.3 Effective marketing.

- 6.2.1.4 Advertising.

- 6.2.1.5 Public education.

- 6.2.1.6 Public relations strategies for public or private sector organizations.

- 6.2.2 Provide services for multiple TxDOT projects simultaneously.

NOTE: Key personnel and team members may not serve in another position on the same TxDOT project or work on more than two TxDOT projects at a time.

- 6.3 All personnel who will be driving to and from TxDOT work locations must:

- 6.3.1 Possess a valid driver license acceptable in the state of Texas.

- 6.3.2 Have no Driving Under Influence (DUI) or Driving While Intoxicated (DWI) incidents on driving record within the past three years.

- 6.3.3 Have no more than two moving violations on driving record within the past three years.

- 6.3.4 NOTE: TxDOT reserves the right to request proof of qualifications.

7. SERVICE REQUIREMENTS: The vendor must:

- 7.1. Provide all required safety equipment and instruct personnel to observe all safety policies, rules, and requirements at all times including, but not limited to, wearing hard hats, safety shoes, goggles, etc.

- 7.2. Provide a primary POC.

- 7.3. Conduct driver license checks annually on vendor staff that drive to and from TxDOT work locations to verify compliance with paragraph 6.3.

- 7.4. Provide an updated list of all vendor personnel or subcontractors at each job site and comply with all security measures required by TxDOT.

- 7.5. Ensure all personnel are fluent in English with the ability to receive, give, and understand written and oral instructions.

- 7.6. Ensure personnel are not excessively loud.

- 7.7. Ensure personnel do not use personal multi-media devices while performing services for TxDOT unless furnished by the vendor to facilitate communication with TxDOT or the vendor.
- 7.8. Conduct background checks using statewide DPS, Texas, and out-of-state county equivalent verification of criminal and sex offender background checks on all vendor's permanent and temporary personnel scheduled to work on TxDOT projects prior to beginning service start-up. Upon award, supporting documentation confirming the completion of these comprehensive background checks may be subject to review upon request by TxDOT or the TxDOT designee, or both, prior to beginning the service. Failure to produce the requested documentation may be cause for cancellation of the contract. Background checks must be within the last year of contract execution date and must be completed on any new employees throughout the life of the contract. The background checks must include, but not be limited to, the following:
  - 7.8.1. Social Security number verification.
  - 7.8.2. Statewide criminal and sex offender records for all Texas counties and out-of-state county equivalents based on the current and previous addresses of the applicant for the past seven years.
- 7.9. Begin work within 10 calendar days after the issuance of written authorization from the authorized TxDOT representative.
- 7.10. Staff or subcontractors available to respond within a two-hour time frame to multiple requests for services simultaneously, as requested by designated TxDOT representative.
- 7.11. Notify TxDOT in writing of events which have an impact on the services being performed within three business days of the event including:
  - 7.11.1. Problems, delays, or adverse conditions which prevent the meeting of timelines or work schedule.
  - 7.11.2. Favorable developments which enable meeting timelines or work.
- 7.12. Reach the diverse demographics of the state in all phases of the programs, to include a culturally sensitive approach.
- 7.13. Translate all public-facing materials for TxDOT campaigns into Spanish.
- 7.14. Ensure all services rendered and related to TxDOT programs or services are co-branded with TxDOT. TxDOT will review, coordinate, and approve all programs and services to include but not limited to:
  - 7.14.1. Meetings
  - 7.14.2. Trainings
  - 7.14.3. Materials
  - 7.14.4. Conferences
- 7.15. Administer and perform services to support the following programs. TxDOT is solely concerned with efforts supporting the network of state-maintained highways.
  - 7.15.1. Governor's Community Achievement Awards (GCAA): Administer and promote the annual program and competition for landscape grants with

related community achievement awards presentations with the use of media, flyers, networking, and other TxDOT approved means. Including training on litter prevention, community cleanups, public awareness, beautification, litter law enforcement, education, solid waste management, and volunteer organization development.

- 7.15.1.1. Program Requirements: The vendor must develop and implement a detailed plan covering each of the following program aspects:
  - 7.15.1.1.1. Recruiting applicants for participation in the GCAA.
  - 7.15.1.1.2. Administering fair competition for participants in multiple population categories.
  - 7.15.1.1.3. Strive to improve the GCAA application and application process to attract interest and applications from new groups.
  - 7.15.1.1.4. The applications must reach the diverse demographics of Texas and result in applications from all areas across the state.
  - 7.15.1.1.5. Include questions in the application, on litter prevention, community cleanups, public awareness, beautification, litter law enforcement, youth education, solid waste management, organizational development, Don't Mess with Texas and Adopt-a-Highway involvement.
  - 7.15.1.1.6. Administer training and provide materials to educate participants on completing the application and judging criteria.
  - 7.15.1.1.7. Administer the judging of GCAA and Adopt-a-Highway applications for awards, including recruiting and training of judges.
  - 7.15.1.1.8. Translate material as determined to be needed and approved by TxDOT.
- 7.15.1.2. Program Administration and Promotion:
  - 7.15.1.2.1. Create the application and develop the application process.
  - 7.15.1.2.2. Develop the judging criteria and process.
  - 7.15.1.2.3. Market the program statewide in coordination with TxDOT.
  - 7.15.1.2.4. Administer the application judging and coordinate with TxDOT on the winners' notification.



- 7.15.1.2.5. Plan and execute the presentation of awards; purchase and provide physical award to present to winning communities.
  - 7.15.1.2.6. Obtain review and approval from the designated TxDOT representative for the application forms, promotional materials, scripts, awards that are presented, presentation arrangements, and speakers.
- 7.16. Litter Prevention, Clean up and Beautification Program Promotion, Training and Recruiting: On Texas' network of state maintained highways.
- 7.16.1. Program requirements:
    - 7.16.1.1. Assist communities, civic organizations, school groups, businesses, and other groups in organizing, promoting, and participating in litter prevention, litter clean up, and beautification on state-maintained highways.
    - 7.16.1.2. Organize and deliver training sessions on litter prevention, community cleanups, public awareness, beautification, litter law enforcement, youth and education, and solid waste management issues on state-maintained highways. Make this training available to TxDOT personnel, where possible.
    - 7.16.1.3. Recruit a network of volunteers for litter prevention, litter clean up and beautification on state-maintained highways. Recruit volunteers to serve as mentors, trainers, and recruiters.
    - 7.16.1.4. Encourage group affiliation with the Keep America Beautiful program, as well as other state and national grassroots organizations that promote litter prevention litter clean up, and beautification on state-maintained highways.
    - 7.16.1.5. Provide program communication to groups and individuals through a newsletter, distributed a minimum of four times each year; maintain a website to disseminate information in support of litter prevention programs on state-maintained highways.
    - 7.16.1.6. Participate in at least one annual conference to educate, recognize, and reward volunteers and affiliate communities in litter prevention, litter clean up, and beautification on state-maintained highways.
    - 7.16.1.7. If vendor hosts conference, TxDOT will pay an agreed upon percentage for catering for event(s) solely dedicated to TxDOT programs.  
  
NOTE: If vendor is host of conference, vendor should provide full conference entrance passes for five (5) TxDOT employees, one booth exhibit space, and provide ad space in the conference brochure.
  - 7.16.2. Program Administration:
    - 7.16.2.1. Develop promotional and training materials.

- 7.16.2.2. Plan and deliver training.
  - 7.16.2.3. Market the program statewide in coordination with TxDOT.
  - 7.16.2.4. Implement a process for tracking prospects.
  - 7.16.2.5. Develop a recruiting process.
  - 7.16.2.6. Engage and retain volunteers.
  - 7.16.2.7. Create public relations opportunities.
  - 7.16.2.8. Maintain current and past affiliate data in a digital format that can be delivered to TxDOT as a .csv or .xls file.
  - 7.16.2.9. Develop and implement a program that reaches the diverse demographics of Texas and results in a reduction of litter in all areas across the state.
  - 7.16.2.10. Translate material as determined to be needed and approved by TxDOT.
- 7.17. Don't Mess with Texas Trash-Off and Great American Cleanup: The vendor shall:
- 7.17.1. Assist TxDOT in administering and promoting:
    - 7.17.1.1. The annual Don't Mess with Texas Trash-Off events that is part of the annual Great American Cleanup activities in Texas.
    - 7.17.1.2. Cleanup events covered in this contract should focus on cleaning TxDOT maintained roads. Map of TxDOT maintained roads:  
<http://ftp.dot.state.tx.us/pub/txdot-info/trv/maps/texas.pdf>
    - 7.17.1.3. State funds cannot be used to clean city parks or other city areas that do not include state-maintained roadways.  
  
NOTE: All cleanup efforts that are in conjunction with dates of the state-maintained roadway cleanups will be covered under this contract. Current examples of this include the Don't mess with Texas Trash-Off and Fall Sweep.
    - 7.17.1.4. Promote cleanups in relevant communications channels such as the quarterly newsletter and website.
    - 7.17.1.5. Develop and implement a communications plan, subject to TxDOT approval.
    - 7.17.1.6. Market the programs statewide in coordination with TxDOT.
    - 7.17.1.7. Organize application process and material distribution.
    - 7.17.1.8. Create a system to track results and organize information.
    - 7.17.1.9. Distribute information and materials.
  - 7.17.2. Program Requirements:
    - 7.17.2.1. Promote the "Don't Mess with Texas Trash-Off" to groups in Texas and increase participation in events to clean and beautify TxDOT maintained roads.

- 7.17.2.2. Attend scheduled meetings and assist in the collection of information to report the activities of participating groups.
  - 7.17.2.3. Assist in soliciting sponsorship for the Don't Mess with Texas Trash-Off event.
  - 7.17.2.4. Organize and coordinate material distribution to communities for the Don't Mess with Texas Trash-Off, Great American Cleanup and other cleanups coordinated by TxDOT.
  - 7.17.2.5. Encourage affiliate Adopt-a-Highway groups to participate in the Don't Mess with Texas Trash-Off.
- 7.18. Culturally Diverse Programs: The vendor must:
- 7.18.1. Develop and implement materials and programs that reach the diverse demographics of Texas and strive for a reduction and cleanup of litter in all areas. Vendor must translate all public-facing material dependent on the area.
  - 7.18.2. Vendors must provide a recommendation (using illustrations or descriptions) on how diverse populations will be reached.
  - 7.18.3. Market to the diverse demographics of Texas, with an emphasis on historically marginalized or underserved communities.
  - 7.18.4. Provide language appropriate materials for non-native English speakers.
- 7.19. Youth Programs: The vendor must:
- 7.19.1. Provide a recommendation (using illustrations with descriptions) to promote and administer programs and activities to encourage youth to take responsibility for litter prevention, beautification, and waste reduction.
  - 7.19.2. Program Requirements:
    - 7.19.2.1. Promote youth activities through training and publications.
    - 7.19.2.2. Research and select existing curriculum, or develop new curriculum directed at youth that teaches reduction in litter and waste, and beautifying communities.
    - 7.19.2.3. Reach out to Texas educators to make them aware of the selected curriculum and train them in its use.
    - 7.19.2.4. Promote TxDOT's "Don't Mess with Texas" youth and educational curriculum activities.
    - 7.19.2.5. Track participation in activities promoting youth involvement and the promoted curriculum specifically.
    - 7.19.2.6. Include links to youth and education-oriented material on the program website.
    - 7.19.2.7. Organize workshops and training.
    - 7.19.2.8. Develop a plan to involve participating groups in youth and education activities.

- 7.19.2.9. Assist in soliciting sponsors for youth programs.
- 7.19.2.10. Market to the diverse demographics of Texas, with an emphasis on historically marginalized or underserved communities.
- 7.19.2.11. Provide language appropriate materials for non-native English speakers.
- 7.19.2.12. Translate material needed and approved by TxDOT.
- 7.19.3. Other Litter Prevention Program Support: The vendor must:
  - 7.19.3.1. Provide support and coordination for TxDOT's litter prevention programs Don't Mess with Texas, Adopt-a-Highway, and other programs determined on an as-needed basis through vendor's network of seminars, speeches, newsletters, educational programs, conferences, and other communication activities.
  - 7.19.3.2. Program Requirements:
    - 7.19.3.2.1. Include TxDOT litter prevention and beautification programs in public information, public affairs, affiliates, grassroots volunteer service programs, publications, website, and training courses.
    - 7.19.3.2.2. Work with and communicate with the vendor of the Don't Mess with Texas campaign as needed.
  - 7.19.3.3. Program Administration and Promotion:
    - 7.19.3.3.1. Promote and administer litter prevention programs, as approved by TxDOT.
- 7.20. Work Plan: Submit a work plan to include, but not be limited to, the following:
  - 7.20.1. An Implementation Schedule.
  - 7.20.2. A logical sequence of tasks and deliverables included in each project period.
  - 7.20.3. A specific completion date for each task and deliverable.
  - 7.20.4. The specific target audience for each activity and how it relates to the network of state-maintained roads. Official map of state maintained roads: <http://ftp.dot.state.tx.us/pub/txdot-info/trv/maps/texas.pdf>
  - 7.20.5. Task and deliverable relationships and dependencies.
  - 7.20.6. Indicate the coordinated timing of campaign activities such as paid media flights, social media, event dates, and promotional activities.
  - 7.20.7. Use of a gated approach reflecting critical milestones and necessary Department approvals.
- 7.21. Printing: Any standard-size printing, on standard paper stock, with a turn-around time of seven weeks or more for this service may be performed internally by the TxDOT print shop with pre-approval by TxDOT PM. Most printing performed by the TxDOT print shop would not impact the vendor's budget. This will be determined on a case by case basis by TxDOT. If charges are incurred, they will come from

the budget for this service. The vendor must provide the TxDOT PM the necessary specifications prior to development of any print materials to ensure these items can be printed internally. Printed materials paid for by TxDOT must be strictly dedicated to TxDOT programs.

- 7.22. Expenditure Approvals: The vendor must:
- 7.22.1. Prepare written estimates based on the pricing schedule for all expenditures and obtain written approval before making any commitment on behalf of this campaign and TxDOT. This campaign, nor TxDOT, will be responsible for any expenditure unless pre-approved in writing.
  - 7.22.2. Submit a written request for approval of estimates at least five (5) working days prior to the start of production.
    - 7.22.2.1. Estimates must include, but not limited to:
      - 7.22.2.1.1. Job number
      - 7.22.2.1.2. Description
      - 7.22.2.1.3. Location (if applicable)
      - 7.22.2.1.4. Size
      - 7.22.2.1.5. Production specification
      - 7.22.2.1.6. Packaging
      - 7.22.2.1.7. Shipping
      - 7.22.2.1.8. Name of vendor
  - 7.22.3. Estimate revisions must be approved in writing. All revised estimates must contain full written explanation for the cost differential, including previous approved amounts.
  - 7.22.4. Estimate cancellations. Upon cancellation of any previously approved estimate, the successful vendor must submit a revised closed estimate for approval, reflecting all cancelled portions of the estimate.
  - 7.22.5. The vendor will be responsible for the costs of all items produced on behalf of TxDOT that are misprinted, produced in error, or which DMWT/TxDOT in its sole discretion determines is unacceptable. The vendor will also be responsible for costs incurred in conjunction with services provided which are deemed unacceptable due to failure to meet established deadlines or rendered in a manner inconsistent with the services approved.
- 7.23. Budget: The vendor must provide a breakdown of their proposed pricing for this service.
- 7.23.1. The budget for this program is \$400,000 per fiscal year.
  - 7.23.2. TxDOT may identify additional funds for this service, at any time during the term of service. A purchase order change notice will be processed to add any additional funding identified.

- 7.23.3. Provide a budget to TxDOT that shows how funds for this service will be expended; examples of information to be included in the detailed budget must include, but may not be limited to:
  - 7.23.3.1. Number of personnel, title, and pay rates for each personnel
  - 7.23.3.2. Estimated means and length of travel
  - 7.23.3.3. Contractual services
  - 7.23.3.4. Details of other miscellaneous costs when formulating budget, unless noted otherwise
- 7.23.4. Provide budget in the following four budget categories.
  - 7.23.4.1. Category 1. Agency Fees (may also be referred to as Staff Time or Labor).
  - 7.23.4.2. Category 2. Paid Media Placement (may also be referred to as Advertising Services; or Public Service Announcements, Radio, TV, Special Events, Media Placement.).
  - 7.23.4.3. Category 3 – Contractual Services and Miscellaneous (may also be referred to as Miscellaneous Advertising Services, Contract Services, etc.).
  - 7.23.4.4. Category 4. Travel (may also be referred to as Non-Local Travel).
- 7.23.5. Provide shipping and storage costs to be included in the vendor's campaign budget. Campaign materials will be required to be shipped to all 25 TxDOT districts and to include partners and schools.
- 7.23.6. Where vendor's efforts include TxDOT interests and interests outside of those, TxDOT will determine a percentage of the effort that pertains to TxDOT and reimburse based on that percentage.
  - 7.23.6.1. Vendor reimbursement will be limited to the above categories and will not include operations or overhead costs such as office leases, vendor's general website hosting costs, telephone service, utilities, and so on. Where vendor efforts include TxDOT interests and interests outside of those, vendor must explicitly detail percentages in their proposed budget that TxDOT must agree on.

NOTE: The vendors salary must not exceed 65% of overall budget.

- 7.24. REPORTS: Reports as requested by TxDOT. Reports and format standards will be approved by TxDOT and must be delivered to the designated TxDOT representative. Reports include, but not limited to, the following:
  - 7.24.1. Summary Reports: Due to TxDOT in writing within three business days of the event. Summary report must include:
    - 7.24.1.1. Summary of event.
    - 7.24.1.2. Problems encountered.

- 7.24.1.3. Adverse conditions preventing meeting of timelines or work schedule.
- 7.24.1.4. Favorable developments.
- 7.24.1.5. Meeting timelines early or completion of work schedule.
- 7.24.2. Weekly Status Report: A weekly status report to be provided on Friday of each week, on all current projects, immediate action items, and upcoming action items. The report should note status relative to approved timeline, due dates and responsible parties for the current and upcoming tasks, and any other pertinent information. Include metrics to demonstrate and quantify the benefits to TxDOT's network of state-maintained highways.
- 7.24.3. Activity and Progress Report: A monthly activity and progress report must be included with each invoice. This report must provide details for activities on behalf of the litter prevention program for the previous month. Detailing current status on projects. Include metrics to demonstrate and quantify the benefits to TxDOT's network of state-maintained highways. Provide an additional copy of all products, films, recordings, and reports or documents produced during the purchase order term to support payment claims.
- 7.24.4. Annual Report: A comprehensive annual report to be submitted by August 30<sup>th</sup> or as agreed to by the designated TxDOT point of contact, documenting the results of the work performed under this purchase order and the benefits to the network of state-maintained roadways. Included metrics should demonstrate and quantify the benefits to TxDOT's network of state-maintained highways.
- 7.25. Goods: The vendor must create and maintain a list of goods paid for by TxDOT, throughout the term of service.
  - 7.25.1. At the end of the term of service, the goods paid for by TxDOT will become the property of TxDOT.
  - 7.25.2. TxDOT approval is required for the disposition of physical or tangible goods paid for by TxDOT, relating to the services to include:
    - 7.25.2.1. Incidentals to services or works such as props
    - 7.25.2.2. Set dressings
    - 7.25.2.3. Promotional materials
    - 7.25.2.4. Signage
    - 7.25.2.5. Any other related materials, goods.
- 8. **VENDOR PERFORMANCE**: Vendor performance will be monitored on a regular basis by TxDOT.
  - 8.1 An unsatisfactory performance determination includes, but is not limited to:
    - 8.1.1 One instance of providing services related to TxDOT programs or services without obtaining prior TxDOT approval.
    - 8.1.2 Two Instances of not submitting reports as specified.

- 8.1.3 Failure to deliver any portion of the work.
- 8.1.4 Any requirement not met as outlined in the service requirements determined by TxDOT.

NOTE: Unsatisfactory performance may result in a negative vendor performance report, or cancellation of the contract or both, in addition to any other rights, liquidated damages and remedies provided by the contract or allowed by law.

8.2 An exceptional performance determination includes, but is not limited to:

- 8.2.1 Vendor commended for exceptional customer service; exceptional service provided.

9. LIQUIDATED DAMAGES:

- 9.1. Failure to perform in accordance with the SOW and terms and conditions of the contract, after having been notified in writing by TxDOT of the specific deficiency, may result in TxDOT requiring the vendor to pay liquidated damages of \$1,000.00 per calendar day until the deficiency is corrected. If the deficiency is not corrected within 30 calendar days, the vendor may be considered in default.

This provision is not intended as a penalty, but as liquidated damages.

10. PERSONNEL CONTINUITY AND REPLACEMENT:

- 10.1. The PM must remain available for the entire term of the contract as long as that individual is employed by the vendor.
- 10.2. TxDOT recognizes that events beyond the control of the vendor such as the death, physical or mental incapacity, long-term illness, or the voluntary termination of employment of the PM, will require the vendor propose a replacement. Vendor must notify TxDOT within 24 hours after the vendor is made aware of such a situation.
- 10.3. Proposed replacement personnel must:
  - 10.3.1. Be submitted to TxDOT within 10 calendar day(s) of notification resulting from paragraph 18.2 above.
  - 10.3.2. Meet minimum qualifications and have experience comparable to the person(s) being replaced. Resume(s) and reference(s) may be requested for the proposed replacement(s).
  - 10.3.3. Be provided at no additional cost to TxDOT.
  - 10.3.4. Not begin work on the project without prior written approval from TxDOT

NOTE: TxDOT may reject any replacement if references or past working performance is questionable or unfavorable. TxDOT will be the sole judge of the qualifications of the proposed replacement personnel.

- 11. BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN: The respondent must submit a description of its business continuity and disaster recovery plan. Upon request of TxDOT, vendor must provide copies of its most recent business continuity and disaster recovery plans. Business continuity and disaster recovery plan must:



- 11.1. Document a structured approach that describes the procedures that will be implemented to quickly resume work and fulfill all requirements of the contract after a disruption of business due to: fire, theft, natural disaster, technical difficulty, workforce problems, equipment failure, or other unplanned incident.
- 11.2. Be maintained throughout the term of the contract. The vendor shall be responsible for all cost-of-disaster recovery.
12. TRAVEL: All travel and per diem must be pre-approved in writing by the designated TxDOT representative. If approved, expenses will be reimbursed as follows:
  - 12.1. Reimbursement for travel expenses include: Personal vehicle mileage, commercial transportation, lodging, parking, and meals. Reimbursement shall be based on the "Employee" section of the website below:  
<https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>
  - 12.2. Meals for non-overnight travel may be reimbursed if the travel period is greater than six hours and the travel is to a location outside the district in which the vendor's primary work location is located.  
  
NOTE: The Internal Revenue Service has ruled that the meal reimbursements related to non-overnight travel are taxable as additional income. Taxes must be withheld at a rate of 25% of the reimbursement amount. The vendor shall be responsible for withholding this tax.
  - 12.3. Rental cars are permitted when the cost is equal to or less than the cost of calculated mileage.  
  
NOTE: When a rental car is approved, personal mileage is not reimbursed without prior approval from the designated TxDOT representative.
  - 12.4. Air travel is allowed only if the travel charges that include air, parking, mileage, fuel, and rental car are equal to or less than the rate of the standard travel charges. Air travel must be approved by the designated TxDOT representative prior to travel.
    - 12.4.1. Travel expenses on the calendar before a meeting or work that begins at 1:00 p.m. or on the calendar after a meeting or work that ends at 12:00 noon will not be reimbursed unless prior approval from the designated TxDOT representative has been granted. Approval will be based upon whether the following circumstances would warrant additional travel expenses:
      - 12.4.1.1. More than 200 miles one way from the vendor's home base to the meeting or work location.
      - 12.4.1.2. More than four hours of driving time one way from the vendor's home base to the meeting or work location.
      - 12.4.1.3. Inclement weather.
      - 12.4.1.4. Mileage for the vendor's employees to drive back and forth to the meeting or job site is 50 miles or more from the vendor's home base.
  - 12.5. Travel expenses must be clearly detailed, and receipts emailed to the designated TxDOT representative.

NOTE: TxDOT will not reimburse tips, gratuities, or alcoholic beverage purchases.

- 12.6. Expenditure Approvals: The vendor must:
  - 12.6.1. Prepare written estimates for all expenditures and obtain written approval before making any commitment on behalf of this campaign and TxDOT. This campaign, nor TxDOT, will be responsible for any expenditure unless pre-approved in writing.
  - 12.6.2. Submit a written request for approval of estimates at least five (5) working days prior to the start of production. Estimates must include, but not limited to, job number, job name, description, location (if applicable), size, production specs, packaging, shipping, name of vendor, etc.
  - 12.6.3. Estimate revisions must be approved in writing. All revised estimates must contain full written explanation for the cost differential, including previous approved amounts.
  - 12.6.4. Estimate cancellations. Upon cancellation of any previously approved estimate, the successful vendor must submit a revised closed estimate for approval, reflecting all cancelled portions of the estimate.
13. CONFLICT OF INTEREST: The vendor, vendor's personnel, and vendor's subcontractor(s) affirm not to have acquired and agree not to acquire any interest during the term of the contract that would conflict in any manner with the performance of the vendor's obligations in regards to services authorized.
14. ADDITIONAL INVOICING INSTRUCTIONS: The vendor must:
  - 14.1. Invoice in accordance with Paragraph 4.03 of the Terms and Conditions attached and include the additional information listed below:
    - 14.1.1. Media expense
    - 14.1.2. Labor Hours and rates based on pricing schedule.
    - 14.1.3. Media placement verification where applicable.
  - 14.2. Documentation validating the invoice charges must be emailed to the designated TxDOT representative and include, but not be limited to:
    - 14.2.1. Proof of payment from subcontractors or other entities which requires reimbursement from TxDOT contract.
    - 14.2.2. Receipts for travel expenses as approved by TxDOT.
15. TxDOT RESPONSIBILITIES: TxDOT will:
  - 15.1. Provide a contract manager as the point of contact.
  - 15.2. Review, coordinate, and approve all programs and services.
16. CONTRACT ADMINISTRATION: Administration of the contract is a joint responsibility of the TxDOT contract administrator and TxDOT purchasing staff. Purchasing staff will be responsible for administering the contractual business relationship with the vendor.
  - 16.1. Any proposed changes to work to be performed, whether initiated by TxDOT or the vendor, must receive final written approval in the form of a Purchase Order Change Notice signed by the authorized TxDOT purchasing agent.

- 16.2. Upon issuance of contract, TxDOT will designate an individual to serve as the contract manager and point of contact between the agency and the vendor. The contract manager does not have any express or implied authority to vary the terms of the contract, amend the contract in any way, or waive strict performance of the terms or conditions of the contract. This individual's contract management and contract administration responsibilities include, but are not limited to:
  - 16.2.1. Monitoring the vendor's progress and performance and ensuring services conform to established specification requirements.
  - 16.2.2. Managing the financial aspects of the contract including approval of payments.
  - 16.2.3. Meeting with the vendor as needed to review progress, discuss problems, and consider necessary action.
  - 16.2.4. Identifying a breach of contract by assessing the difference between contract performance and non-performance.
  - 16.2.5. Other areas as identified by the State of Texas Procurement and Contract Management Guide version 2.0.

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TERMS AND CONDITIONS  
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**TEXAS DEPARTMENT OF TRANSPORTATION  
TERMS AND CONDITIONS**

**PART 1. INTRODUCTION**

**1.01 GENERAL:** These Terms and Conditions 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” means the proposal, quote, bid, or offer made to TxDOT in response to the solicitation. The term “respondent” or “bidder” means the party who submits the response to the solicitation, including the vendor. The term “vendor” or “contractor” means the party listed as vendor in the contract. Any reference to time in the solicitation or contract shall mean central time.

**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 §50.3 (for purposes of this Section and §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 must 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 must maintain all licenses and certifications required by law or by the contract throughout the term of the contract. When required, vendor must furnish TxDOT with satisfactory proof of its compliance.

**PART 2. GENERAL INSTRUCTIONS**

**2.01 SPECIFICATIONS**

- (a) Respondent must carefully examine the solicitation. Respondent is 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 interpretation pertaining to the solicitation will be in writing and issued by TxDOT as an addendum. Any change 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 clarification 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 §2155.067. Respondent must 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 must 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 must apply unless otherwise stated in this solicitation.
- (g) All electrical items must 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 must be submitted in the format and quantity noted in the solicitation. If submitting multiple responses, each response must 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 will disqualify the response. The person signing the response must have authorization to contractually bind the company. The solicitation response must 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) (except for pricing schedules, which must be submitted in Excel format using the pricing spreadsheet developed by the department). All attached documents together must not exceed a total of 20 MB, be signed by respondent, and be attached to the email to be considered for award. TxDOT will not be responsible for failure of electronic equipment, operator error, or system delays or outages. Responses that are late, illegible, incomplete, file-corrupted, flagged as a virus, or otherwise non-responsive will not be considered.
- (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 must be marked with respondent's name and address and TxDOT solicitation number. Samples must not be enclosed or attached to a response unless specified in the solicitation.
- (k) The response, including price, 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, and extended by multiplying the submitted price by the quantity. Unit prices 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 purchases are on a firm, fixed price basis unless otherwise stated in the solicitation.
- (c) Vendor must not increase price(s) during the term of the contract unless otherwise stated in the contract. Vendor must give price reductions to TxDOT that result from reduced cost to vendor during the term of the contract.
- (d) All prices must be F.O.B. destination, freight prepaid and allowed. This means vendor must prepay the freight charges and include them in the unit price.
- (e) 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.

- (f) The contract may contain a “Total Cost Not to Exceed” statement. Vendor must not perform any work that may exceed either the contract total or the not-to-exceed total without prior written authorization from TxDOT.
- (g) Consistent and continued tie response pricing may lead to rejection of the responses 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) business days prior to the meeting so arrangements can be made.

**2.05 RECEIPT OF PROPOSALS AND BID OPENINGS**

- (a) At the time of opening for RFOs or RFPs, only the names of respondents will be announced. Prices will not be disclosed.
- (b) At the time of opening for RFQs and IFBs, names of respondents will be announced and pricing disclosed.
- (c) 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 must 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 must 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 §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 §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 are:

- (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:** As provided in Government Code §2157.003, 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 will 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 must 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 must promptly give written notice to TxDOT. TxDOT has the right to extend delivery or service date if reasons appear valid. Vendor must 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 must be made between 8 a.m. and 4 p.m. 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 must 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 testing 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 shipments. 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 will be based on attainment of performance in accordance with specifications and the contract.

**2.11 VENDOR PERFORMANCE:** TxDOT may review vendor's performance under a contract of \$25,000 or more resulting from the solicitation as described in Government Code §2155.089. These reviews and any resulting classification grade will be posted on the Vendor Performance Tracking System as noted in §2262.055 of the Texas Government Code.

Past Performance: A respondent's past performance will be measured based upon pass/fail criteria in compliance with applicable provisions of Government Code §§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 (e.g., 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 will 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) Personnel must be competent, knowledgeable, and experienced in the types of services to be provided under the contract and perform such services in a professional and workmanlike manner consistent with industry standards. Services must 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 inferred from, such contract; and
- (b) All goods and services furnished in connection with the contract must be of good and merchantable quality, strictly conform in all respects to the terms of the contract, including any drawings, specifications, or standards incorporated herein, and 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 §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 will be immediately terminated. Under Government Code §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 §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 Family Code §231.006, 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 §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 §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; and
  - (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 §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 will 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 [§2155.006](#), 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 respondent is not an abortion provider or an affiliate of an abortion provider under Government Code §2272.003.
- (f) 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; or
  - (2) The grandparent, parent, sibling, child, or grandchild of the person's spouse.

- (b) A notification required by this section must 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 must 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 must notify TxDOT under subsection (b) of each instance within thirty (30) calendar days of obtaining that knowledge.
- (e) If vendor violates this section, TxDOT may terminate the contract immediately for cause, impose any sanction permitted by law, and pursue any other remedy permitted by law.

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

**3.14 DISCLOSURE OF RESTRICTED EMPLOYMENT:** Respondent acknowledges that under Government Code §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 §2252.152.

**3.16 CONTRACTING INFORMATION RESPONSIBILITIES:** Respondent represents and warrants that it will comply with the requirements of Government Code §552.372(a). Except as provided by Government Code §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 §2155.0061, 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.

**3.19 COVID VACCINE PASSPORTS:** Respondent represents and warrants that it is in compliance with Texas Health and Safety Code §161.0085(c), which prohibits a business from requiring a customer to provide documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the business.

**3.20 FIREARM AND AMMUNITION DISCRIMINATION:** Pursuant to Government Code §2274.002, to the extent applicable to respondent and this contract, respondent certifies that respondent:

- (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
- (b) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

**3.21 LONE STAR INFRASTRUCTURE PROTECTION ACT:** Respondent represents and warrants that this contract is not prohibited by Government Code §2274.0102.

**3.22 BOYCOTTING ENERGY COMPANIES:** To the extent applicable to respondent and this contract, respondent certifies that respondent does not boycott energy companies and will not boycott energy companies during the term of the contract in accordance with Government Code §2274.002.

#### **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 15<sup>th</sup> day of the month after the goods have been delivered or services have been provided, or as otherwise stated on the contract. No payment will be made under the contract without the prior submission of detailed and 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., or Texas Identification Number (TIN).
  - (4) Complete PO number.
  - (5) Telephone number.
  - (6) Description of goods or services 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) Quantity, unit of measure, unit price, and extended price of each line item.
  - (8) Grand total.



- (9) Shipment date of merchandise or date of service, if lease, include the payment number (e.g., 1 of 36).
- (10) Any additional requirements as stated in the solicitation or specification.

**4.04 PAYMENT:** Payment for goods or services purchased with state funds is made by warrants or by direct deposit. 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 funds.

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) If 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 must 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 must 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 must obtain necessary licenses, copyrights, trademarks, or patents for TxDOT's use.
- (d) Vendor must 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 Chapters 206 and 213:

- (a) Effective April 18, 2020, state agencies shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC, Chapters 206 and 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 must provide accessibility information for the purchased goods or services in accordance with 1 TAC §213.18 (b).

**4.07 CYBER SECURITY TRAINING:** In accordance with Government Code §2054.5192, each vendor personnel that will access a TxDOT computer system or database must complete a TxDOT-approved cyber security training program that is certified under Government Code §2054.5192. The training program must be completed by each vendor during the term of the purchase order and during any renewal period. The vendor must provide verification of completion of the cyber security training program in a method designated by TxDOT.

**4.08 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.

**4.09 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.

**4.10 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS:** Vendor has 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.

**4.11 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.

**4.12 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).

**4.13 FORCE MAJEURE:** TxDOT may, at its sole discretion, 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, force of nature, pandemic, public health crisis, or other unavoidable cause not attributable to the fault or negligence of vendor (any such event or cause referred to herein as "force majeure"). To obtain relief based on force majeure, vendor must file a written request with TxDOT describing the events, dates, and effect of the events on vendor's ability to perform its obligations under 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 right to seek relief under this Section 4.12. Upon an event of force majeure, vendor must use commercially reasonable efforts to commence performance whenever and to whatever extent possible without delay. An event of force majeure does not excuse vendor from any obligation under the contract unless TxDOT grants relief in writing in response to a request for relief under this Section 4.13.

**4.14 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, must provide the state auditor access to any information the state auditor considers relevant to the investigation or audit.
- (b) TxDOT's internal auditors may 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 must 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.

**4.15 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 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 ATTORNEYS' 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 ATTORNEYS' 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 will 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, or
  - (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, must), 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, or
  - (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, ATTORNEYS' 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 ATTORNEYS' 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.

**4.16 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 subcontractors work or negligence in performance of the work by vendor's or subcontractor's personnel or equipment.

**4.17 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.

In accordance with Section 2252.907 of the Government Code, 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. 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 and its employees or subcontractors must 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. 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.

**4.18 BUY TEXAS:** In accordance with Government Code §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.

**4.19 COMPETENCE OF VENDOR:** To be entitled to consideration, vendor must 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, must be employed under and for the contract. Vendor must, at its own cost, obtain any licenses, certifications, and permits required for the performance of the service.

**4.20 CHANGES IN WORK:** If TxDOT determines it necessary to require corrections to completed work due to errors made by vendor, vendor must correct the work at no additional cost to TxDOT. For negotiated contracts, if TxDOT requires changes in previously-approved and completed work, vendor must 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.

**4.21 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.

**4.22 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.

**4.23 PUBLIC DISCLOSURE:** No public disclosures or news releases pertaining to this contract shall be made without prior written approval of the Texas Department of Transportation.

**4.24 DISASTER RECOVERY PLAN:** If required in the solicitation, respondent must provide 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 must provide the required TxDOT insurance form upon written notice from TxDOT. Vendor must 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 must maintain all required insurance coverage throughout the term of the contract. Vendor must 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 must have a waiver of subrogation endorsement in favor of TxDOT. TxDOT will allow deductible policies. Vendor must 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; or
- (c) Otherwise improving real property or an appurtenance to real property through similar activities.

Vendor must 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 (DWC-81, DWC-82, DWC-83, or DWC-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" do not include activities unrelated to the project such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- (b) Vendor must 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, Government Code §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 must 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; and
    - (2) No later than seven (7) business 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 must retain all required certificates of coverage for the duration of the project and for one year thereafter.
  - (g) Vendor must notify the governmental entity in writing by certified mail or personal delivery, within ten (10) business 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 must 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 must 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, Government Code §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's 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 to 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's beginning work on the project; and
    - (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) business 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; and
  - (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) business days after receipt of notice of breach from the governmental entity.

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

**5.07 COMMERCIAL AUTOMOBILE POLICY:** Required coverage must, 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 will 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 will 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 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. If any employee of the vendor violates this requirement, TxDOT may terminate the contract for cause, in addition to seeking any other available remedies. Vendor's employees must comply with TxDOT's policy prohibiting smoking in TxDOT buildings.



**6.03 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 must immediately remove that employee or subcontractor.

**6.04 LABOR/MATERIAL/EQUIPMENT:** Vendor must 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 must 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.

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

**6.06 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.

**6.07 SUBCONTRACTING REQUIREMENTS:** In accordance with Government Code §§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>.

**6.08 PAYMENT OF SUBCONTRACTORS:** As provided by Government Code §2251.022, vendor must 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.

**6.09 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, 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, 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 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 regulations relative to nondiscrimination on the grounds of race, color, or national origin.
  - (4) Information and Reports: The contractor must provide all information and reports required by the acts, regulations, and directives issued pursuant thereto and must 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 must so certify to TxDOT or the FHWA, as appropriate, and must 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; and/or
    - (b) Cancelling, terminating, or suspending a contract, in whole or in part.
  - (6) Incorporation of Provisions: The contractor must 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 must 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.

**6.10 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; and
- (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 will 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 must continue performance and will 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 §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 will 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 will 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 services 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 cost or penalty, by providing thirty (30) calendar days written notice. In the event of such termination, vendor must, 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 will not relieve vendor of any obligation or liability that has occurred prior to termination. Vendor must refund any balance of unused prepaid funds.
- (c) **FUNDING:** The contract may be terminated by TxDOT in whole or in part, without cost or penalty, pursuant to §4.02 of these Terms and Conditions.

**8.04 SALE OR ASSIGNMENT:** Vendor may 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 must 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) calendar 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 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 CONTRACTS**

- (a) TxDOT reserves the right to extend a contract, for time only, for a period not to exceed 180 calendar 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) calendar 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 will 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, and will 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 will 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 and 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 will not release vendor from any liabilities or obligations set forth in the terms and conditions and contract or any work orders 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 warranty, confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice, and fees verification. Upon expiration or termination of the contract for any reason, TxDOT will retain ownership of all associated work products and documentation obtained from or created by vendor under the contract. Vendor must 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 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



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](http://www.txdot.gov/business/vendors/epp.html)

To speak with a supplier support specialist, call 844.893.8837 or email at [earlypay@txdot.gov](mailto:earlypay@txdot.gov)

**THIS PAGE SHOULD BE RETURNED WITH YOUR COMPLETED RESPONSE**

## Attachment A

### Historically Underutilized Business Participation

#### I.3 Historically Underutilized Business Participation

In accordance with Texas Government Code [§2161.252](#), a proposal that **does not** contain a [HUB Subcontracting Plan \(HSP\)](#) is non-responsive and will be rejected without further evaluation. In addition, if the Department determines that the HSP was not developed in good faith, it will reject the proposal for failing to comply with material specifications based on the solicitation.

##### I.3.1 Introduction

The Department is committed to promoting full and equal business opportunities for businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study. The Department encourages the use of Historically Underutilized Businesses (HUBs) through race, ethnic and gender-neutral means.

Pursuant to [Texas Government Code §2161.181](#) and [§2161.182](#), and the Department's HUB policy and rules, the Department is required to make a good faith effort to increase HUB participation in its contracts. The Department may accomplish the goal of increased HUB participation by contracting directly with HUBs or indirectly through subcontracting opportunities.

##### I.3.2 Department's Administrative Rules

The Department has adopted the CPA's HUB rules as its own. The Department's HUB rules are located in [Title 43, Part 1, Chapter 9, Subchapter L](#) of the Texas Administrative Code, and the CPA rules are located in [Title 34, Part 1, Chapter 20, Subchapter D, Division 1](#). If there are any discrepancies between the Department's administrative rules and this solicitation, the rules shall take priority.

##### I.3.3 HUB Participation Goal

The CPA has established statewide HUB participation goals for different categories of contracts in [34 T.A.C. §20.284](#). To meet or exceed the HUB participation goals, the Department encourages outreach to certified HUBs. Contractors shall make a good faith effort to include certified HUBs in the procurement process.

This contract is classified as a service contract under the CPA rule, and therefore has a HUB Annual Procurement Utilization Goal of 26.0% per fiscal year.

##### I.3.4 Required HUB Subcontracting Plan

In accordance with Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of \$100,000 or more over the life of the contract (including any renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

In accordance with [34 T.A.C. §20.285\(a\),\(1\),\(C\)](#) of the HUB Rules. State agencies may determine that subcontracting is probable for only a subset of the work expected to be performed or the funds to be

expended under the contract. If an agency determines that subcontracting is probable on only a portion of a contract, it shall document its reasons in writing for the procurement file.

The Department has determined that subcontracting opportunities are probable for this solicitation. As a result, the respondent must submit an HSP with its proposal. The HSP is required whether a respondent intends to subcontract or not.

In the HSP, a respondent must indicate whether it is a Texas certified HUB. Being a certified HUB does not exempt a respondent from completing the HSP requirement.

The Department shall review the documentation submitted by the respondent to determine if a good faith effort has been made, in accordance with solicitation and HSP requirements. During the good faith effort evaluation, The Department may, at its discretion, allow clarifications or enhancements to information submitted with the HSP.

If the Department determines that the respondent's HSP was not developed in good faith, the HSP will be considered non-responsive and will be rejected as a material failure to comply with the advertised specifications. The reasons for rejection shall be recorded in the procurement file.

In accordance with Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of \$100,000 or more over the life of the contract (including any renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

### **I.3.5 CPA Centralized Master Bidder's List**

Respondents may search for HUB subcontractors in the CPA's [Centralized Master Bidders List \(CMBL\)/HUB Directory](#). For this procurement, the Department has identified the following class and item codes for potential subcontracting opportunities:

***NIGP Class/Item Code: 915-03, 961-53***

Respondents are not required to use, nor limited to using, the class and item codes identified above, and may identify other areas for subcontracting.

The Department does not endorse, recommend nor attest to the capabilities of any company or individual listed on the CPA's CMBL. The list of certified HUBs is subject to change, so respondents are encouraged to refer to the CMBL often to find the most current listing of HUBs.

### **I.3.6 HUB Subcontracting Procedures – If a Respondent Intends to Subcontract**

An HSP must demonstrate that the respondent made a good faith effort to comply with the Department's HUB policies and procedures. The following subparts outline the items that the Department will review in determining whether an HSP meets the good faith effort standard. A respondent that intends to subcontract must complete the HSP to document its good faith efforts.

#### **I.3.6.1 Identify Subcontracting Areas and Divide Them into Reasonable Lots**

A respondent should first identify each area of the contract work it intends to subcontract. Then, to maximize HUB participation, it should divide the contract work into reasonable lots or portions, to the extent consistent with prudent industry practices.



### **I.3.6.2 Notify Potential HUB Subcontractors**

The HSP must demonstrate that the respondent made a good faith effort to subcontract with HUBs that have an active HUB certification. The respondent's good faith efforts shall be shown through utilization of all methods in conformance with the development and submission of the HSP and by complying with the following steps:

**I.3.6.2.1** Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices. The respondent must determine which portions of work, including goods and services, will be subcontracted.

**I.3.6.2.2** Use the appropriate method(s) to demonstrate good faith effort. The respondent can use either method(s) 1, 2, or 3:

#### **I.3.6.3 Method 1: Respondent Intends to Subcontract with only HUBs:**

The respondent must identify in the HSP the HUBs that will be utilized and submit written documentation that confirms **100%** of all available subcontracting opportunities will be performed by one or more HUBs; **or**,

#### **I.3.6.4 Method 2: Respondent Intends to Subcontract with HUBs and Non-HUBs (Meet or Exceed the Goal):**

The respondent must identify in the HSP and submit written documentation that one or more HUBs, with an active HUB certification, will be utilized; and that the aggregate expected percentage of subcontracts with HUBs will meet or exceed the goal specified in this solicitation. Only HUB subcontractors that have an existing contract with the respondent for less than five years may be used to comply with the good faith effort requirements under this method.

When the aggregate expected percentage of subcontracts with HUBs meets or exceeds the goal specified in this solicitation, respondents may also use non-HUB subcontractors; **or**,

#### **I.3.6.5 Method 3: Respondent Intends to Subcontract with HUBs and Non-HUBs (Does Not Meet or Exceed the Goal):**

The respondent must identify in the HSP and submit documentation regarding both of the following requirements:

- Written notification to minority or women trade organizations or development centers to assist in identifying potential HUBs of the subcontracting opportunities the respondent intends to subcontract.

Respondents must give minority or women trade organizations or development centers at least seven (7) working days prior to submission of the respondent's response for dissemination of the subcontracting opportunities to their members. A list of minority and women trade organizations is located on the CPA's website under the [Minority and Women Organization link](#).

- written notification to at least three (3) HUB businesses of the subcontracting opportunities that the respondent intends to subcontract. The written notice must be sent to potential HUB subcontractors prior to submitting proposals and must include:
  - a description of the scope of work to be subcontracted,

- information regarding the location to review project plans or specifications,
- information about bonding and insurance requirements,
- required qualifications and other contract requirements, and
- a description of how the subcontractor can contact the respondent.

Respondents must give potential HUB subcontractors a reasonable amount of time to respond to the notice, at least seven (7) working days prior to submission of the respondent's response unless circumstances require a different time-period, which is determined by the agency and documented in the contract file;

Respondents must also use the CMBL, the HUB Directory, and Internet resources when searching for HUB subcontractors. Respondents may rely on the services of contractor groups; local, state and federal business assistance offices; and other organizations that provide assistance in identifying qualified applicants for the HUB program.

#### **I.3.6.6 Written Justification of the Selection Process**

The Department will determine if a good faith effort was made by the respondent in the development of the required HSP. One or more of the methods identified in the previous sections may be applicable to the respondent's good faith efforts in developing and submission of the HSP. The Department may require the respondent to submit additional documentation explaining how the respondent made a good faith effort in accordance with the solicitation.

A respondent must provide written justification of its selection process if it chooses a non-HUB subcontractor. The justification should demonstrate that the respondent negotiated in good faith with qualified HUB bidders, and did not reject qualified HUBs, with an active HUB certification.

#### **I.3.7 Method 4: Respondent Does Not Intend to Subcontract**

When the respondent plans to complete all contract requirements with its own equipment, supplies, materials and/or employees, it is still required to complete an HSP.

The respondent must complete the "Self-Performance Justification" portion of the HSP, and attest that it does not intend to subcontract for any goods or services, including the class and item codes identified in Section I.3.5. In addition, the respondent must identify the sections of the proposal that describe how it will complete the Scope of Work using its own resources or provide a statement explaining how it will complete the Scope of Work using its own resources. The respondent must agree to comply with the following if requested by the Department:

- provide evidence of sufficient respondent staffing to meet the solicitation requirements,
- provide monthly payroll records showing the respondent staff fully dedicated to the contract,
- allow the Department to conduct an onsite review of company headquarters or work site where services are to be performed, and,
- provide documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the Scope of Work.

#### **I.3.8 Post-award HSP Requirements**

The [HUB Subcontracting Plan \(HSP\)](#) shall be reviewed and evaluated prior to contract award and, if accepted, the finalized HSP will become part of the contract with the successful respondent(s).

After contract award, the Department will coordinate a post-award meeting with the successful respondent to discuss HSP reporting requirements. The contractor must maintain business records

documenting compliance with the HSP, and must submit monthly subcontract reports to the Department by completing the HUB [“Prime Contractor Progress Assessment Report”](#) and **“HUB Subcontracting Plan (HSP) Progress Compliance Form - 2579”**. This monthly report is required as a condition for payment to report to the agency the identity and the amount paid to all subcontractors.

As a condition of award, the Contractor is required to send notification to all selected subcontractors as identified in the accepted/approved HSP. In addition, a copy of the notification must be provided to the agency’s Contract Manager and/or HUB Program Office within 10 days of the contract award.

During the term of the contract, if the parties in the contract amend the contract to include a change to the scope of work or add additional funding, the Department will evaluate to determine the probability of additional subcontracting opportunities. When applicable, the Contractor must submit an HSP change request for the Department’s review. The requirements for an HSP change request will be covered in the post-award meeting.

When making a change to an HSP, the Contractor will obtain prior written approval from the Department before making any changes to the HSP. Proposed changes must comply with the HUB Program good faith effort requirements relating to the development and submission of a HSP.

If the contractor decides to subcontract any part of the contract after the award, it must follow the good faith effort procedures outlined in Section I.3.6 of this solicitation (e.g., divide work into reasonable lots, notify at least three (3) vendors per subcontracted area, provide written justification of the selection process, or participate in the Mentor Protégé Program).

For this reason, the Department encourages respondents to identify, as part of their HSP, multiple subcontractors able to perform the work in each area the respondent plans to subcontract. Selecting additional subcontractors may help the selected contractor make changes to its original HSP, when needed, and will allow the Department to approve any necessary changes expeditiously.

Failure to meet the HSP and post-award requirements will constitute a breach of contract, and will be subject to remedial actions. The Department may also report noncompliance to the CPA in accordance with the provisions of the Vendor Performance and Debarment Program ([see 34 T.A.C. §20.585 relating to Debarment](#)) and ([see 34 T.A.C. §20.586 relating to Procedures for Investigations and Debarment](#)).