



Dated: January 2025

Request for Proposal

**Marketing and Advertising Services for Don't
Mess with Texas®, Adopt-A-Highway Texas
and Community Landscape and Beautification
Award Program.**

Solicitation No.: 601440000045640

NIGP Class-Item: 915-03

Purchaser: Kristi Wright, CTCD, CTCM

Solicitation Calendar of Events	
Solicitation Open Date:	February 11, 2025
Non-Mandatory Pre-Response Conference:	February 20, 2025, 10:00 AM Central Time
Deadline for Submission of Questions: Reference Paragraph 7 – Contact Information	February 24, 2025
TxDOT Response to Questions to be posted by Date:	March 3, 2025
Solicitation Close Date:	March 13, 2025, 3:00 PM Central Time
Tentative Date for Contract Award:	June 2, 2025

1. Description:

This solicitation is to establish a contract for services for marketing and advertising of TxDOT's Don't Mess with Texas®, Adopt-A-Highway Texas campaigns and Community Landscape and Beautification Award Program Services. The vendor must assist TxDOT in the development, education, and public awareness of these campaigns.

2. Electronic State Business Daily (ESBD):

A notification of this solicitation and any updates are posted on the ESBD. The solicitation, addenda, or additional information are posted on Bonfire. It is the responsibility of the interested parties to periodically check the ESBD and Bonfire for updates to the procurement prior to submitting a response. Vendors active on the CMBL at the time the solicitation was posted will receive notifications regarding addenda or additional information related to the solicitation.

<http://www.txsmartbuy.com/esbd>

<https://txdot.bonfirehub.com>

3. Proprietary:

Not applicable for this solicitation.

4. Service or Delivery Location:

Not applicable for this solicitation.

5. Work or Delivery Hours:

Not applicable for this solicitation.

6. Estimated Quantities:

Not applicable for this solicitation.

7. Contact Information:

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

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

Primary Contact: Kristi Wright, CTCD, CTCM

Phone: 817-370-6803

Email: kristi.wright@txdot.gov

Secondary Contact: Stacie S. Collins, CTCD, CTCM

Phone: 936-633-4339

Email: Stacie.Collins@txdot.gov

When submitting questions through vendor Discussion, the vendor must include the name of the document and paragraph number related to the question.

NOTE: For assistance in submitting questions through Bonfire use the following link and reference the document and paragraph the question pertains to:

<https://vendorsupport.gobonfire.com/hc/en-us/articles/6832480724503-How-do-I-contact-the-Project-Owner->

8. Pre-Response Conference:

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

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

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

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

The pre-response conference information is shown below:

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

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

Example: John Doe – TxDOT

Meeting number: 23096080800

Meeting password: enPxHPM3T78

WebEx Link:

<https://txdot.webex.com/txdot/j.php?MTID=m7ed33e814697ee3cd2be39957f67019f>

Call-in number: 4156550003 United States TOLL

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

9. Logo License:

The awarded vendor will be granted a non-exclusive, limited, royalty-free license and revocable right to use the department's trademark and service mark known as the "Flying T" (the "Mark"), as provided by the department, only on deliverables prepared under the terms and conditions of the contract. The right and license granted by the contract automatically terminates on the expiration or termination of the contract, or upon vendor's breach of the terms and conditions of the contract.

10. Financial Requirements:

Be in good financial standing and current in payment of all taxes and fees such as state franchise fees.

Vendor must have the financial capacity to perform the requirements in accordance with the contract. TxDOT will review the vendor's audited or un-audited financial statement in accordance with Texas Government Code, Title 10, Subtitle D, Section 2156.007, to evaluate the vendor's financial stability.

Consolidated financial statements are not acceptable. The financial statements must be for the specific business entity that is responding to the solicitation and throughout the duration of the term of contract.

The financial statements must be provided at the lowest level for which the financial statements are available and for the past three years. If vendor has been in business less than three years, the requirement is for all available years. For any financial statements submitted at a level above Level 1, vendor must include an explanation why the financial statements are not available at a lower level. The financial statements do not have to be at the same level for each period submitted, but an explanation of the need for the variation is required with the response.

Acceptable Levels of financial statements (submit at the lowest feasible level):

- 10.1. Level 1 – A complete set of audited financial statements based on US Generally Accepted Accounting Principles (US GAAP). The submission must include the notes to the financial statements as well as any other information covered by the auditor’s opinion.
 - 10.2. Level 2 – A complete set of audited financial statements based on other than US GAAP but acceptable to the country of origin. The submission must include a letter from the certified public accountant discussing the areas of the financial statements that would be affected by a conversion to US GAAP, the notes to the financial statements as well as any other information covered by the auditor’s opinion.
 - 10.3. Level 3 – A complete set of reviewed statements based on US GAAP reviewed by an independent CPA. The submission must include the notes to the financial statements as well as any other information covered by the auditor’s report.
 - 10.4. Level 4 – A complete set of compiled statements compiled by an independent CPA (income statement and balance sheet at a minimum) as well as the note disclosures and any report issued by the auditor with regards to the statements. If the CPA is not independent, the report must state the accountant is not independent.
 - 10.5. Level 5 – Properly classified and presented balance sheets and income statements generated by the vendor’s accounting system. The submission must state the basis on which the statements are created and must be certified as true and reliable by an officer of the vendor’s business.
11. Performance and Payment Bonds:
Not applicable for this solicitation.
12. Security Requirements:
- 12.1. Any third party creating, accessing, transmitting, storing, or using Sensitive data in the third-party’s environment must comply with the TxDOT Low security baseline with the Privacy Overlay.
 - 12.2. A copy of the TxDOT Information Security Controls Standards Catalog and Attachment I – Information Resources and Security Requirements outlining the security baseline requirements can be downloaded from:
<https://www.txdot.gov/inside-txdot/division/information-technology/Cybersecurity/cybersecurity-resources.html>
 - 12.3. The vendor must provide to TxDOT a completed TxDOT Security Questionnaire (TSQ) within seven business days of request by TxDOT.
13. Accessibility Requirements:
Not applicable for this solicitation.

14. License Agreement, Master Service Agreements or Order Forms:

Not applicable for this solicitation.

15. HUB Subcontracting Plan:

TxDOT has determined that subcontracting opportunities are probable in connection with this solicitation (Reference Historically Underutilized Business Participation Attachment).

16. Response Submission:

16.1. GENERAL FORMAT: The respondent must submit one signed and dated response to include the documentation required per response paragraph 16.3. through the Bonfire system: <https://txdot.bonfirehub.com/>.

NOTE: Any response sent to TxDOT personnel via email - whether directly, courtesy copy (cc), or blind copy (bcc) - will be considered non-responsive. For hand delivery or courier service, United States Postal Service, Federal Express, United Parcel Service, or other mail service, contact the purchaser for assistance.

16.2. The respondent shall not encrypt or password protect response or embed documents within the response; each section must be its own separate document.

16.3. RESPONSE: Failure by the respondent to submit the documentation listed below will result in the response being considered non-responsive. The response submission must be submitted with each section named with the "Section #" and brief description not to exceed 30 total characters as a separate document in the following format:

16.3.1. Section 1 – Pricing Schedule

16.3.2. Section 2 – Execution of Proposal

16.3.3. Section 3 – Texas Family Code Schedule

16.3.4. Section 4 – Addenda: Acknowledgement of Associated Addenda, if applicable.

16.3.5. Section 5 – Location Schedule: Not applicable for this solicitation.

16.3.6. Section 6 - HUB Subcontracting Plan

16.3.7. Section 7 – Vendor Qualifications and Experience Schedule: Complete and return detailing respondent qualifications and experience to include certifications or licenses required.

16.3.8. Section 8 – Vendor Personnel Qualifications, Experience and References Schedule: Complete and return for each proposed key or respondent personnel position to include certifications or licenses required.

16.3.9. Section 9 – Demonstration of Capability: The respondent's approach and ability to meet the service requirements as specified in the solicitation must be demonstrated. The response should be specific and address all requirements described in the solicitation in the order presented in Paragraph 9. of the SOW to include but not limited to the below key topics:

16.3.9.1. DMWT CAMPAIGN: Describe the proposed campaign strategy for accomplishing the scope of work to include the following:

- 16.3.9.1.1. Strategies and Methodologies: Describe marketing and advertising goals and objectives of the campaign to include information on approach, methodologies, strategies, and overall program recommendations using detailed descriptions and illustrations. (Reference Attachment A Paragraph 2.1.)
- 16.3.9.1.2. Creative Strategy and Branding: Provide overall creative and branding strategy, using original, engaging ideas that speak to the target demographic. Strategy should include various components that would increase visibility and awareness of the campaign while maintaining a strong brand. (Reference Attachment A Paragraph 2.2.)
- 16.3.9.1.3. Multimedia Plan: Provide a plan which includes media placement using paid and unpaid advertising. Consider the impact of the outlets on the target audience and ability to provide a variety of memorable impressions on the target audiences. (Reference Attachment A Paragraph 3.)
- 16.3.9.1.4. Public Relations Plan: Provide details on how the vendor will utilize promotional events, the media/press and address target markets. (Reference Attachment A Paragraph 4.)
- 16.3.9.1.5. Promotional Materials: Provide a plan to use and distribute giveaway items currently in possession of the program that effectively promote the litter prevention message. (Reference Attachment A Paragraph 5.)
- 16.3.9.1.6. Sponsorship and Partnerships: Provide a strategy to use current sponsors and recruit new partners. (Reference Attachment A Paragraph 6.)
- 16.3.9.1.7. Licensing Program: Provide a plan to develop partners for the merchandising and licensing programs and a plan to promote licensees' products to the public. (Reference Attachment A Paragraph 7.)
- 16.3.9.1.8. Youth Programs: Provide a plan to grow and enhance youth education. (Reference Attachment A Paragraph 8.)
- 16.3.9.1.9. Research: Describe research strategy. (Reference Attachment A Paragraph 9.)
- 16.3.9.2. AAH PROGRAM: Describe the proposed program strategy for accomplishing the scope of work to include the following:
 - 16.3.9.2.1. Strategies and Methodologies: Describe marketing and advertising goals and objectives of the campaign to include information on approach, methodologies, strategies, and

- overall program recommendations using detailed descriptions and illustrations. (Reference Attachment B Paragraph 2.)
- 16.3.9.2.2. Multimedia strategy to raise program awareness and recruit new volunteer groups. (Reference Attachment B Paragraph 2.1.)
- 16.3.9.2.3. Clean-up Program: Provide a clean-up program strategy to promote litter pickups statewide, increase DMWT Trash Off participation and Organize Cleanup events. (Reference Attachment B Paragraph 3.)
- 16.3.9.3. CLBA Program: Demonstrate ability to administer and promote the Community Landscape and Beautification Award Program Services, include plan to organize application, judging and execution of awards (Reference Attachment C Paragraph 2.).
- 16.3.9.4. BUDGET: Provide a proposed budget as detailed below and showing the total in each category below. (Reference Attachment E and the Pricing Schedule) A strong budget supporting the objective, performance measures, and proposed activities to effectively execute the SOW. The proposed budget shall be realistic and reasonable, allowable, and necessary, and shall include only cost-eligible line items. Provide for the complete year-long campaign. Include as much specific information as possible for all costs in the categories of Labor, Travel, Contractual Services, and Other Miscellaneous. Vendor shall indicate the amount of funds that will be used for the required match. When formulating budget, unless noted otherwise, vendor(s) shall translate all public-facing materials for TxDOT campaigns into Spanish for our Spanish-speaking citizens.
- 16.3.9.5. CAMPAIGN EFFECTIVENES PLAN: Provide example reports. Provide an example matrix which outlines and identifies specific goals, objectives, strategies, and evaluation measures. Include match sources and estimated match values. (Reference SOW Paragraph 9.23)
- 16.3.10. Section 10 - Staffing Plan: Submit a proposed staffing plan to demonstrate staff qualification and experience, including subcontractors. This plan should describe the number of staff proposed for this project, the functions they will perform, and the percentage of time they will be assigned to this project during the contract term.
- 16.3.11. Section 11 – Security Plan: Not applicable for this solicitation.
- 16.3.12. Section 12 – Quality Assurance Plan: Not applicable for this solicitation.
- 16.3.13. Section 13 – Business Continuity and Disaster Recovery Plan: Respondent must submit a business continuity and disaster recovery plan, limit one page, detailing how the respondent proposes to meet the specifications in the event the respondent's service is interrupted.

The plan must detail the respondent's backup and recovery process (Reference Paragraph 19. SOW).

- 16.3.14. Section 14 – Assumptions Schedule: The respondent must provide a comprehensive listing of all assumptions made in preparing its response to this solicitation. All respondent assumptions must reference the solicitation section and/or paragraph number. No price data may be included in the assumptions. If the respondent does not have assumptions to the solicitation, please note this on the Assumptions Schedule document.
- 16.3.15. Section 15 – Exceptions Schedule: If the respondent takes exceptions to any portion of the solicitation, these exceptions must be specifically and clearly identified by paragraph in the response and the respondent's proposed alternative must also be provided for consideration. If the respondent does not have exceptions to the solicitation, please mark it on the Exceptions Schedule. The respondent must not take a 'blanket exception' to the entire solicitation.
- 16.3.16. Section 16 – Financial Standing:
 - 16.3.16.1. Submit the most recent three years audited financial statements, or if audited financial statements are unavailable, un-audited financial statements must be submitted and certified as true, correct, and accurate by the chief financial officer or treasurer of the respondent's company (Reference Paragraph 10. RFP).
 - 16.3.16.2. Additional information demonstrating financial stability and ability to meet the financial responsibilities for the requirements to perform this service.
- 16.3.17. Section 17 – Respondent References Schedule: The respondent must submit a minimum of 3 references to substantiate the qualifications and experience requirements for similar services completed for three years within the past five years. References must illustrate respondent's ability to provide the services outlined in the SOW.

NOTE: TxDOT reserves the right to waive minor errors and omissions, reference paragraph 2.02(h) of TxDOT Terms and Conditions.

17. Evaluation:

- 17.1. TxDOT will consider best value for the state (reference TxDOT Terms and Conditions, Paragraph 2.07).
- 17.2. TxDOT reserves the right to omit Discussions, negotiations or not make an award.
- 17.3. Respondent is strongly encouraged to provide its best proposal in the response. TxDOT makes no guarantee there will be any opportunity to make Oral Presentations, attend Discussions or to negotiate at any point during the evaluation process. TxDOT may seek additional information, negotiate, and solicit Best and Final Offers (BAFO) from respondents determined to be in the competitive range.
- 17.4. Evaluation of Responses: Only a complete response with the listed required submittal documents and meeting minimum qualifications will be considered. Failure to meet the minimum qualifications and submit the required documents will

result in a response being declared non-responsive. TxDOT reserves the right to conduct studies and other investigations as necessary to evaluate any response.

17.5. Respondent’s assumptions and exceptions will be reviewed to ensure they do not descope or significantly change the solicitation, as advertised. Any assumptions or exceptions which descope or significantly change the solicitation will result in the respondent being disqualified. All questions regarding assumptions or exceptions will be addressed during Discussions or Negotiations.

17.6. Evaluation Criteria:

Pass/Fail Criteria: In addition to the weighted criteria, TxDOT will review responses based on the Pass/Fail criteria as follows:

17.6.1. All Documents in Response Submission section above are included in the response.

17.6.2. Financial review – The determination of whether the respondent has the financial capability to carry out the responsibilities as described in this solicitation is in TxDOT’s sole discretion.

17.6.3. Vendor performance rating through the CPA Vendor Performance Report: <http://www.txsmartbuy.com/vpts> - Reference Terms and Conditions paragraph 2.11.

17.6.4. HUB Subcontracting Plan

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

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

17.7.2. Written responses will be evaluated as indicated below:

Respondent qualifications and experience	15 Points
Respondent’s approach to meeting requirements detailed in the SOW	75 Points
Pricing from Respondent’s original written proposal	10 Points

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

17.9. Definitions Oral Presentation, Discussion, Revised Proposal, Negotiations:

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

- 17.9.2. Discussion – A conversation between the respondent(s) and TxDOT to discuss the proposal. This meeting is to resolve outstanding or unanswered questions and for clarifications by both parties; will not include negotiations.
- 17.9.3. Revised Proposal – A revision to the original proposal based on clarifications and questions answered in the Discussion phase.
- 17.9.4. Negotiations – This phase will include only those items that require finalizing. The negotiations may include, but not be limited to: Exceptions to the terms and conditions, pricing, or additional items within the scope of work based on the respondent’s proposal.

17.10. Oral Presentations:

- 17.10.1. TxDOT reserves the right to down select and invite the highest scoring respondents to participate in Oral Presentations.
- 17.10.2. If Oral Presentations are requested, TxDOT will advise each respondent in writing of the location, date and time, and topics of the scheduled Oral Presentation. A minimum of 14 business days’ notice will be given to the respondent(s) selected for the Oral Presentation phase. Attendance at the Oral Presentation is mandatory. Failure to attend the Oral Presentation at the location, date, and time designated by TxDOT will disqualify the response submitted by the respondent.
- 17.10.3. TxDOT may provide the respondent with a list of proposed key personnel required to attend and participate in the meeting.
- 17.10.4. Oral Presentations, if conducted, will be evaluated as indicated below and scores will replace the written response scores below:

Respondent qualifications and experience	15 Points
Respondent’s approach to meeting requirements detailed in the SOW	75 Points
Pricing from Respondent’s original written proposal	10 Points

17.11. Discussions:

- 17.11.1. TxDOT reserves the right to down select and invite the highest scoring respondents to participate in Discussions and may request Revised Proposal.
- 17.11.2. If Discussions are requested, TxDOT will advise each respondent in writing of the location, date and time, and topics of the scheduled Discussion. A minimum of 14 business days’ notice will be given to the respondent(s) selected for the Discussion phase. Attendance at the Discussion meeting is mandatory. Failure to attend the Discussion meeting at the location, date and time designated by TxDOT will disqualify the response submitted by the respondent.
- 17.11.3. TxDOT may provide the respondent with a list of proposed key personnel required to attend and participate in the meeting.
- 17.11.4. When a Revised Proposal is requested, respondents must submit one clean and one red-lined version as instructed by TxDOT.

- 17.11.5. Discussions, if conducted, whether a Revised Proposal is requested or not, will be evaluated as indicated below and scores will replace the previous evaluation scores (i.e., written, or oral responses).

Respondent's revised approach to meeting the requirements detailed in the SOW	90 Points
Respondent's revised pricing	10 Points

18. **Negotiations:** TxDOT reserves the right to select and invite the highest scoring respondent(s) to participate in Negotiations and may request a BAFO following the completion of Negotiations. TxDOT will conduct Negotiations at a designated location and mutually agreed to date(s) and time for the meeting(s).
- 18.1. When a BAFO is requested, respondents must submit one clean and one red-lined version as instructed by TxDOT.
- NOTE: Any assumptions or exceptions taken by the down selected respondent(s) that require Negotiations will also be addressed during these meetings.
19. **Post Award Meeting:** The successful respondent(s) may be required to attend a post award meeting with TxDOT within 10 business days after the award. If a post award meeting is scheduled, TxDOT will advise each respondent in writing of the location, date, and time. The purpose of the meeting is to discuss the terms and conditions of the award and to provide additional information regarding the contract. The awarded vendor and TxDOT shall identify specific goals, strategies, and activities planned for meeting program area objectives.
20. **Debriefing Meeting:** A respondent who responded to the solicitation may request a debriefing meeting within 30 calendar days of the award being posted to the ESBD. Respondent must request this meeting in writing from the purchaser listed on the solicitation.

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TEXAS DEPARTMENT OF TRANSPORTATION
TERMS AND CONDITIONS
PART 1. INTRODUCTION

1.01 GENERAL

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

1.02 STATUTORY AUTHORITY

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

1.03 TITLE VI ASSURANCE

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

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

1.04 ENVIRONMENTAL IMPACT

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

1.05 COMPLIANCE WITH LAWS

Vendor must comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting contract performance, including, if applicable, laws and regulations regarding

workers' compensation, minimum and maximum salaries and wages, prompt payment, and licensing. Vendor must maintain all licenses and certifications required by law or by the contract throughout the term of the contract. When required, vendor must furnish TxDOT with satisfactory proof of its compliance.

PART 2. GENERAL INSTRUCTIONS

2.01 SPECIFICATIONS

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

2.02 RESPONSE SUBMISSIONS

- (a) Response must be submitted as noted in the solicitation.

- (b) Response must be time stamped in TxDOT's mail room or hand-delivered to the address on the solicitation before the hour and date specified for the solicitation opening. Late responses will not be considered under any circumstances and will be returned unopened to respondent.
- (c) Documentation provided with the response should be complete and comprehensive. TxDOT will not be responsible for locating or securing information not included in the response. Failure to furnish required documentation with the response may result in the response being deemed incomplete and non-responsive, resulting in rejection. TxDOT will not be responsible for any expenses relating to responses or development of documentation that may result from this solicitation.
- (d) Failure to sign the solicitation will disqualify the response. The person signing the response must have authorization to contractually bind the company. The solicitation response must include an Employer Identification Number (EIN) and full firm name and address. The EIN should be entered in the space provided on the solicitation.
- (e) Facsimile (Fax) responses will not be considered unless otherwise stated in the solicitation. Fax responses must be received before the hour and date specified for the solicitation opening. TxDOT will not be responsible for failure of electronic equipment or operator error. Responses that are late, illegible, incomplete, or otherwise non-responsive will not be considered.
- (f) Email responses may be accepted if stated on the solicitation. Email responses must be received before the hour and date specified for the solicitation opening and be in Portable Document Format (PDF) (except for pricing schedules, which must be submitted in Excel format using the pricing spreadsheet developed by the department). All attached documents together must not exceed a total of 20 MB, must be signed by respondent, and be attached to the email to be considered for award. TxDOT will not be responsible for failure of electronic equipment, operator error, or system delays or outages. Responses that are late, illegible, incomplete, file-corrupted, flagged as a virus, or otherwise non-responsive will not be considered.
- (g) RESPONDENT EXCEPTIONS OR CONDITIONED RESPONSES: Exceptions taken by respondent to TxDOT's Terms and Conditions, or respondent's Terms and Conditions attached to a response, will not be considered unless specifically referred to and clearly identified as such within the response, including, without limitations, exceptions related to software maintenance and usage or equipment maintenance services. TxDOT may reject a response that takes exception to TxDOT's Terms and Conditions.
- (h) TxDOT reserves the right to accept or reject all or any part of any response, waive minor technicalities, and make an award to best serve the interests of the state. TxDOT reserves the right to reject any response not prepared and submitted in accordance with the solicitation requirements.
- (i) Response should indicate number of days required to deliver goods, or begin service (if required), at TxDOT's designated location. Failure to indicate delivery time obligates vendor to complete delivery in fourteen (14) calendar days.
- (j) The response, including price, is irrevocable for 120 calendar days following the hour and date specified for the solicitation opening. TxDOT may extend this period with respondent's written agreement.

2.03 PRICING

- (a) TxDOT's automated purchasing system requires pricing to be submitted per unit and extended by multiplying the submitted price by the quantity. Unit prices govern in the

event of extension errors. If a trade discount is offered on the solicitation response, it should be deducted, and net line extensions should be shown.

- (b) All prices must be F.O.B. destination, freight prepaid and allowed. This means vendor must prepay the freight charges and include them in the unit price.
- (c) Purchases made for state use are exempt from state and local sales tax and federal excise tax. Do not include tax in response pricing unless otherwise specified in the solicitation. State Sales Tax and Federal Excise Tax Exemption Certificates will be furnished by TxDOT on request.
- (d) Consistent and continued tie response pricing may lead to rejection of the responses by TxDOT and investigation for antitrust violations.

2.04 ADA CONSIDERATIONS AND NOTIFICATION

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

2.05 RESPONSE OPENINGS AND DISCLOSURE OF INFORMATION

Information submitted in an accepted response will not be returned to respondent. Government Code Chapter 552 (the "Public Information Act") allows the public to have access to information in the possession of a governmental body through an open records request. Therefore, respondent must clearly identify in the response any confidential or proprietary information. Proprietary information identified by respondent in the response will be kept confidential by TxDOT to the extent permitted by state law. TxDOT will use best efforts to give respondent or vendor an opportunity to present to the Office of the Attorney General its arguments for non-disclosure of its identified confidential or proprietary information.

2.06 ALTERATIONS OR WITHDRAWAL OF RESPONSES

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

2.07 DETERMINING AWARD

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

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

the sole judge as to which response is the most advantageous and in the best interest of TxDOT.

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

- (1) Installation costs.
- (2) Life cycle costs.
- (3) Quality and reliability of goods and services.
- (4) Delivery terms.
- (5) Indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support.
- (6) Cost of any employee training associated with a purchase.
- (7) The effect of a purchase on agency productivity.
- (8) The impact of a purchase on the agency's administrative resources.
- (9) Other factors relevant to determining best value for the state set forth in the solicitation.

(b) **ADDITIONAL BEST VALUE CRITERIA FOR RFP AND RFO PURCHASES:** As provided in Government Code §2156.007, additional best value criteria will be used including but not limited to:

- (1) The quality and availability of the goods or contractual services and their adaptability to the use required.
- (2) The scope of conditions attached to the bid.
- (3) The bidder's ability, capacity, and skill to perform the contract or provide the service required.
- (4) The bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference.
- (5) The bidder's character, responsibility, integrity, and experience or demonstrated capability.
- (6) The quality of performance of previous contracts or services.
- (7) The bidder's previous and existing compliance with laws relating to the contract or service.
- (8) The bidder's previous or existing noncompliance with specification requirements relating to the time of submission of specified information, including samples, models, drawings, or certificates.
- (9) The sufficiency of the bidder's financial resources and ability to perform the contract or provide the service.
- (10) The bidder's ability to provide future maintenance, repair parts, and service.

(c) **ADDITIONAL BEST VALUE CRITERIA FOR RFO PURCHASES:**

Not applicable for this solicitation.

- (d) **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.
- (e) TxDOT reserves the right to reject a response from a respondent whose goods or services to TxDOT or other state agencies have been documented as unsatisfactory in providing the same goods or services.
- (f) **TIE RESPONSES:** In case of tie responses, one or more preferences described in Government Code Chapter 2155 and 34 TAC §20.306 will be used to make an award. Tie responses which cannot be resolved by application of one or more preferences will be made by drawing lots.
- (g) **MULTIPLE AND MULTI-TIERED AWARDS:**
Not applicable for this solicitation.

2.08 PREFERENCES

A respondent may claim a preference under 34 TAC §20.306. To claim a preference, a respondent must identify the preference on Execution of Proposal, Offer or Bid. If the appropriate area on the solicitation or response is not marked, a preference will not be granted unless other documents included in the response show a right to the preference.

2.09 DELIVERY

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

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

2.10 INSPECTIONS AND TESTS

TxDOT may test and inspect goods before they are purchased under the contract. The cost of the sample and testing shall be borne by vendor.

2.11 VENDOR PAST PERFORMANCE

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

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

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

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

PART 3. RESPONDENT AFFIRMATIONS

3.01 FALSE STATEMENTS

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

3.02 REPRESENTATIONS, WARRANTIES, AND COVENANTS

Respondent represents, warrants, and covenants that:

- (a) Personnel must be competent, knowledgeable, and experienced in the types of services to be provided under the contract and perform such services in a professional and workmanlike manner consistent with industry standards. Services must meet all specifications set forth in the contract provided, however, that where the contract specifies a particular standard or criteria for performance more particular than the foregoing, this warranty is not intended to and does not diminish that standard or criteria for performance. Further, in any case where detailed requirements for a service are not mutually agreed upon or set forth in the contract, such services shall be fit and sufficient for the purposes expressed in, or reasonably inferred from, such contract; and
- (b) All goods and services furnished in connection with the contract must be of good and merchantable quality, strictly conform in all respects to the terms of the contract including any drawings, specifications, or standards incorporated herein, and be free from any defects (latent or otherwise) in materials, workmanship, and design. In addition, respondent warrants that goods and services are suitable and sufficient for, and will perform in accordance with, the purposes for which they are intended.

3.03 GRATUITIES

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

3.04 CERTAIN BIDS AND CONTRACTS PROHIBITED

Under Government Code §2155.004, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or solicitation on which the bid or contract is based. Under Government Code §2155.004, respondent certifies that the individual or business entity named in the response or contract is eligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

3.05 ANTITRUST LAWS

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

3.06 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES

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

3.07 COLLUSION

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

3.08 INELIGIBILITY UNDER FAMILY CODE

Under Family Code §231.006, respondent certifies that respondent and any other individual or business entity named in the response are eligible to receive the specified payment and acknowledges that the contract may be terminated, and payment may be withheld if this certification is inaccurate. Any respondent subject to Family Code §231.006 must complete the Texas Family Code Schedule and return it with the response.

3.09 CONTRACTING WITH EX-TXDOT EXECUTIVE DIRECTOR

Under Government Code §669.003, respondent certifies that:

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

or

- (b) Respondent has disclosed its employment of any former executive director of TxDOT as an attachment to its response, including the name of the former executive director, the date of separation from TxDOT, and the date of employment with respondent.

3.10 DEBT TO THE STATE

Successful respondent agrees that any payments due under the contract will be applied toward any debt or delinquency that is owed to the state of Texas.

3.11 RESPONDENT ELIGIBILITY

- (a) Respondent certifies that respondent and its principals are eligible to participate in this transaction and have not been subject to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity.
- (b) Respondent certifies that respondent is in compliance with the state of Texas statutes and rules relating to procurement.
- (c) Respondent certifies that respondent is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control.
- (d) Under Government Code §2155.006, respondent certifies that the individual or business entity named in the response is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
- (e) Respondent certifies that respondent is not an abortion provider or an affiliate of an abortion provider under Government Code §2272.003.
- (f) Respondent certifies that it is not:
 - (1) A person required to register as a lobbyist under Government Code Chapter 305.
 - (2) A public-relations firm.
 - (3) A government consultant.

3.12 NEPOTISM DISCLOSURE

- (a) In this section, the term "relative" means:
 - (1) A person's great grandparent, grandparent, parent, aunt or uncle, sibling, niece or nephew, spouse, child, grandchild, or great grandchild.
 - (2) The grandparent, parent, sibling, child, or grandchild of the person's spouse.
- (b) A notification required by this section must be submitted in writing to the person designated to receive official notices under the contract and by first-class mail addressed to Contract Services Division, Texas Department of Transportation, 6230 East Stassney Lane, Austin, Texas 78744. The notice must specify vendor's firm name, the name of the person who submitted the notification, the purchase order number, the district, division, office or regional service center of TxDOT that is principally responsible for the contract, the name of the relevant vendor employee, the expected role of the vendor employee on the project, the name of the TxDOT employee who is a relative of the

vendor employee, the title of the TxDOT employee, and the work location of the TxDOT employee.

- (c) By signing the solicitation, respondent is certifying that respondent does not have any knowledge that any of its employees or any employees of a subcontractor who are expected to work under the contract has a relative who is employed by TxDOT unless respondent has notified TxDOT of each instance as required by subsection (b).
- (d) If vendor learns at any time that any of its employees or that any of the employees of a subcontractor who are performing work under the contract have a relative who is employed by TxDOT, vendor must notify TxDOT under subsection (b) of each instance within thirty (30) calendar days of obtaining that knowledge.
- (e) If vendor violates this section, TxDOT may terminate the contract immediately for cause, impose any sanction permitted by law, and pursue any other remedy permitted by law.

3.13 BOYCOTTING ISRAEL

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

3.14 DISCLOSURE OF RESTRICTED EMPLOYMENT

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

3.15 ANTI-TERRORISM OR TERRORIST ORGANIZATION PROHIBITED

Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Government Code §2252.152.

3.16 CONTRACTING INFORMATION RESPONSIBILITIES

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

3.17 HUMAN TRAFFICKING PROHIBITION

Under Government Code §2155.0061, respondent certifies that the individual or business entity named in the response or contract is eligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

3.18 NO CONFLICTS OF INTEREST

Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. Respondent represents and warrants it has not acquired and agrees not to acquire any interest during the term of the contract that would

conflict in any manner with the performance of the respondent's obligations in regards to goods or services provided under this contract.

3.19 COVID VACCINE PASSPORTS

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

3.20 FIREARM AND AMMUNITION DISCRIMINATION

Pursuant to Government Code §2274.002, to the extent applicable to respondent and this contract, respondent certifies that respondent:

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

Respondent acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.

3.21 LONE STAR INFRASTRUCTURE PROTECTION ACT

Pursuant to Government Code §2274.0102, respondent certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code §2274.0103, or (2) headquartered in any of those countries.

3.22 BOYCOTTING ENERGY COMPANIES

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

3.23 FOREIGN ADVERSARIES

Respondent certifies that neither it, nor its holding companies or subsidiaries, is:

- (a) Listed in Section 889 of the 2019 National Defense Authorization Act;
- (b) Listed in Section 1260H of the 2021 National Defense Authorization Act; or
- (c) Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. Section 791.4; or
- (d) Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. Section 791.4.

PART 4. GENERAL TERMS AND CONDITIONS

4.01 CONTRACTS

- (e) Only authorized TxDOT purchasers have the authority to issue contracts for goods and services. Contracts must be issued by a TxDOT purchaser prior to vendor providing the goods or services. The only exceptions are payment card orders and bona fide emergencies. In the case of an emergency, the TxDOT Procurement Division will confirm such orders with a signed contract.
- (f) The vendor shall perform service or deliver material only after receiving authorization via a Blanket Purchaser Order Release (BPOR), PO, or as provided for in the Statement of Work (SOW). Authorization will be emailed to the vendor's point of contact noted on the contract unless otherwise provided for in the SOW.
- (g) TxDOT may refuse to pay the vendor for services performed or goods delivered without prior authorization.

4.02 FUNDING

Any contract resulting from the solicitation is subject to termination or cancellation, without penalty to TxDOT, either in whole or in part, subject to the availability of state funds. In the event of a termination under this section, TxDOT will not be liable to successful respondent for any damages that are caused or associated with such termination, and TxDOT will not be required to give prior notice.

4.03 NO QUANTITY GUARANTEES

TxDOT makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the contract.

The contract is not exclusive to the Vendor. TxDOT may obtain products and related services from other sources during the term of the contract.

4.04 INVOICING

NO PAYMENT WILL BE MADE UNDER THE CONTRACT WITHOUT THE PRIOR SUBMISSION OF DETAILED AND CORRECT INVOICES WHICH COMPLY WITH THE FOLLOWING REQUIREMENTS:

- (a) Each invoice must be submitted not later than the 15th day of the month after the goods have been delivered or services have been provided, or as otherwise stated on the contract. An electronic copy of the invoice must be sent as an email attachment to the email address shown on the purchase order. A link to a copy of the invoice will not be accepted in lieu of an electronic or physical copy of the invoice. If the vendor cannot submit invoices electronically as an email attachment, vendor must mail a hard copy to the physical address noted on the purchase order.
- (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) Email address (if applicable).
 - (4) Employer Identification Number (EIN), federal tax I.D., or a valid Texas Identification Number (TIN).
 - (5) Complete PO number or Blanket PO Release number.
 - (6) Telephone number.

- (7) Name of person designated to answer questions regarding the invoice.
- (8) Description of item or service as it appears on the PO or pricing schedule in the same order as listed on purchase order or pricing schedule. Item numbers must correspond with the item numbers on the PO or pricing schedule.
- (9) Quantity, unit of measure, unit price, and extended price of each line item.
- (10) Grand total.
- (11) Shipment date of merchandise or date of service. If lease, include payment number (e.g., 1 of 36).
- (12) Any additional requirements as stated in the solicitation or specification.

4.05 PAYMENT

Payment for goods or services purchased with state funds is made by warrants or by direct deposit. Direct deposit is the preferred method of payment. No penalty for late payment will be incurred by TxDOT if payment is made in thirty (30) days or less from receipt of goods, services, or a correct invoice, whichever is later. Payments under this contract are subject to the availability of funds.

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

Payment will be made in accordance with Government Code Chapter 2251 as indicated on Pricing Schedule and within thirty (30) days from receipt of a correct invoice for goods or services accepted by TxDOT.

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 <http://www.txdot.gov/business/vendors/epp.html> or the Priority Invoice and Early Payment Program form (Appendix B).

4.06 INTELLECTUAL PROPERTY

- (a) All intellectual property developed and created in the course of the services rendered pursuant to the contract are works for hire, and all intellectual property rights, including but not limited to, publication rights, copyrights, trademarks, patents, and trade secrets to all products and materials developed and created pursuant to the contract, shall be exclusively owned by TxDOT. Vendor must provide TxDOT all assistance required to perfect such intellectual property rights without any charge or expense beyond those amounts payable for services rendered under the contract. To the extent that title to any work created under the contract is held by operation of law to not vest exclusively in TxDOT, such work is hereby irrevocably assigned to TxDOT.
- (b) Vendor must ensure that TxDOT's intellectual property rights, including but not limited to publication rights, copyrights, trademarks, patents, and trade secrets, are secured from all suppliers, contractors, and subcontractors.
- (c) When applicable, each vendor must obtain necessary licenses, copyrights, trademarks, or patents for TxDOT's use.
- (d) Vendor must not assert rights at common law or in equity or establish any claim to TxDOT's intellectual property, including but not limited to, licenses, claiming common law ownership of intellectual property, obtaining registrations for copyrights, trademarks, trade secrets, or patents for any intellectual property developed in performance of the services authorized.

- (e) VENDOR AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND TXDOT AND THE STATE FROM CLAIMS INVOLVING INFRINGEMENT OF THIRD PARTIES' LICENSES, TRADEMARKS, COPYRIGHTS, PATENTS, TRADE SECRETS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS AS SET FORTH IN SECTION 4.15 BELOW.

4.07 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS

As required by 1 TAC Chapters 206 and 213:

- (a) Effective April 18, 2020, state agencies shall procure products which comply with the State of Texas Accessibility Requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Vendor represents and warrants that technology to be provided to TxDOT and for TxDOT is in compliance with these requirements.
- (b) Vendor must provide accessibility information for the purchased goods or services in accordance with 1 TAC §213.18 (b).

4.08 CYBER SECURITY TRAINING

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

4.09 SITE VISITS

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

4.10 INSPECTIONS AND TESTS

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

A pre-shipment sample not applicable for this solicitation.

4.11 VENDOR PERFORMANCE

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

4.12 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.

4.13 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS

Vendor has no authority to act for or on behalf of TxDOT or the state of Texas except as expressly provided for in this contract. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the state of Texas or TxDOT.

4.14 VENUE AND JURISDICTION; APPLICABLE LAW

Venue for any suit concerning the solicitation and any resulting contract is fixed in any court of competent jurisdiction in Travis County, Texas. The solicitation and any resulting contract shall be governed by and construed in accordance with the laws of the state of Texas without regard to the conflict of laws provisions.

4.15 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).

4.16 FORCE MAJEURE

TxDOT may, at its sole discretion, grant relief for time only from performance of the contract if vendor is prevented from performance by an act of war, order of legal authority, act of God, force of nature, pandemic, public health crisis, or other unavoidable cause not attributable to the fault or negligence of vendor (any such event or cause referred to herein as "force majeure"). To obtain relief based on force majeure, vendor must file a written request with TxDOT describing the events, dates, and effect of the events on vendor's ability to perform its obligations under the contract. Vendor must inform TxDOT in writing within three (3) business days of the existence of such force majeure; failure to do so will waive the right to seek relief under this Section 4.12. Upon an event of force majeure, vendor must use commercially reasonable efforts to commence performance whenever and to whatever extent possible without delay. An event of force majeure does not excuse vendor from any obligation under the contract unless TxDOT grants relief in writing in response to a request for relief under this Section 4.13.

4.17 RIGHT TO AUDIT

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

4.18 INDEMNIFICATION

Acts or Omissions

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

Infringement:

- (a) VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND TXDOT AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL CLAIMS INVOLVING VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE AND SERVICE MARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF VENDOR PURSUANT TO THE CONTRACT; (2) ANY DELIVERABLE WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED UNDER THE CONTRACT; AND/OR (3) TXDOT'S AND/OR VENDOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TXDOT BY VENDOR OR OTHERWISE TO WHICH TXDOT HAS ACCESS AS A RESULT OF

VENDOR'S PERFORMANCE UNDER THE CONTRACT. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT ARE NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. IN ADDITION, VENDOR WILL REIMBURSE TXDOT AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES, OR OTHER AMOUNTS, INCLUDING BUT NOT LIMITED TO, ATTORNEYS' FEES ARISING FROM ANY SUCH CLAIM. IF TXDOT DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF VENDOR OR IF TXDOT IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TXDOT WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND VENDOR WILL PAY ALL REASONABLE COSTS OF TXDOT'S COUNSEL.

- (b) VENDOR WILL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY:
 - (1) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TXDOT, OR
 - (2) ANY USE OF THE PRODUCT OR SERVICE BY TXDOT THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT BETWEEN VENDOR AND TXDOT.
- (c) IF VENDOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TXDOT PROVIDES VENDOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, VENDOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TXDOT, MUST), AT VENDOR'S SOLE OPTION AND EXPENSE:
 - (1) PROCURE FOR TXDOT THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR
 - (2) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY-EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TXDOT'S USE IS NON-INFRINGEMENT.

Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

- (a) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TXDOT AND/OR THE STATE SHALL NOT BE LIABLE TO VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.
- (b) VENDOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS TXDOT, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND/OR DESIGNEES

FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION, AND/OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY IN OR ARISING OUT OF ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES AND COURT COSTS. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT IS NAMED AS A DEFENDANT IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. VENDOR AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

4.19 DAMAGE TO TXDOT PROPERTY

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

4.20 PUBLIC INFORMATION ACT AND CONFIDENTIALITY

Information, documentation, and other material in connection with the solicitation or any resulting contract may be subject to public disclosure pursuant to the Public Information Act.

In accordance with §2252.907 of the Government Code, vendor is required to make any information created or exchanged with the state pursuant to the contract, and not otherwise excepted from disclosure under the Public Information Act, available in a format that is accessible by the public at no additional charge to the state. All information created by or accessible to a vendor while providing a good or service for TxDOT shall be treated by vendor as confidential. If applicable to a service, upon award of the contract, vendor may be required to complete and sign TxDOT Form 1828b, Information Resource Security Compliance and Confidentiality Agreement. Vendor and its employees or subcontractors must not divulge any information related to TxDOT business at any time to a third party without the prior written approval of TxDOT. Vendor will notify TxDOT within 24 hours of receipt of any third-party requests for information that was provided by TxDOT for use in performing the contract, including the contract itself. Upon request by TxDOT, vendor agrees to promptly provide any information created or exchanged with the state pursuant to the contract to TxDOT in any format reasonably required by TxDOT, including, without limitation, portable document format (PDF) and HTML.

4.21 BUY TEXAS

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

4.22 COMPETENCE OF VENDOR

To be entitled to consideration, vendor must have available the necessary organization and facilities to fulfill all the requirements under the contract. Only personnel trained to perform the

solicited services or, if applicable, licensed to perform such services must be employed under and for the contract. Vendor must, at its own cost, obtain any licenses, certifications and permits required for the performance of the service.

4.23 CORRECTIONS TO WORK

If TxDOT determines it necessary to require corrections to work due to errors made by vendor, vendor must correct the work at no additional cost to TxDOT.

4.24 IT SERVICE CONTRACTS SECURITY

Not applicable for this solicitation.

4.25 NOTICES

Any notices required under the contract will be in writing and sent by hand delivery or by U.S. Mail, certified, return receipt requested to vendor at vendor's address specified on page 1 of the purchase order to TxDOT at 6230 East Stassney Lane, Austin, Texas 78744. 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.

4.26 PUBLIC DISCLOSURE

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

4.27 DISASTER RECOVERY PLAN

If required in the solicitation, respondent must provide TxDOT descriptions of its business continuity and disaster recovery plans in accordance with 13 TAC §6.94(a)(9).

4.28 DISCLOSURE OF INTERESTED PARTIES

In accordance with Government Code §2252.908 for any contract with a value exceeding \$1 million the vendor must (1) complete the Texas Ethics Commission (TEC), Form 1295, Disclosure of Interested Parties, at <https://www.ethics.state.tx.us/filinginfo/1295/>; (2) submit the form online to the TEC; (3) print the completed form that includes the Certificate Number automatically signed by TEC; and (4) submit the form, signed by its authorized agent, by email to TxDOT within seven business days of request.

If a respondent does not submit a completed and signed TEC Form 1295 to TxDOT within 10 business days of notification, TxDOT is prohibited by law from executing a contract. TxDOT may award the contract to another vendor and may seek appropriate damages for respondent's failure to comply with this requirement.

PART 5. INSURANCE

5.01 PROOF OF INSURANCE

Vendor must provide TxDOT Certificate of Insurance Form 1950 upon written notice from TxDOT. Vendor must not perform services under the contract until this form is received by TxDOT. Failure to provide proof of insurance within the time frame requested by TxDOT may result in termination of the contract. Approval of equivalent is at the sole discretion of TxDOT.

5.02 DURING TERM OF CONTRACT

Vendor must maintain all required insurance coverage throughout the term of the contract. Vendor must provide a correct TxDOT Certificate of Insurance Form 1950 each time its

insurance is renewed or updated. Failure to provide this form promptly may be cause for discontinuance of the work and termination of the contract.

5.03 WAIVER OF SUBROGATION ENDORSEMENT

Vendor's insurance policy must have a waiver of subrogation endorsement in favor of TxDOT. TxDOT will allow deductible policies. Vendor must pay the deductible amount.

5.04 WORKERS' COMPENSATION INSURANCE

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

5.05 COMMERCIAL GENERAL LIABILITY INSURANCE

Bodily Injury/Property Damage. Required coverage must, at a minimum, be inclusive of the limits listed on the TxDOT Certificate of Insurance Form 1950.

5.06 COMMERCIAL AUTOMOBILE POLICY

Required coverage must, at a minimum, be inclusive of the limits listed on the instructions page of the TxDOT Certificate of Insurance Form 1950.

5.07 ADDITIONAL INSURANCE REQUIREMENTS

Not applicable for this solicitation.

PART 6. VENDOR PERSONNEL MANAGEMENT

6.01 INDEPENDENT CONTRACTOR

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

6.02 ALCOHOL, DRUG, AND SMOKE-FREE WORKPLACE

TxDOT is committed to maintaining an alcohol and drug-free workplace. Possession, use of, or being under the influence of alcohol or controlled substances by vendor's employees while in the performance of any service is prohibited. If any employee of the vendor violates this requirement, TxDOT may terminate the contract for cause, in addition to seeking any other available remedies. Vendor's employees must comply with TxDOT's policy prohibiting smoking in TxDOT buildings.

6.03 REPLACEMENT OF PERSONNEL

If TxDOT determines that an employee or subcontractor of vendor performing any part of vendor's work under this contract is unable to perform the work in accordance with the service

requirements or to communicate effectively or is, in the opinion of TxDOT, otherwise objectionable, vendor must immediately remove that employee or subcontractor.

6.04 LABOR/MATERIAL/EQUIPMENT

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

6.05 VENDOR STAFF

- (a) Vendor must ensure, at all times, a minimum of one English-speaking employee is on the job.
- (b) All employees must be well-groomed and appropriately dressed when on TxDOT property.

6.06 FELONY CRIMINAL CONVICTIONS

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

6.07 SUBCONTRACTING REQUIREMENTS

In accordance with Government Code §§2161.181-182 and pursuant to the CPA Historically Underutilized Business (HUB) Rules and Transportation DBE/HUB/SBE Rules (relating to Disadvantaged Business Enterprises, HUB and Small Business Enterprises, DBE/HUB/SBE), all state agencies entering into a contract with an expected value of \$100,000 or more over the life of the contract (including renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine if it is probable for subcontracting opportunities under the contract. If subcontracting opportunities are probable, the respondent must include a HUB Subcontracting Plan (HSP). The HSP, if acceptable, will be a provision of the contract. The HSP, if required, may be found at:

<https://comptroller.texas.gov/purchasing/vendor/hub/forms.php> .

6.08 PAYMENT OF SUBCONTRACTORS

As provided by Government Code §2251.022, vendor must pay a subcontractor the appropriate share of any payment vendor receives from TxDOT not later than the 10th day after the date the vendor receives the payment. The appropriate share is overdue on the 11th day after the date vendor receives the payment.

6.09 VENDOR TITLE VI AFFIRMATIONS

Vendor represents and warrants the following with regard to the work performed by it under the contract:

- (a) Vendor and its subcontractors shall not discriminate on the grounds of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, or disability in the performance of this contract, including without limitation in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Vendor shall not participate either directly or indirectly in any discriminatory

employment practices. Failure by vendor to carry out these requirements is a material breach of any contract awarded and may result in the termination of the contract or such other remedy as TxDOT deems appropriate.

- (b) In any solicitations for subcontractors, including procurements of materials or leases of equipment and in all solicitations either by competitive bidding or negotiation made by vendor for work to be performed under a subcontract, each potential subcontractor or supplier shall be notified by vendor of vendor's and subcontractor's obligations under its contract relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- (c) During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to collectively in this subsection (c) as the "contractor") agrees as follows:
 - (1) Compliance with Regulations: The contractor will comply with the acts and the regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
 - (2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by the acts and regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
 - (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the acts and regulations relative to nondiscrimination on the grounds of race, color, or national origin.
 - (4) Information and Reports: The contractor must provide all information and reports required by the acts, regulations, and directives issued pursuant thereto and must permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by TxDOT or the Federal Highway Administration (FHWA) to be pertinent and to ascertain compliance with such acts, regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor must so certify to TxDOT or the FHWA, as appropriate, and must set forth what efforts it has made to obtain the information.
 - (5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the nondiscrimination provisions of this contract, TxDOT will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a) Withholding payments to the contractor under the contract until the contractor complies; and/or
 - (b) Cancelling, terminating, or suspending a contract, in whole or in part.

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

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

6.10 E-VERIFY

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

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

PART 7. DISPUTE RESOLUTION

7.01 DISPUTE RESOLUTION

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

PART 8. CONTRACT TERMS

8.01 TERM OF CONTRACT

The initial term of the contract shall commence upon execution of the contract by TxDOT and expires on June 1, 2026 with the option to renew for three one-year period(s) at TxDOT's sole discretion. TxDOT will provide an intent to renew, in writing, a minimum of 30 calendar days prior to expiration of the current term.

NOTE: The dates, list below, are estimated and based on the anticipated award date of the contract.

- 1st Renewal Option: June 2, 2026 through June 1, 2027
- 2nd Renewal Option: June 2, 2027 through June 1, 2028
- 3rd Renewal Option: June 2, 2028 through June 1, 2029

8.02 ORDER OF PRECEDENCE

In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies will be resolved by reference to the documents in the order specified below:

- (a) The Solicitation
- (b) The Terms and Conditions
- (c) The Statement of Work (SOW)
- (d) The Pricing Schedule
- (e) The HUB Subcontracting Plan
- (f) The Execution of Proposal

8.03 PRICING

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

Index to be used:

- Consumer Producers Index – Wage Earners and Clerical Workers (CPI-W) - U.S. city average, All items - CWUR0000SA0

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

The allowable percent change must be calculated as follows:

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

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

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

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

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

- (b) Vendor must give price reductions to TxDOT that result from reduced cost to vendor during the term of the contract.
- (c) Shipping must be F.O.B. destination; therefore, unit prices must include delivery to the location(s) indicated on the contract (all shipping, handling, and delivery fees and fuel surcharges).

- (d) Purchases made for state use are exempt from state and local sales tax and federal excise tax. Do not include tax in response pricing unless otherwise specified in the solicitation. State Sales Tax and Federal Excise Tax Exemption Certificates will be furnished by TxDOT on request.
- (e) The contract may contain a "Total Cost Not to Exceed" statement. Vendor must not perform any work that may exceed either the contract total or the not-to-exceed total without prior written authorization from TxDOT.

8.04 TERMINATION OF A CONTRACT

- (a) **FOR CAUSE:** If vendor fails to provide a good or service according to the provisions of the contract or fails to comply with any term or condition of the contract, or if any representation or certification made in the contract or any related document is false, incomplete, or inaccurate, vendor shall be in default under the contract and TxDOT may immediately terminate all or any part of the contract upon written notice to vendor. 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.
- (b) **FOR CONVENIENCE:** The contract may be terminated by TxDOT in whole or in part, without cost or penalty, by providing thirty (30) calendar days written notice. In the event of such termination, vendor must, unless otherwise agreed in writing, cease all work immediately upon the effective date of termination. TxDOT will be liable only for payments for goods or services ordered before the termination date. With regard to services, TxDOT will pay vendor the contract price prorated for acceptable service performed up to the date specified in the notice of termination. Termination under this paragraph will not relieve vendor of any obligation or liability that has occurred prior to termination. Vendor must refund any balance of unused prepaid funds.
- (c) **FUNDING:** The contract may be terminated by TxDOT in whole or in part, without cost or penalty, pursuant to §4.02 of these Terms and Conditions.

8.05 REMEDIES

If vendor is in default under the contract, in addition to its right of termination set forth in Section 8.03, TxDOT may, in its sole discretion:

- (a) Purchase the goods or services elsewhere and charge any increase in cost to the defaulting vendor.
- (b) Proceed by appropriate court action to enforce the provisions of the contract.
- (c) Exercise any other right, remedy, or privilege which may be available to it under law, equity, or this contract.

The exercise of any of the foregoing remedies will not constitute a termination of the contract unless TxDOT notifies vendor in writing that TxDOT has elected to terminate the contract prior to the exercise of such remedy. Vendor shall be responsible for all costs and expenses, including court costs, incurred by TxDOT with respect to the enforcement of any of the remedies listed herein. The remedies listed above and elsewhere in this contract are not exclusive. Failure to exercise a remedy shall not constitute a waiver by TxDOT.

8.06 SALE OR ASSIGNMENT

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

8.07 EXTENSION OF CONTRACTS

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

8.08 SEVERABILITY CLAUSE

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

8.09 AMENDING THE CONTRACT

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

8.10. THIRD-PARTY BENEFICIARIES

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

8.11 BINDING EFFECT AND SURVIVAL OF OBLIGATIONS

- (a) By submitting the response, respondent binds itself, its respective successors, and assignees to the faithful performance of the terms and conditions and provisions of a contract issued to respondent in connection with the solicitation.

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

Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest

(hereinafter referred to in this Appendix A as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

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