INSTRUCTIONS TO RESPONDENTS

THE ATTACHED SOLICITATION SHOULD BE RETURNED AS FOLLOWS:

Place a label in the lower left-hand corner of all sealed envelope(s) or box(es) as shown in the below example.

Bid No.: 601320000027667
Bid Opening: February 1, 2018 - 9:00AM
Purchaser: Santiago Garcia, CTPM

HAND DELIVERY

or

COURIER SERVICE, UNITED STATES POSTAL SERVICE, FEDERAL EXPRESS, UNITED PARCEL SERVICE OR OTHER MAIL DELIVERY SERVICE

Texas Department of Transportation
4615 N.W. Loop 410
San Antonio, TX 78229
Attn: Purchasing Office

or

Responses may be submitted via e—mail if they are signed and in pdf format. Responses that are late, illegible, incomplete, or otherwise non-responsive will not be considered for award. TxDOT is not responsible for failure of electronic equipment or operator error.

USE OF NATIONAL INSTITUTE OF GOVERNMENTAL PURCHASING CODE

The Texas Department of Transportation (TxDOT) uses the National Institute of Governmental Purchasing, Inc., (NIGP) code to standardize purchases by conforming to the class, item, and group structure of the code. The NIGP code is used to select vendors for our master vendor file from the Texas Comptroller of Public Accounts (CPA) Centralized Master Bidders List (CMBL).

New suppliers and other vendors wishing to furnish materials, equipment, supplies and services to TxDOT should apply to be on the CMBL to receive bidding opportunities.

Existing TxDOT vendors need only be concerned that the information listed on the CMBL file is correct, and that the applicable NIGP class and item are selected for those you can provide.

CMBL information is available online at: http://www.window.state.tx.us/procurement/prog/cmbl/, or by phoning 1-512-463-3459.

Early Payment Program - TxDOT is offering an important program to all respondents that provide prioritized invoice processing and payments (prior to the 30th day after receipt of a correct invoice). The program provides enrolled vendors enhanced benefits from improved invoice processing to priority handling to cash advancement and technology efficiencies.

Respondents offering a cash discount in exchange for TxDOT's priority invoice processing and early payment agreement, should complete and return the attached form entitled "Priority Invoice and Early Payment Program" with the response.

Additional information may be found at the following website: http://www.txdot.gov/business/vendors/epp.html.

Revised 10/02/2015

INVITATION FOR BID

01/15/2018

SOLICITATION NO: 601320000027667

OPENING DATE 09:00 AM Feb 01, 2018

To:	Return Sealed Response To:
	See Body of Solicitation for **Specific Return Instructions**
	BUYER: Garcia, Santiago **PHONE:** 210/615-6403

Shows opening date and number in lower left hand corner of sealed response envelope and show return address of vendor.
Vendor agrees to comply with the solicitation below and at terms and conditions.
F.O.B. destination means vendor retain title to goods until delivered and the price quoted includes all freight charges.

Delivery in _____Days
Cash Discount_____%_____ Days

QUOTE F.O.B. DESTINATION

Item No.	Item Description	Quantity	Unit	Make/ Model	Unit Price	Extended Price
	SHIP THIS ITEM TO THE FOLLOWING LOCATION CORPUS CHRISTI DIST HDQ 1701 S PADRE ISLAND DRIVE SH 358 GREENWOOD EXIT CORPUS CHRISTI TX 78416 United States					
1	55096272418 FLASHERS, SOLARED POWERED. 24 HOUR FLASH, PHOTOVOLTAIC, YELLOW LEDLAMP, EQUIPPED W/ TWO 12 IN. LED LAMPS, MEETING TXDOT SPECIAL SPECIFICATION Red/infrared over height vehicle detection system, 24VDC system, Z-pattern. **EX: Trigg Industries Part# 3400-Z-S or TxDOT approved equal.**	2.00	EA	_____	_____	_____
2	55096272400 FLASHERS, SOLARED POWERED.24 HOUR, PHOTOVOLTAIC, YELLOW LED LAMP,EQUIPPED W/ ONE 12 INCH LED LAMP, MEETINGTXDOT SPECIAL SPECIFICATION TO-4051, Solar electric power assembly 100W w/DCDC converter. **EX: Trigg Industries Part# SEPA100-DS-ALC18/DCDC122450 or TxDOT approved equal.**	2.00	EA	_____	_____	_____
3	55088332550 FLASHERS, TRAFFIC SIGNAL.30 AMP, 120 VOLT, 2 CIRCUIT, EMERGENCY,SCREW TERMINAL TYPE Solar electric power assembly 150W w/DCDC converter. **EX: Trigg Industries Part# SEPA150-DM-ALC18/DCDC122450 or TxDOT approved equal.**	2.00	EA	_____	_____	_____

IF RESPONDING, FORM MUST BE SIGNED. IF NOT RESPONDING. DO NOT RETURN THIS FORM.

Failure to sign will disqualify response.

_____
Authorized Signature Date

_____
Printed Name

By signing solicitation, respondent certifies that if the Texas address is shown as the address of the respondent, respondent qualifies as a Texas Bidder as defined in 34 T AC Rule 20.306

INVITATION FOR BID

Texas Department of Transportation

01/15/2018

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QUOTE F.O.B. DESTINATION

Item No.	Item Description	Quantity	Unit	Make/ Model	Unit Price	Extended Price
4	65515390000 FLASH ATTACHMENTS, AND SUPPLIES Pole mount bracket **EX: Trigg Industries Part# PMB-406 or TxDOT approved equal.**	4.00	EA	_____	_____	_____
5	55085694804 PARTS AND ACCESSORIES, TRAFFIC SIGNAL. BRACKET ASSY, FLASHER, 8 IN. TO 12 IN. ADJUSTABLE CLAMP, 3 HOLE MOUNT. Three axis mount for pole mount bracket installation. **EX: Trigg Industries Part# TGZ-M017 or TxDOT approved equal.** **The following comments apply to the entire Solicitation** This solicitation is to purchase over height vehicle detection systems for the Corpus Christi District office. This solicitation is posted on the Electronic State Business Daily (ESBD). It is the responsibility of the interested parties to periodically check the Electronic State Business Daily (ESBD) for updates to the procurement prior to submitting a response. The respondent's failure to periodically check the ESBD will in no way release the selected vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the solicitation. **http://www.txsmartbuy.com/sp** Award shall be performed in accordance with the documents noted below. In the event of any conflict, terms contained in the documents shall prevail in the order listed below: * Solicitation 601320000027667 * TxDOT Terms and Conditions, revised October 2017 * Payment shall be in accordance with part 4.04, paras. (b) of the TxDOT Terms and Conditions. Delete para. 5, Insurance Requirements in its entirety. **FOB Destination *please note* respondents are advised, when responding to this solicitation, to include all freight charges in their response. Vendor shall be responsible for any shipping charges or**	4.00	EA	_____	_____	_____

INVITATION FOR BID

Texas Department of Transportation

01/15/2018

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QUOTE F.O.B. DESTINATION

Item No.	Item Description	Quantity	Unit	Make/ Model	Unit Price	Extended Price
	insurance coverage or claims to or from the manufacturer's site or repair center. Special packaging requirements for return of products shall be the vendor's responsibility. Vendor shall bear the risk of loss, damage, or theft of product up to TxDOT premises. Acceptance Inspection: All equipment ordered will be subject to acceptance inspection and performance testing upon receipt. Acceptance inspection and performance testing will not take more than ten working days, weather permitting. The vendor will be notified within this time frame of any units not delivered in full compliance with the purchase order specifications. If any units are canceled for non-acceptance, the needed equipment may be purchased elsewhere and the vendor may be charged any additional increase in cost and handling. Deliveries shall be made between 8am and 4pm Monday through Friday, except on regularly observed state or federal holidays. Working day: A working day is defined as a calendar day, not including Saturdays, Sundays, or regularly observed state and federal holidays. Payment: Payment will be made in accordance with the Texas Prompt Payment Act, TGC, Subtitle F, Chapter 2251. Vendor shall submit one copy of a correct itemized invoice showing the purchase order number, payee i.d., remit to address, and phone number on invoice. Vendors may submit an electronic invoice. All electronic invoices shall be sent to rcs_invoices@txdot.gov (Note: There is an underscore "_" between rcs and invoices). All invoices received at the rcs_invoices email address will be filed for future reference and you will receive a receipt confirmation email. To avoid the confusion of duplicate invoices, please do not send other copies of this invoice via regular mail, fax or other means. On emails for electronic invoices, include the company name (as it appears on the invoice) and the po number in the subject line to assist in identifying and processing your invoices in a timely manner. TxDOT will not incur any penalty for late payment if payment is made in 30 days or less from receipt of goods or services and a correct invoice, which-ever is later. Note: Warrants will not be issued to a vendor without a current Texas identification number. The equipment furnished shall be the latest model in current production as offered to commercial trade and shall be of quality workmanship and material. The vendor represents that all equipment offered shall be new. Used, shopworn, demonstrator, prototype or discontinued					

INVITATION FOR BID

Texas Department of Transportation

01/15/2018

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Delivery in _____Days
Cash Discount_____%_____ Days

QUOTE F.O.B. DESTINATION

Item No.	Item Description	Quantity	Unit	Make/ Model	Unit Price	Extended Price
	models are not acceptable. **If bidding other than the referenced product(s), or if no product is referenced, vendor will provide printed documentation with the bid; which will permit full verification of each of the specifications of this Invitation For Bid.** Warranty: This equipment shall be warranted against defective materials, workmanship and failure for at least 12 months. If the manufacturer's warranty is for a period in excess of 12 months, the standard warranty shall apply. The vendor shall furnish a warranty with the equipment indicating the terms and conditions of the warranty. Exceptions to this warranty requirement shall be stated on the Invitation For Bid. Vendor shall place purchase order number on each carton and shipping label. Manual(s): Original manual(s) containing illustrated parts list(s) and operating and service instructions for the unit shall be delivered with each unit. Copies of manual(s) are not acceptable. * Manual(s) shall be as detailed as possible outlining all necessary service and operating instructions for each unit delivered. * Parts list(s) shall cover all components of the unit. Each part shall be identified by part number, description, and component location. * Necessary warnings and safety precautions shall be included. **If the name of your company is not printed on the heading of this solicitation, you must write the full name of company, full name of signer, mailing address and respondent's Employer Identification Number (EIN) on the face of the solicitation.** Respondent is required to provide the name and phone number of the point-of-contact for the submitted response. Be advised, that this point-of-contact will not be recognized as or accepted in lieu of the "Authorized Signature" requirement of this Invitation For Bid: Name:_____ Phone:_____ Fax number:_____ Email:_____ For clarification of the specifications of the solicitation, respondents may contact: Purchaser: Santiago Garcia Telephone: (210) 615-6403 Email: santiago.garcia5@txdot.gov The individual listed above may be telephoned or emailed for clarification of the specifications only. No					

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01/15/2018

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Delivery in _____Days
Cash Discount_____%_____ Days

QUOTE F.O.B. DESTINATION

Item No.	Item Description	Quantity	Unit	Make/ Model	Unit Price	Extended Price
	authority is intended or implied that specifications may be amended or alternates accepted prior to solicitation opening without written approval. **Responses must be submitted on this solicitation form. Failure to comply will disqualify submitted response. All responses must be signed. Responses that are unsigned, late, illegible, incomplete or otherwise non-responsive will not be considered for award. Responses may be submitted via e-mail if they are signed and in pdf format. TxDOT is not responsible for failure of electronic equipment or operator error.** **Email: pro_south_bids@txdot.gov** **Bids may also be mailed or delivered to:** **Texas Department of Transportation** **4615 N.W. Loop 410** **San Antonio, Texas 78229** **Attention: Santiago Garcia - Bldg. #2 – Purchasing** **IFB# 601320000027667** **The bid opening will be held at:** **Texas Department of Transportation** **4615 N.W. Loop 410** **Bldg. #2 – Purchasing Office** **San Antonio, Texas 78229** Vendor to provide current company name: _____ Vendor to provide Federal EIN: _____ If invoice will be submitted by, and/or payment made to, an EIN or company name different from the vendor on the po, vendor must complete the following to authorize payment: EIN of company authorized to invoice for vendor: _____ Name of invoicing company: _____ EIN of company authorized to receive: _____ Name of company to be paid: _____ PREFERENCE AND VENDOR ID NUMBER. Check below if preference claimed under rule 34TAC 20.38. Tie-Bid Preferences: _ Supplies, materials or equipment produced in Texas or offered by a Texas bidder _ Agricultural products produced or grown in Texas					

INVITATION FOR BID

01/15/2018

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QUOTE F.O.B. DESTINATION

Item No.	Item Description	Quantity	Unit	Make/ Model	Unit Price	Extended Price
	_ Agricultural products and services offered by Texas bidder _ USA produced supplies, material or equipment _ Products produced at facilities located on formerly contaminated property _ Products and services from economically depressed or blighted areas _ Goods produced or offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident Source Preferences _ Products of persons with mental or physical disabilities _ Vendors that meet or exceed air quality standards. For contracts to be performed, in whole or in part, in a designated non-attainment area or an affected county, as those terms are defined by Health and Safety Code 386.001 Texas emission reduction plan _ Manufacturer that has a recycle program for computer equipment _ Contractor providing foods of higher nutritional value Specification Preferences: Point lines made of recycled materials, remanufactured, or environmentally sensitive materials including recycled steel _ Energy efficient products _ Rubberized asphalt paving materials _ Recycled motor oil and lubricants In an effort to minimize identity theft, every company must have an Employer Identification Number (EIN), also known as a federal tax identification number, prior to award of a purchase order. For information on obtaining your EIN you may call 800-829-4933 or visit the following website: http://www.irs.gov/businesses/small-businessesself-employed/employer-id-numbers-eins (Note: This link will not work if capitalization is used. Type in navigation bar using lower case letters.)					

TEXAS DEPARTMENT OF TRANSPORTATION
TERMS AND CONDITIONS

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TEXAS DEPARTMENT OF TRANSPORTATION
TERMS AND CONDITIONS

PART 1. INTRODUCTION

1.01 GENERAL: These Terms and Conditions shall apply to all solicitations for goods and/or services [including without limitation any Request for Quote (RFQ), Invitation for Bids (IFB), Request for Offer (RFO) and Request for Proposal (RFP)] offered by the Texas Department of Transportation (TxDOT) (each, a "solicitation") and any purchase order issued by TxDOT ("purchase order" or "contract"). The term "response" or "bid" shall mean the proposal, quote, bid, or offer made to TxDOT in response to a solicitation. The term "respondent" or "bidder" shall mean any party who makes a response to a solicitation, including the vendor. The term "vendor" or "contractor" shall mean the party listed as vendor on the purchase order.

1.02 STATUTORY AUTHORITY: This procurement falls under the statutory authority of Government Code Chapter 2151 (commonly known as the "Purchasing Act"), Chapter 2155 (Purchasing: General Rules and Procedures), Chapter 2157 (Purchasing Methods) and Chapter 2161 (Historically Underutilized Businesses, "HUBs"). The purchasing procedures include statutory requirements and those requirements established by rule of the Texas Comptroller of Public Accounts (CPA), Statewide Procurement Division (SPD) as contained in 34 TAC §20.31 and other applicable Federal and State statues and rules herein cited.

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

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

1.04 ENVIRONMENTAL IMPACT: It is the intent of TxDOT to purchase goods, equipment, and services having the least adverse environmental impact within the constraints of statutory purchasing requirements, departmental need, availability, and sound economical considerations in accordance with 34 TAC §20.38.

1.05 COMPLIANCE WITH LAWS: The vendor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the purchase order, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. The vendor shall maintain all required licenses, certifications, etc. throughout the term of the purchase order. When required, the vendor shall furnish TxDOT with satisfactory proof of its compliance.

PART 2. GENERAL INSTRUCTIONS

2.01 SPECIFICATIONS

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

(b) TxDOT will not be bound by any oral statement or representation contrary to the written specifications of the solicitation. Any revision, clarification, or interpretations pertaining to the solicitation will be in writing and issued by TxDOT as an Addendum. Any changes or interpretation not in an Addendum will not legally bind TxDOT. Any Addendum must be issued through TxDOT's purchasing department.

(c) The goods furnished or services performed shall be in accordance with the specifications set forth in the solicitation and with these Terms and Conditions. TxDOT will provide clarifications of the specifications and determine the quality and acceptability of goods furnished or work performed. If the solicitation is for a service, TxDOT will determine the manner of performance, the rate of progress of the work and whether the 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 Texas Government Code Section 2155.067. The respondent shall show manufacturer, brand or trade name, and other description of the product offered in response to the solicitation. If offer is for other than example(s) shown in the solicitation, include illustration(s) and complete description(s) of product(s) in the response to the solicitation. If respondent takes no exception to specifications or reference data in the response, the vendor will be required to furnish brand names, numbers, etc., as specified.

(e) Unless otherwise specified, all goods offered shall be new and in first class condition, including shipping and storage containers. Verbal agreements to the contrary will not be recognized.

(f) Manufacturer's standard warranty shall apply unless otherwise stated in this solicitation.

(g) All electrical items shall meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.

(h) Any iron or steel product produced through a manufacturing process and used in the project must be produced in the United States.

2.02 RESPONSE SUBMISSIONS

(a) Respondent shall submit the number of responses required in the manner stated in the specification or on the solicitation.

(b) Response should be submitted on the solicitation form. If submitting multiple responses, each response should be placed in a separate envelope, correctly identified with the solicitation number and opening or closing date. If no solicitation form is provided, responses shall be submitted as required in the specification.

(c) 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 or closing. Late responses will not be considered under any circumstances. Late responses will be returned unopened to the respondent.

(d) 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.

(e) Failure to sign the solicitation manually will disqualify the response. The person signing the response must have authorization to contractually bind the company. The solicitation response shall include an Employer Identification Number (EIN), full firm name and address of company. The EIN should be entered in the space provided on the solicitation.

(f) 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. 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.

(g) E-mailed responses may be accepted if stated on the solicitation. E-mailed responses must be in Portable Document Format (pdf), signed by the respondent and attached to the e-mail to be considered for award.

(h) RESPONDENT EXCEPTIONS OR CONDITIONED RESPONSES: Exceptions taken by the 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. TxDOT may reject a response that takes exception to TxDOT's Terms and Conditions.

(i) 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.

(j) 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.

(k) Samples, when requested must be furnished at no cost to TxDOT. TxDOT may perform tests on samples. If not destroyed in testing, samples will be returned upon request at respondent's expense. Each sample shall be marked with respondent's name and address, and TxDOT solicitation number. Samples shall not be enclosed or attached to a response unless specified in the solicitation.

2.03 PRICING

(a) TxDOT's automated purchasing system requires pricing to be submitted per unit, multiplied by the quantity and extended. Unit prices shall govern in the event of extension errors. If a trade discount is offered on the solicitation response, it should be deducted and net line extensions should be shown.

(b) All prices shall be firm for thirty (30) days from the solicitation response date unless otherwise stated in the solicitation. "Discount from list" pricing is not acceptable unless requested. Cash discounts are acceptable, but are not considered in making an award.

(c) All purchases are on a firm, fixed price basis unless otherwise stated in the solicitation.

(d) Price(s) shall not increase during the term of the purchase order unless otherwise stated in the solicitation. Vendor shall give price reductions to TxDOT that result from reduced cost to the vendor during the term of the purchase order.

(e) All prices shall be F.O.B. destination, freight prepaid and allowed. This means the vendor shall prepay and include the freight charges in the unit price.

(f) Purchases made for State use are exempt from the State and Local Sales tax and Federal Excise tax. Do not include tax in response pricing unless otherwise specified in the solicitation. State Sales tax and Federal Excise Tax Exemption Certificates will be furnished by TxDOT on request.

(g) The purchase order may contain a "Total Cost Not to Exceed" statement. Vendor shall not perform any work that may exceed either the purchase order total or the not-to-exceed total without prior written authorization from TxDOT.

(h) Consistent and continued tie response pricing may lead to rejection of the response by TxDOT and investigation for antitrust violations.

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

2.05 RECEIPT OF PROPOSALS AND BID OPENINGS

(a) NEGOTIATED SOLICITATIONS: At the time of opening or closing for RFOs or RFPs, only the names of respondents will be announced. Prices will not be disclosed.

(b) NON-NEGOTIATED SOLICITATIONS: At the time of opening or closing for IFBs, names of respondents will be announced. Prices will be disclosed.

(c) DISCLOSURE OF RESPONSE: Information submitted in an accepted response will not be returned to the respondent. The Public Information Act (PIA), Government Code Chapter 552, allows the public to have access to information in the possession of a governmental body through an open records request. Therefore, the respondent shall clearly identify in the response any confidential or proprietary information. Proprietary information identified by the respondent in the response, will be kept confidential by TxDOT to the extent permitted by state law. TxDOT merely raises the exception on behalf of the vendor. TxDOT takes no legal position on disclosure. TxDOT will use best efforts to give the respondent or the awarded 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 or closing date and time shall be initialed by respondent or authorized agent. Response cannot be altered or amended after the opening or closing 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 or closing date only with the approval of TxDOT based on respondent's written, acceptable reason. The response will not be considered for award but will be retained by TxDOT according to the response information confidentiality provision referenced in Section 2.05 (c).

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

(a) BEST VALUE CRITERIA FOR PURCHASE OF GOODS OR SERVICES: When specified in the solicitation, the factors listed in Government Code Section 2155.074 will be considered in making a best value award. This section allows TxDOT to apply best value criteria in order to obtain goods and services that provide the best value for TxDOT. Under these guidelines, a respondent is not automatically awarded a purchase order 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.

In determining best value, factors other than price may be considered in making an award. Those factors are:

(1) life cycle costs;

(2) the quality and reliability of goods and services;

(3) the 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; and

(7) other factors relevant to determining best value for the state in the context of a particular purchase.

(b) BEST VALUE CRITERIA FOR RFO PURCHASES: Best value criteria will be used on all information technology equipment or service purchases. Those best value criteria include but are 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 networks 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 service.

(e) TIE RESPONSES: In case of tie responses, one or more preferences described in Government Code Chapter 2155 and 34 TAC §20.36 and §20.38 will be used to make an award. Tie responses which cannot be resolved by application of one or more preferences shall be made by drawing lots.

2.08 PREFERENCES: A respondent may claim a preference under 34 TAC §20.38. To claim a preference, a respondent shall identify the preference on the solicitation or on the response to the solicitation. If the appropriate area on the solicitation or response is not marked, a preference will not be granted unless other documents included in the response show a right to the preference.

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

(a) If delay is foreseen, vendor shall give written notice to TxDOT. TxDOT has the right to extend delivery or service date if reasons appear valid. Vendor shall keep TxDOT advised at all times of the status of the order. Default in promised delivery or service date (unless vendor has received a written extension of the delivery or service date which has been signed by TxDOT), or failure to meet specifications, authorizes TxDOT to purchase goods or services elsewhere and charge the full increase, if any, in cost and handling to defaulting vendor.

(b) Delivery shall be made between 8 AM and 4 PM Monday through Friday except on regularly observed state or federal holidays, unless prior approval has been obtained from TxDOT or otherwise stated in the solicitation.

(c) Receipt of goods or services does not constitute acceptance.

(d) Goods and materials shall be properly packaged. Damaged goods and materials will not be accepted. If the damage is not readily apparent at the time of delivery, the goods shall be returned to the 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: Goods will be subject to inspection and test by TxDOT to the extent practicable at all times and places. Tests will be performed on samples taken from regular shipment. In the event samples tested fail to meet all conditions and requirements of the specification, the cost of the sample used and the cost of the testing shall be borne by the vendor. Goods which have been delivered and rejected in whole or in part may, at TxDOT's option, be returned to the vendor or held for disposition at vendor's risk and expense. Latent defects may result in revocation of acceptance. Acceptance of services shall be based on attainment of performance in accord with specifications and the purchase order.

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

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

- 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,
- Being currently under a Corrective Action Plan through the CPA,
- Having repeated negative Vendor Performance Reports for the same reason,
- Having purchase orders that have been cancelled or terminated in the previous 12 months for non-performance (i.e. late delivery, etc.).

Vendor performance information is located on the CPA website at:
http://www.window.state.tx.us/procurement/prog/vendor_performance/
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 Texas Administrative Code §20.108) TxDOT may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TxDOT, and any negative findings, as determined by TxDOT, may result in non-award to the Respondent.

PART 3. RESPONDENT AFFIRMATIONS

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

3.02 CONFORMANCE: The respondent warrants to TxDOT that all goods and services furnished shall conform in all respects to the terms of this purchase order, including any drawings, specifications or standards incorporated herein, and any defects in materials, workmanship, and free from such defects in design. In addition, respondent warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.

3.03 GRATUITIES: The 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 the submitted response to the solicitation.

3.04 CERTAIN BIDS AND CONTRACTS PROHIBITED: Under Government Code Section 2155.004, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or solicitation on which the bid or contract is based. If the respondent is not eligible, then any contract resulting from the solicitation shall be immediately terminated. Under Section 2155.004, Government Code, the 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: Neither the respondent nor the firm, corporation, partnership, or institution represented by the respondent, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas 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.

3.06 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES: The 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 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 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: The respondent has not colluded with, nor received any assistance from, any person who was paid by TxDOT to prepare specifications or a solicitation on which a respondent's bid is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract awarded.

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

NOTE: Pursuant to Government Code Section 403.055 and Family Code Section 231.006, a contract will not be issued to a respondent and warrants will be held by CPA if the vendor owes delinquent child support payment(s), a delinquent state tax, or other tax collected by the CPA.

3.09 CONTRACTING WITH EX-TXDOT EXECUTIVE DIRECTOR: Under Government Code Section 669.003, TxDOT may not enter into a contract with the executive director of TxDOT, an individual who was the executive director of TxDOT during the four years before the date of the contract, or with anyone who employs a current or former executive head of a state agency affected by Section 669.003, unless the Transportation Commission approves the contract in an open meeting and notifies the Legislative Budget Board, not later than the fifth day before the date of the vote, of the terms of the proposed contract.

(a) Accordingly, respondent certifies that:

(1) respondent is not the executive director of TxDOT;

(2) respondent was not at any time during the past four years the executive director of TxDOT; and

(3) respondent does not employ a current or former executive director of TxDOT;

or

(b) respondent and TxDOT have complied with the requirements of Government Code Section 669.003 concerning approval of the Transportation Commission and notice to the Legislative Budget Board.

Respondent acknowledges that the contract can be terminated at any time, and payments withheld, if this certification is false.

NOTE: If Section 669.003 applies, respondent must provide the following information as an attachment to the solicitation response: Name of applicable former TxDOT executive director, date of separation from TxDOT, position with respondent, and date of employment with respondent. This information is subject to public disclosure under Section 660.004.

3.10 DEBT TO THE STATE: Respondent agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support, 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, and that respondent is in compliance with the State of Texas statutes and rules relating to procurement, and that respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at: http://www.epls.gov.

(b) Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a bid or award a contract, including a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been:

(1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or

(2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

Under Section 2155.006, Government Code, 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.

Respondent acknowledges that if TxDOT determines that respondent was ineligible to have the bid accepted or contract awarded under Government Code Section 2155.006, TxDOT may immediately terminate the contract without further obligation to the vendor.

(c) 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 persons spouse.

(b) A notification required by this section shall be submitted in writing to the person designated to receive official notices under this purchase order and by first-class mail addressed to Contract Services Division, Texas Department of Transportation, 125 East 11th Street, Austin Texas 78701. The notice shall specify the 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 purchase order, 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 the respondent is certifying that the respondent does not have any knowledge that any of its employees or any employees of a subcontractor who are expected to work under this purchase order has a relative who is employed by TxDOT unless the respondent has notified TxDOT of each instance as required by subsection (b).

(d) If the vendor learns at any time that any of its employees or that any of the employees of a subcontractor who are performing work under this purchase order have a relative who is employed by TxDOT, the vendor shall notify TxDOT under subsection (b) of each instance within thirty days of obtaining that knowledge.

(e) If the vendor violates this section, TxDOT may terminate the purchase order immediately for cause, may impose any sanction permitted by law, and may pursue any other remedy permitted by law.

3.13 BOYCOTTING ISRAEL: Respondent certifies their company does not boycott Israel and will not during the term of the purchase order.

PART 4. GENERAL TERMS AND CONDITIONS

4.01 ORDERS

(a) Only authorized TxDOT purchasers have the authority to place orders for goods and services. Purchase orders must be issued by a TxDOT purchaser prior to a vendor providing the goods or service. 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 purchase order.

(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 the vendor's cost and also result in non-payment.

4.02 FUNDING: Any purchase order resulting from the solicitation is contingent upon the availability of funding, 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 addition, state agencies are prohibited from incurring obligations in excess of amounts lawfully appropriated by the Texas Legislature over the course of a biennium.

4.03 INVOICING

(a) Invoices must be submitted not later than the 15th day of the month after the goods have been delivered or services have been provided. No payment shall be made under the purchase order without the prior submission of detailed, correct invoices which comply with the requirements set forth in this Section 4.03. Invoices should be sent to the address shown on the purchase order. The vendor may receive more detailed instructions on invoicing after award.

(b) The invoice must at a minimum show the following:

(1) Vendor name as it appears on the purchase order.

(2) Remit to address.

(3) Employer identification number (EIN) Federal Tax I.D.

(4) The complete PO number.

(5) Telephone number.

(6) Description of item 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) Unit, unit price and extended price of each line item.

(8) Grand total.

(9) Shipment date of merchandise or date of service.

(10) Any additional requirements as stated in the solicitation or specification.

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

Additional information and a Direct Deposit Authorization application may be found at: https://fmx.cpa.state.tx.us/fm/payment/index.php.

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) As otherwise stated in the solicitation document.

OR

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

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 purchase order 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 purchase order shall be exclusively owned by TxDOT. Vendor shall provide TxDOT all assistance required to perfect such intellectual property rights without any charge or expense beyond those amounts payable for services rendered under the Contract. To the extent that title to any work created under the Contract is held by operation of law to not vest exclusively in TxDOT, such work shall is hereby irrevocably assigned to TxDOT.

(b) Vendor shall ensure that TxDOT's intellectual property rights, including but not limited to publication rights, copyrights, trademarks, patents and trade secrets, are secured from all suppliers, contractors and subcontractors.

(c) When applicable, each vendor shall obtain necessary licenses, copyrights, trademarks or patents for TxDOT's use.

(d) The vendor shall not assert rights at common law or in equity or establish any claim to TxDOT's intellectual property, including, but not limited to, licenses, claiming common law ownership of intellectual property, obtaining registrations for copyrights, trademarks, trade secrets or patents for any intellectual property developed in performance of the services authorized.

(e) THE VENDOR AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND TXDOT AND THE STATE FROM CLAIMS INVOLVING INFRINGEMENT OF THIRD PARTIES' LICENSES, TRADEMARKS, COPYRIGHTS, PATENTS, TRADE SECRETS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS AS SET FORTH IN SECTION 4.14 BELOW.

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

(a) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Vendor represents and warrants that technology to be provided to TxDOT and for TxDOT is in compliance with these requirements.

(b) Vendor shall provide Texas Department of Information Resources with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product or service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (http://www.buyaccessible.gov). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide the Texas Department of Information Resources with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at: http://www.section508.gov/.

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

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

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

4.10 VENUE AND JURISDICTION; APPLICABLE LAW: Venue for any suit concerning the solicitation and any resulting purchase order shall be in a court of competent jurisdiction in Travis County, Texas. The solicitation and any resulting purchase order shall be governed by, construed in accordance with, and interpreted under the laws of the State of Texas.

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

4.12 FORCE MAJEURE: TxDOT may grant relief for time only from performance of the purchase order if the vendor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the vendor (any such event or cause referred to herein as "force majeure"). The burden of proof for the need of such relief shall rest upon the vendor. To obtain relief based on force majeure, the vendor shall file a written request with TxDOT describing the events, dates and effect of the events on vendor's ability to perform according to the purchase order. Vendor must inform TxDOT in writing within 3 business days of the existence of such force majeure; failure to do so will waive the defense provided in this Section 4.13.

4.13 RIGHT TO AUDIT

(a) The State Auditor's Office, pursuant to Section 2262.154, ("state auditor") may conduct an audit or investigation of the vendor or any other entity or person receiving funds from the state directly under this purchase order or indirectly through a subcontract under this purchase order. Acceptance of funds directly under this purchase order or indirectly through a subcontract under this purchase order 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, the vendor or any other entity that is the subject of an audit or investigation by the state auditor agrees to provide the state auditor access to any information the state auditor considers relevant to the investigation or audit.

(b) TxDOT's internal auditors shall have the right to conduct an audit or investigation of the vendor or any other person receiving funds directly under this purchase order or indirectly through a subcontract under this purchase order. TxDOT has the right to audit the 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 agrees to 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 the Vendor and the requirement to cooperate is included in any subcontract it awards.

4.14 INDEMNIFICATION: Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and TXDOT, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, VENDORS, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL

RELATED COSTS, ATTORNEY FEES, COURT COSTS AND EXPENSES arising out of, or resulting from, any acts or omissions of the 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 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 ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Infringement:

(a) Vendor shall indemnify and hold harmless the State of Texas and TxDOT, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, trade secrets, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS 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 AND COURT COSTS. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE 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 ATTORNEY GENERAL.

(b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by:

  (1) any intellectual property right owned by or licensed to TxDOT, 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, shall), at Vendor's sole option and expense;

  (1) procure for TxDOT the right to continue to use the affected portion of the product or service, 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 THE 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 INDEMNIFY AND HOLD HARMLESS TXDOT, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS, AND/OR ASSIGNEES 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 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 ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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

4.16 CONFIDENTIALITY CLAUSE: TxDOT is governed by laws and regulations that make certain information confidential as well as specifying how public information is released. Notwithstanding any provision to the contrary, the vendor understands that TxDOT will comply with the Texas Public Information Act, Government Code Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. The vendor, its employees or subcontractors shall not divulge any information relative to TxDOT business at any time to a third party without the prior written approval of TxDOT. The vendor will notify TxDOT within 24 hours of receipt of any third party requests for information that was provided by TxDOT for use in performing the purchase order, including the purchase order itself. All information created by or accessible to a vendor while providing a good or service for TxDOT is confidential. If applicable to a service, upon award of a purchase order, the vendor may be required to complete and sign TxDOT Form 1828b, Information Resource Security Compliance and Confidentiality Agreement. Contractor is required to make any information created or exchanged with the state pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. Vendor agrees to provide the information to the public in any format reasonably required by TxDOT.

4.17 BUY TEXAS: Pursuant to Section 2155.4441 of the Government Code, the vendor shall buy products and materials produced in the State of Texas for use in providing services authorized in this contract when such products and materials are available at a comparable price and in a comparable period of time when compared to products and materials produced outside the state.

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

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

4.20 IT SERVICE CONTRACTS SECURITY: The vendor will implement appropriate administrative, physical and technical safeguards which reasonably and appropriately protect the confidentiality, integrity, and availability of services provided to TxDOT. The vendor will immediately report to TxDOT any security incident which it becomes aware. The 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 Title 1, Texas Administrative Code, Section 202.

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

4.22 ACCESS TO INFORMATION: The vendor is required to make any information created or exchanged with TxDOT pursuant to this purchase order, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to TxDOT. At a minimum the formats are to include portable document format (PDF) and HTML.

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.

PART 5. INSURANCE

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

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

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

5.04 WORKERS' COMPENSATION INSURANCE: Amounts of coverage are minimums and notice provisions are statutory (Texas Labor Code Chapter 406 and Title 28 Texas Administrative Code Chapter 110). The vendor is responsible for both Federal and State Unemployment Insurance coverage and Standard Workers' Compensation Insurance coverage:

5.05 WORKERS' COMPENSATION INSURANCE FOR BUILDING AND CONSTRUCTION SERVICES: The 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.

The vendor shall provide workers' compensation insurance for building and construction services in accordance with Title 28 Texas Administrative Code §110.110(c)(7).

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

(1) Certificate of coverage ("certificate") – A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81,

TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

(2) Duration of the project - includes the time from the beginning of the work on the project until the 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 §406.096) - includes all persons or entities performing all or part of the services the vendor has undertaken to perform on the project, regardless of whether that person contracted directly with the vendor and regardless of whether that person has employees. This includes, without limitation, independent vendors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

(b) The vendor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the vendor providing services on the project, for the duration of the project.

(c) The Vendor must provide a certificate of coverage to TxDOT prior to being awarded the purchase order.

(d) If the coverage period shown on the vendor's current certificate of coverage ends during the duration of the project, the 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) The vendor shall obtain from each person providing services on a project, and provide to TxDOT:

(1) a certificate of coverage, prior to that person beginning work on the project, so TxDOT will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the 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) The vendor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

(g) The vendor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the 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) The vendor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

(i) The vendor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the vendor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the 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 the vendor:

(a) a certificate of coverage, prior to the other person 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 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; 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, the vendor is representing to TxDOT that all employees of the 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 the vendor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

(k) The vendor's failure to comply with any of these provisions is a breach of contract by the vendor which entitles TxDOT to declare the purchase order void if the vendor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

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

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

PART 6. VENDOR PERSONNEL MANAGEMENT

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

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

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

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

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

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

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

6.08 SUBCONTRACTING REQUIREMENTS: In accordance with Government Code Sections 2161.181-182 and 34 TAC §20.11 and pursuant to the CPA Historically Underutilized Business (HUB) Rules, 34 TAC, §20.14, and Transportation DBE/HUB/SBE Rules, 43 TAC 9.50-.57 (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: http://www.dot.state.tx.us/gsd/purchasing/purchasing.htm.

6.09 PAYMENT OF SUBCONTRACTORS: As provided by Government Code Section 2251.022 Time for Payment by Vendor:

(a) A vendor who receives a payment from a governmental entity shall pay a subcontractor the appropriate share of the payment not later than the 10th day after the date the vendor receives the payment.

(b) The appropriate share is overdue on the 11th day after the date the vendor receives the payment.

6.10 VENDOR TITLE VI AFFIRMATIONS: The vendor affirms the following, with regard to the work performed by it under the purchase order:

(a) Vendor and its subcontractors shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The vendor shall not participate either directly or indirectly in any discriminatory employment practices. Failure by the 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 the vendor for work to

be performed under a subcontract, each potential subcontractor or supplier shall be notified by the vendor of the vendor's and subcontractor's obligations under its purchase order relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

(c) During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to collectively in this subsection (c) as the "contractor") agrees as follows:

(1) Compliance with Regulations: The contractor will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation , the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by TxDOT or the Federal Highway Administration (FHWA) to be pertinent and to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor will so certify to TxDOT or the FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the nondiscrimination provisions of this contract, TxDOT will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

a) withholding payments to the contractor under the contract until the contractor complies; and/or

b) cancelling, terminating, or suspending a contract, in whole or in part.

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

(d) The contractor agrees to comply with the provisions of Appendix A attached hereto, which is incorporated by reference and made a part hereof.

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

(a) All persons employed by Vendor during the term of this agreement to perform duties within the State of Texas; and

(b) All persons, including subcontractors, assigned by Vendor to perform work pursuant to this agreement.

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

PART 7. DISPUTE RESOLUTION

7.01 DISPUTE RESOLUTION: In accordance with Government Code, Chapter 2260, TxDOT has established a dispute resolution process in 43 Texas Administrative Code §§9.1 and 9.2 to resolve disputes that may arise between TxDOT and the vendor under the purchase order in 43 Texas Administrative Code §§9.1 and 9.2 (the dispute resolution process described by Government Code Chapter 2260 and 43 TAC §§9.1 and 9.2 referred to herein as the "dispute resolution process"). The dispute resolution process shall be used by TxDOT and the vendor to resolve disputes arising under the purchase order, including without limitation any claim for breach of contract. The contested case process provided in Chapter 2260 is the vendor's sole and exclusive process for seeking a remedy for an alleged breach of contract by TxDOT if the parties are unable to resolve their disputes as described above. Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the contract by TxDOT nor any other conduct of any representative of TxDOT relating to the contract shall be considered a waiver of sovereign immunity to suit. Notwithstanding any provision of the purchase order to the contrary, unless otherwise agreed in writing by TxDOT, the vendor shall continue performance and shall not be excused from performance during the period of contract claim or dispute is pending; however, the vendor may suspend performance during the pendency of such claim or dispute if the vendor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

PART 8. CONTRACT TERMS

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

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

8.03 TERMINATION OF A PURCHASE ORDER

(a) FOR CAUSE: If vendor fails to provide a good or service according to the provisions of the purchase order or fails to comply with any term or condition of the purchase order, or if any representation or certification made in the purchase order or any related document is false, incomplete or inaccurate, TxDOT may immediately terminate the purchase order upon written notice to the vendor. TxDOT may, at its option, re-solicit or award the purchase order 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 purchase order, TxDOT may purchase the goods or service elsewhere and charge any increase in cost to the defaulting vendor. TxDOT may impose sanctions, debar or suspend the vendor for abandonment or default(s) on the purchase order. 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 the vendor in writing prior to the exercise of such remedy. The 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 purchase order may be terminated in whole or in part, without penalty, by either party by providing thirty (30) days written notice to the other party. In the event of such termination, the vendor shall, unless otherwise agreed in writing, cease all work immediately upon the effective date of termination. TxDOT will be liable only for payments for goods or services ordered before the termination date. With regard to services, TxDOT will pay the vendor the purchase order price prorated for acceptable service performed up to the date specified in the notice of termination. Termination under this paragraph shall not relieve the vendor of any obligation or liability that has occurred prior to termination. The vendor shall refund any balance of unused prepaid funds.

8.04 SALE OR ASSIGNMENT: The purchase order is void if sold or assigned to another company without written approval from TxDOT. Written notification of changes to company name, address, telephone number, etc. shall be provided to TxDOT as soon as possible but not later than thirty (30) days from the date of change.

8.05 RENEWAL OF BLANKET PURCHASE ORDER FOR GOODS: A blanket purchase order for goods may be renewed for up to three additional like periods of time at the original price, terms and conditions, and any approved changes. Any changes will be clearly detailed in the amended purchase order.

8.06 RENEWAL OF PURCHASE ORDER FOR SERVICES: The purchase order may be renewed for up to three additional like periods of time at the same terms and conditions, or as otherwise stated in the solicitation, provided both parties agree in writing to do so prior to the expiration of the purchase order.

8.07 RENEWAL OF PURCHASE ORDER FOR NEGOTIATED GOODS OR SERVICES

(a) The purchase order may be renewed for up to three additional like periods of time at the same terms and conditions, or as otherwise stated in the solicitation, provided both parties agree in writing to do so prior to the expiration of the purchase order.

(b) For purchase orders issued using the RFP or RFO method of purchase, TxDOT reserves the right to negotiate additional time if circumstances require. TxDOT and the vendor may negotiate additional time and price based on the deliverable or need in the best interest of the state and TxDOT.

8.08 EXTENSION OF PURCHASE ORDERS

(a) TxDOT reserves the right to extend a purchase order for time only past the stated term to allow the vendor to complete the requirements or to accommodate unanticipated events or requirements prior to the expiration of the purchase order.

(b) A purchase order in its final renewal period may be further extended for time and money for a period up to ninety (90) days at the option of TxDOT.

(c) The vendor may request a time only extension of a purchase order by submitting written justification to TxDOT. TxDOT will approve or decline the request for extension in writing. An extension will only be effective if it is issued by the TxDOT purchasing department in the form of a purchase order change notice.

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

8.10 BINDING EFFECT AND SURVIVAL OF OBLIGATIONS

(a) By executing this purchase order, the vendor binds itself, its respective successors and assignees, to the faithful performance of the terms and conditions and provisions of the purchase order.

(b) Expiration or termination of the purchase order for any reason shall not release vendor from any liabilities or obligations set forth in the terms and conditions and purchase order or any work order that are expressly stated to survive any such expiration or termination or which by their nature are intended to be applicable following such expiration or termination, including any and all provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification. Upon expiration or termination of the purchase order for any reason, TxDOT shall retain ownership of all associated work products and documentation obtained from or created by the vendor under the purchase order. Vendor shall deliver all documents or other work product to TxDOT upon request, including original versions if so specified in the request.

(c) The term of service stated on the purchase order is binding on the vendor regardless of the term on the originating agency contract or its purchase order.

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);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U .S.C. 1681 et seq).

Appendix B

EARLY PAYMENT PROGRAM

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

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

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

Company: _____ Tax ID/EIN: _____

Contact Name: _____ Title: _____

Address: _____

Email: _____ Phone: _____

Billing Contact: _____ Title: _____

Address: _____

Email: _____ Phone: _____

OPTIONS (Please check one):

☐ Yes, I would like to enroll in the EPP with the following terms for all future invoices:_____ % / 10 Days / Net 30 **
Texas State Agencies are allowed to make early payments to vendors, but are required to take a discount in return. (Texas Government Code, Chapter 2155.382). TxDOT allows EPP vendors to determine the invoice discount rate (%) that best suits their business needs.

- I confirm that I am an authorized representative of this company and that if TxDOT pays any Invoiced Debt owed to the aforementioned company under or in connection with any Contract prior to the date by which such payment would otherwise be required to be made under the terms of that Contract, TxDOT shall be entitled to deduct and retain from that Invoiced Debt, for its own benefit, an Early Payment Discount which it will deduct and retain from that Invoiced Debt. These terms will apply to all invoices unpaid as of the date of signature as printed on this form. Early payment discounts are dynamically calculated, with a target payment date of 10 days from the date of invoice acceptance. The final discount taken is proportionate to the number of days the payment is accelerated. A discount is taken ONLY if payment is made before 30 days from the date of invoice acceptance.
- I confirm that I am an authorized representative of this company and agree to the Oxygen Network Supplier Terms of Use found at http://ftp.dot.state.tx.us/pub/txdot-info/fin/early-pmt/oxygen-network-terms.pdf

☐ I'm interested in the EPP, but would like a supplier support specialist to call me at this number _____

☐ I am already enrolled in the EPP

☐ No, I am not interested at this time

_____ _____ _____
Printed Name Signature Date

*Please note: Direct deposits post 1-3 business days after the payment date and paper checks could take up to 5 business days to receive
**TxDOT reserves the right to approve or reject any proposed rates.
To learn more about the program and its benefits, visit www.txdot.gov/business/vendors/epp.html
To speak with a supplier support specialist, call 844.893.6837 or email at earlypay@txdot.gov
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