



INSTRUCTIONS TO RESPONDENTS

THE ATTACHED SOLICITATION SHOULD BE RETURNED AS FOLLOWS:

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

Bid No.: 60144000000064
Bid Opening: 01/05/2015, 3:00 p.m.
Purchaser: Brenda Helgren

HAND DELIVERY

or

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

Texas Department of Transportation
Procurement Division
150 E. Riverside Dr.
Austin, TX 78704

USE OF NATIONAL INSTITUTE OF GOVERNMENTAL PURCHASING CODE

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

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

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

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

TEXAS DEPARTMENT OF TRANSPORTATION



REQUEST FOR OFFER

WEB DESIGN, HOSTING & MAINTENANCE FOR
www.texashighways.com

RFO No. 601440000000064

NIGP Class/Item

915	51
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Posting Date: November 21, 2014

Offer Due Date and Time (Central Time in Austin, Texas)

January 5, 2015 at 3:00 p.m.

It is the responsibility of interested parties to periodically check the Electronic State Business Daily (ESBD) for updates to the procurement prior to submitting a response. The Respondent's failure to periodically check the ESBD will in no way release the selected vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFO.

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RFO RESPONSE SUBMISSION INSTRUCTIONS

REQUIREMENTS AND ADDITIONAL INFORMATION

1. Electronic State Business Daily (ESBD)

This solicitation, specifications and other referenced response documents associated with this solicitation are available electronically on:

Electronic State Business Daily (ESBD) under the Solicitation No. **601440000000064** at:

<http://esbd.cpa.state.tx.us/>

NOTE: All information or changes related to this solicitation will be posted on the above website. RESPONDENTS SHOULD MONITOR THIS WEBSITE FOR ANY ADDENDUMS, ADDITIONAL DOCUMENTS, QUESTIONS AND RESPONSES OR CHANGES PRIOR TO RFO OPENING DATE.

2. DESCRIPTION OF SERVICE

This solicitation is to provide services for web design, maintenance, and hosting services for the Texas Department of Transportation's Travel Information Division's current website, www.texashighways.com and future digital companion publications. The services shall include creating a unified presence and branding of the website in order to better engage magazine subscribers and the traveling public.

3. ORDER OF PRECEDENCE:

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

Service for TxDOT's web design, hosting, and maintenance services for the www.texashighways.com website shall be performed in accordance with:

- RFO #**601440000000064**
- Statement of Work, May 2014
- TxDOT Terms and Conditions, Revised November 2014
- Schedule 1 – Pricing
- Schedule 2 – Execution of Offer
- Schedule 3 – Respondent Qualifications and Experience
- Schedule 4 – Key Personnel Qualifications
- Schedule 5 – Texas Family Code
- Attachment A – Asset Management Vendor Reporting Requirements
- Respondent References

4. TxDOT TERMS AND CONDITIONS

Service shall be performed in accordance with TxDOT Terms and Conditions, latest revision, and the Supplemental Terms of this document. The TxDOT Terms and Conditions are available at:

http://www.txdot.gov/services/general_services/purchasing/reference_docs.htm

Following is a list of **exceptions to the current solicitation:**

TxDOT Terms and Conditions, Revised November 2014 shall apply to this procurement with the following exceptions:

- Form 1950, Certificate of Insurance for Services

Insurance required:

- Worker's Compensation Insurance
- Commercial General Liability insurance
- Commercial Automobile Liability Insurance

RFO RESPONSE SUBMISSION INSTRUCTIONS

5. TERM OF SERVICE

Service shall commence upon issuance of a purchase order for a period of one year with the option to renew for three additional one year periods of time at the same terms and conditions plus any approved changes.

6. ESTIMATED QUANTITIES

Quantities are estimates only. No guarantee of any minimum or maximum purchase is made or implied. TxDOT will only order the amount needed to satisfy operating requirements, which may be more or less than indicated. The vendor will be notified in writing by purchase order change notice for any requirement changes.

7. CONTACT INFORMATION

For clarification of the specification, respondents may contact:

Purchaser: Brenda Helgren, CTPM

E-mail: brenda.helgren@txdot.gov

The individual listed above may be e-mailed for clarification of the specifications only. No authority is intended or implied that specifications may be amended or alternates accepted prior to bid opening without written approval.

8. QUESTIONS CONCERNING RFO

Deadline for submission of questions:

Date: **12/11/2014**

TxDOT Response to Questions to be posted by: **12/17/2014**

NOTE: Questions and the responses will be posted on the ESBD at: <http://esbd.cpa.state.tx.us/>

All questions and inquiries concerning this RFO shall be submitted via e-mail to:

Brenda Helgren, CTPM

E-mail: brenda.helgren@txdot.gov

Any respondent that directly contacts TxDOT or contracted personnel working on this project to ask questions about the RFO instead of contacting the purchaser will be disqualified.

9. ADDING ADDITIONAL SERVICES AFTER PURCHASE ORDER AWARD

Following the purchase order award, additional services of the same general category that could have been encompassed in the award of the purchase order, and that are not already on the purchase order, may be added. A formal written request will be sent to the current vendor(s) to quote on the proposed additional services. Respondent shall submit proposals to TxDOT as instructed. All prices are subject to negotiation and may include submission of a Best and Final Offer (BAFO). TxDOT may accept or reject any or all proposals, and may issue a separate RFO for the services after rejecting some or all of the responses. The services covered under this provision shall conform to the specifications as outlined in the request.

Any proposed changes to work to be performed, whether initiated by TxDOT or the vendor, must receive final written approval in the form of a purchase order change notice signed by the authorized TxDOT purchasing agent.

TxDOT has no financial responsibility for any work performed that is outside the scope of the purchase order, even if that work was requested by TxDOT. The vendor shall notify TxDOT within five business days if the vendor believes that TxDOT has requested work that is outside the scope of the purchase order. The parties shall attempt to resolve the matter informally. If the matter cannot be resolved

RFO RESPONSE SUBMISSION INSTRUCTIONS

informally, the vendor shall perform the work and may file a contract claim for any sums due to it. The contract manager does not have any express or implied authority to vary the terms of the purchase order, amend the purchase order in any way, or waive strict performance of the terms or conditions of the purchase order. This individual's contract management and contract administration responsibilities include, but are not limited to, the responsibilities described in the SOW.

10. VENDOR VERIFICATION OF FEDERAL EMPLOYER IDENTIFICATION NUMBER

Respondent should complete the information below:

Current Company Name: _____

Company Address: _____

Telephone/Fax Numbers: _____

Current Federal Employer Identification Number (EIN): _____

If an invoice will be submitted by, and/or payment made to an EIN or company name different from the vendor on the response, respondent must complete the following to authorize payment:

EIN of company authorized to invoice for vendor: _____

Name of invoicing company: _____

EIN of company authorized to receive payment: _____

Name of company to be paid: _____

11. HUB SUBCONTRACTING PROBABILITIES

Texas HUB subcontracting plan (HSP): in accordance with Texas Government Code, chapter 2161, the Texas Department of Transportation (TxDOT).

Director of purchasing has determined that subcontracting opportunities are probable in connection with this solicitation. Accordingly, a HSP is a required part of the response.

Failure to submit the HSP shall deem the response non-responsive and will disqualify the response from consideration. Respondents planning to subcontract a portion of this purchase order shall identify their proposed subcontractors by completing and returning the required forms in the HSP with their response. TxDOT has the right to check the subcontractors' background and make a determination on either approving or rejecting the use of a proposed subcontractor. Any negative responses may result in the disqualification of the subcontractor.

TxDOT has determined that the following areas of work are probable subcontracting opportunities, but should not be considered an exhaustive list for this solicitation:

PROBABLE AREAS OF WORK / CLASS-ITEM

Hosting 915-51

Programming 920-40

RESPONDENT SHALL RETURN HUB SUBCONTRACTING PLAN FORMS AND ANY ADDITIONAL PAGES IDENTIFYING ALL HUB SUBCONTRACTING EFFORTS

If respondents need guidance on completing the HUB Subcontracting Plan forms, the respondents may submit a "draft" HUB Subcontracting Plan for preliminary review to the TxDOT Purchaser at brenda.helgren@txdot.gov by December 18, 2014. The draft plan will be reviewed and recommended suggestions may be provided.

Failure to receive a response or recommended suggestion from the Purchaser in response to respondent's request to review the draft HUB Subcontracting Plan will not relieve or excuse the respondent from the mandatory requirement to submit the HUB Subcontracting Plan. Failure to

RFO RESPONSE SUBMISSION INSTRUCTIONS

submit a completed HUB Subcontracting Plan will result in the response being considered non-responsive.

12. 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 purchase order. The right and license granted by the purchase order automatically terminates on the expiration or termination of the purchase order, or upon vendors breach of the terms and conditions of the purchase order.

13. RESPONSE SUBMISSION INFORMATION

All responses shall be received at TxDOT on **January 5, 2015** prior to 3:00 P.M. Central Standard Time; TxDOT reserves the right to reject late submissions.

INCLUDE TxDOT SOLICITATION NUMBER AND DUE DATE ON ALL SUBMITTAL PACKAGES.

The RFO opening will be held at the Texas Department of Transportation, Procurement Division, 150 E. Riverside Drive, Austin, TX 78704.

THE RESPONSE SHOULD BE RETURNED AS FOLLOWS:

HAND DELIVERY

Texas Department of Transportation
Procurement Division
150 E. Riverside Drive
Austin, TX 78704

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

Texas Department of Transportation
Procurement Division
200 E. Riverside Drive
Austin, TX 78704

When responses are opened, only the names of the respondents who submitted a response(s) for the goods or services described in the attached specification will be made public. Prices will not be divulged at the time of opening. Prices and other proposal details will only be divulged after award of contract(s).

FACSIMILE AND E-MAIL RESPONSES: Facsimile and e-mail responses are not allowed.

TEXAS DEPARTMENT OF TRANSPORTATION
PROCUREMENT DIVISION

1. SCOPE: This solicitation is to provide services for maintenance, and hosting services for the Texas Department of Transportation (TxDOT) Travel Information Division's (TRV) current website, www.texashighways.com and future digital companion publications. The services shall include maintaining a unified presence and brand in order to better engage magazine subscribers and the traveling public.

2. DEFINITIONS OF TERMS AND ACRONYMS

- 2.1. API – Application Programming Interface
- 2.2. CMS – Content Management System
- 2.3. HTML – Hypertext Markup Language
- 2.4. MS – Microsoft®
- 2.5. PM – Project Manager
- 2.6. TRV – TxDOT Travel Information Division
- 2.7. TxDOT – Texas Department of Transportation
- 2.8. RWD – Responsive Web Design
- 2.9. VPS – Virtual Private Server

3. APPLICABLE LAWS AND STANDARDS: The vendor shall provide the specified service requirements in accordance with all applicable federal, state and local laws, standards and regulations necessary to perform the services, including, but not limited to:

- 3.1. TxDOT Security Standards
 - 3.1.1. Texas Government Code 612, Section 612.002 of Texas Statutes
 - 3.1.2. TxDOT Core Technology Architecture: Version 5.4, July 2008
 - 3.1.3. TxDOT Data Architecture: Version 4.0, December 2007

4. CURRENT ENVIRONMENT: Texas Highways magazine's website www.texashighways.com is currently administered and supported on a Virtual Private Server (VPS) under a web hosting contract.

5. RESPONDENT QUALIFICATIONS: The respondent shall:

Be a company or individual engaged, or whose partners or participants or both are engaged in the business of providing web design, maintenance, and hosting services for a minimum of five years within the last five years. Recent start-up businesses do not meet the requirements of this solicitation.

NOTE: A start-up business is defined as a new company that has no previous operational history or expertise in the relevant business and is not affiliated with a company that has that history or

expertise. Two companies are affiliated if the two companies have a common parent company or if one is the parent or subsidiary of the other.

- 5.1. Have experience planning, implementing, executing and successfully completing a minimum of five projects of similar scope and complexity within the last five years.
- 5.2. Be in good financial standing and current in payment of all taxes and fees such as state franchise fees. TxDOT reserves the right to request a copy of the respondent's audited or un-audited financial statement.

TxDOT may request a statement from the president, owner or financial officer on company letterhead certifying that the company is in good financial standing and current in payment of all taxes and fees.

When financial statements are requested, TxDOT will review the respondent's audited or un-audited financial statement in accordance with Texas Government Code, Title 10, Subtitle D, Section 2156.007 to evaluate the sufficiency of the respondent's financial resources and ability to provide the service required in the solicitation. TxDOT will be the sole judge in determining the sufficiency of the respondent's financial resources and ability to provide the service. Factors to be reviewed include:

- 5.2.1. Balance sheets
- 5.2.2. Net working capital
- 5.2.3. Current asset ratio
- 5.2.4. Liquidity ratio
- 5.2.5. Auditor(s) notes
- 5.2.6. Any notes to the financial statements

6. **RESPONDENT REFERENCES:** The respondent should submit a minimum of five references to substantiate the qualifications and experience requirements for similar services completed for five years within the last five years. References shall illustrate respondent's ability to provide the services outlined in the specification. References shall include name, point of contact, telephone number and dates services were performed. The response may be disqualified if TxDOT is unable to verify qualification and experience requirements from the respondent's references. The response may be disqualified if TxDOT receives negative responses. TxDOT will be the sole judge of references (Ref. – Respondent References).

7. **KEY PERSONNEL QUALIFICATIONS:** The respondent shall provide the following key or respondent personnel:

- 7.1. **PROJECT MANAGER:** A Project Manager will:
 - 7.1.1. Have experience managing complex web development, design (including technical aspects,), and hosting projects of this size and scope
 - 7.1.2. Provide project management services and act as a single point of contact
 - 7.1.3. The PM may be someone acting as a member of the project team and vice versa.

- 7.2. **PROJECT TEAM:** Project team members shall:

- 7.2.1. Have a minimum of five years' of experience within the last five years providing web development, design consultation, and hosting projects.
- 7.2.2. Possess the skills and knowledge required to complete the requirements of the solicitation.

8. VENDOR REQUIREMENTS: The vendor shall:

- 8.1. Adhere to the TxDOT contract terms and conditions identified on the solicitation.
- 8.2. Begin work within 15 calendar days after notification of award and issuance of a purchase order
- 8.3. Provide all labor, materials and equipment necessary to meet requirements of the specified services throughout the term of the purchase order.
- 8.4. Provide a primary point of contact.
- 8.5. Manage the development and implementation of work by assuring that all phases of the project plan and schedule are accomplished without significant delays, problems, or re-work due to poor quality assurance. Delays due to changes both within and outside the vendor's control shall require prior approval of TxDOT.
- 8.6. Administer the work by establishing and maintaining effective communication with all groups related to the project as assigned by the vendor.
- 8.7. Communicate project requirements to vendor staff and subcontractors, direct and coordinate project activities to ensure that the project progresses efficiently and is completed on schedule.
- 8.8. Submit deliverables on the dates specified in a format approved by TxDOT. Any changes to the delivery dates shall have prior written approval by TxDOT.
- 8.9. All deliverables shall have acceptance criteria established and time period for testing or acceptance.
- 8.10. Contact TxDOT in writing if a deliverable cannot be provided within the scheduled time frame. The vendor shall include the reason for the delay and the proposed revised schedule. The request for a revised schedule shall include the impact on related tasks and the overall project.
- 8.11. **BACKGROUND CHECK:** Conduct background checks on all vendor's permanent and temporary personnel scheduled to work on TxDOT projects prior to beginning service start-up. Upon award, supporting documentation confirming the completion of these comprehensive background checks may be subject to review upon request by TxDOT or the TxDOT designee, or both, prior to beginning the service. Failure to produce the requested documentation may be cause for cancellation of the purchase order. The background checks shall include, but not be limited to, the following:
 - 8.11.1. Social Security Number verification
 - 8.11.2. Statewide criminal and sex offender records for all Texas counties and out-of-state counties based on the current and previous addresses of the applicant for the last seven years

9. KEY PERSONNEL REQUIREMENTS

- 9.1. The PM's primary responsibility shall be the day-to-day operation of the service in accordance with the requirements of the purchase order.

- 9.2. The PM shall be a permanent staff employee of the vendor or subcontractor and shall serve as a constant primary point of contact for TxDOT.
- 9.3. All personnel shall:
 - 9.3.1. Have the knowledge to develop and implement the service requirements in this solicitation.
 - 9.3.2. Be fluent in English with the ability to receive, give, and understand written and oral instructions.
 - 9.3.3. Communicate verbally in English, speaking in a manner used in most office environments.
 - 9.3.4. Not be excessively loud or use personal multi-media devices while performing services for TxDOT unless furnished by the vendor to facilitate communication with TxDOT or the vendor.
10. SERVICE REQUIREMENTS: The vendor shall provide a project management methodology and approach to ensure completion of the project to specified quality standards. The vendor's project management approach shall include, but is not limited to:
 - 10.1. SCHEDULE AND WORK PLAN: The vendor shall provide a detailed project schedule and work plan for all project tasks. The PM shall monitor and update the project schedule and work plan, revising as appropriate, with approval from TxDOT. The plan shall be accessible via Microsoft Project 2000[®] or compatible product approved by TxDOT. The plan shall include, but is not limited to:
 - 10.1.1. An implementation schedule.
 - 10.1.2. A logical sequence of tasks and deliverables included in each project period.
 - 10.1.3. A clear definition of each task and deliverable.
 - 10.1.4. Staff requirements for each task and deliverable.
 - 10.1.5. A specific target completion date for each task and deliverable.
 - 10.1.6. Task and deliverable relationships and dependencies.
 - 10.1.7. Use of a gated approach.
 - 10.2. Project Methodology: The vendor shall establish a plan including written project controls, standards and procedures for all project tasks. These documents will be reviewed and approved by TxDOT. This requirement includes, but is not limited to:
 - 10.2.1. Processes for managing project documentation, including electronic issues management and reporting system designed to track and manage maintenance and support issues.
 - 10.2.2. Requirements management.
 - 10.2.3. Business process reviews.
 - 10.2.4. Naming conventions.

- 10.2.5. Change control.
- 10.2.6. Timekeeping procedures.
- 10.2.7. Submission and approval of deliverables.
- 10.2.8. Submission and approval of the gated phases.
- 10.2.9. Meeting procedures.
- 10.3. Gated Approach: The vendor shall use gates within the project work plan:
 - 10.3.1. Gates are decision points that precede every phase. Until specific deliverables are accepted by TxDOT, the project shall not move forward into the next phase.
 - 10.3.2. At each gate, TxDOT and the vendor will review the accepted deliverables in the previous phase to determine whether the project is on target.
 - 10.3.3. Gate sessions will be attended by TxDOT's project management team, selected stakeholders and the vendor's management team. Conditional approval of the deliverables will occur as the deliverables are submitted; however, acceptance of the deliverables will occur at the gate sessions.
- 10.4. Project Organization: The vendor's organization chart shall include both vendor and TxDOT staff resources and shall identify the roles and responsibilities required of all project team members including subcontractors. The organization chart shall show how the vendor shall integrate TxDOT staff resources with the vendor's project team.
- 10.5. Communication Planning: The vendor's communication plan shall facilitate organizational communication and identify strategies for effective communication throughout the life of the purchase order:
 - 10.5.1. The vendor shall administer the work by establishing and maintaining communication with all project stakeholders to ensure that the project meets all requirements and is completed on schedule. The activities of the vendor project team shall be directed, coordinated, and communicated to ensure that the project progresses as outlined in the approved project work plan and is completed on schedule.
 - 10.5.2. Meetings shall be scheduled as required by the TxDOT Project Management Team or the vendor. The vendor's PM and personnel shall be available to provide information reports, audits or other special reports as required by TxDOT. Meetings will be held at a TxDOT facility in Austin, Texas or via teleconference.
 - 10.5.3. The vendor shall have personnel on-site at a minimum during Joint Application Design (JAD) and requirements clarification sessions, design review, walk through and testing the first week of implementation and other times as mutually agreed.
- 10.6. Issue Management: The vendor's issue management process shall include:
 - 10.6.1. Issue identification and tracking.

- 10.6.2. Time frames for resolution.
 - 10.6.3. Responsible parties.
 - 10.6.4. Specific steps to be taken on issues or disputes arising during the implementation process, including approval and escalation procedures.
 - 10.6.5. Issue resolution plan addressing each issue identified.
- 10.7. Change Management: The vendor shall have a comprehensive change management strategy to manage change and control scope throughout all project periods. The plan shall provide a formalized methodology addressing:
- 10.7.1. How changes will be proposed, reviewed, tracked, and approved.
 - 10.7.2. How change requests will be analyzed and presented.
 - 10.7.3. How the change will impact the schedule, quality, and cost structure.
 - 10.7.4. How resources (systems and people) will be managed to support change requests.
- 10.8. Acceptance Management: The vendor's proposed process shall be negotiated and shall include, but is not limited to:
- 10.8.1. Deliverable identification and tracking.
 - 10.8.2. Timeframes for proposed acceptance gate work sessions based on the work plan.
 - 10.8.3. Responsible parties.
 - 10.8.4. Specific steps to be taken on issues or disputes arising with the deliverables, including approval and escalation procedures.
 - 10.8.5. Criteria for acceptance or rejection that is approved by both the vendor and TxDOT within the early phase of the project.
- 10.9. Web Requirements: Vendor shall:
- 10.9.1. Provide guidance to improve the overall look and functionality of the texashighways.com website, assist with initial projects, and keep TRV staff updated on innovations for possible future implementation on texashighways.com.
 - 10.9.2. While TxDOT does not anticipate significant use of design services we may request design consultation on an as needed basis, with a focus on brand integration to ensure that TexasHighways.com and the 3rd-Party hosted online gift shop work seamlessly as one cohesive brand.
 - 10.9.3. Work with TRV staff to implement potential projects to improve the website's look and functionality and may assist with any redesign project as needed, including but not limited to:
 - 10.9.3.1. E-project management for design.

- 10.9.3.2. Solutions for a more enticing presentation.
- 10.9.3.3. Reduction of the bounce rate.
- 10.9.3.4. Refine and minimize navigation.
- 10.9.3.5. Revisit format and structure of the webpages.
- 10.9.4. Maximize usability on all screen sizes via the use of responsive design techniques (RWD) so a single set of web pages will render appropriately on desktop, laptop, tablet, and hand-held devices. TxDOT currently uses the bootstrap framework for our responsive design approach. As technology progresses, additional avenues for enhanced content delivery, interactivity, and rich media may be possible and should be explored for all devices: e.g. desktops, laptops, tablets, and smartphones, including but not limited to, potential mobile apps, rich Hypertext Markup Language (HTML) HTML5-based content, and ePub formats.

NOTE: A separate mobile version of the site does not exist.
- 10.9.5. Manage and code the website to meet or exceed federal and State of Texas web accessibility requirements.
- 10.9.6. Provide technical expertise and project management for developing the website as designed.
- 10.9.7. Maintain and extend the existing website using the selected Content Management System (CMS). Texashighways.com currently runs on Joomla (v3.3.x) using the K2 content module from JoomlaWorks Ltd. And utilizes the OpenX ad serving platform. Code design templates in HTML and install design templates into the selected CMS.
- 10.9.8. Develop navigation menus in the selected CMS
- 10.9.9. Install approved plug-ins for added features or functionality, such as robust and intuitive site search and archives, potential customer integration via profiles, potential subscriber-only perks, events calendar.
- 10.9.10. Work with the additional third-party vendors to ensure an integrated website experience. This includes the external events database hosted and developed by Lightspoke via a provided API and standard web protocols. May also include header/footer template development for use as content wrappers on subscription/gift shop/advertiser information pages.
- 10.9.11. Provide testing and compatibility validation with Internet Explorer 8 and newer for PC, Firefox 7 and newer for PC and Mac, Chrome for PC and Mac, Safari 5 and newer for Mac, Mobile Safari (iOS) and Android/Mobile Chrome.
- 10.9.12. Provide support to the TRV staff throughout the term of the purchase order.
- 10.9.13. Provide TRV with all requested documentation for the website.
- 10.9.14. Provide an online support system for reporting, tracking, and managing maintenance and support issues.

- 10.9.15. Improve search function and archives search ability.
- 10.10. **IMPLEMENTATION APPROACH:** The vendor's solution for implementation shall include, but not be limited to the following:
- 10.10.1. Infrastructure Specifications: The specifications shall be approved by TxDOT and shall include requirements to host the development, testing, training, and production environments. Any recommendations shall include all hardware and software modules necessary to address the functional and technical requirements of the upgrade, enhancement, or change in software or hardware.
- 10.10.2. Infrastructure Test Plan: If changes to the infrastructure are approved by TxDOT, the vendor shall provide an infrastructure test plan that shall include, but is not limited to the following:
- 10.10.2.1.1. Performance testing to ensure integrated system satisfies service level targets under normal workloads
- 10.10.2.1.2. Stress testing of the application to determine failure point of the system under extreme levels of usage.
- 10.10.3. TESTING AND ACCEPTANCE CRITERIA: TxDOT will, in its sole discretion, determine whether the system meets the acceptance criteria. To meet the acceptance criteria, the system shall pass all, but not be limited to, stages of testing described below. The system will be accepted when :
- 10.10.3.1. All deliverables required by the purchase order have been provided to TxDOT.
- 10.10.3.2. The system is fully operational in its installed setting at TxDOT, and all integrated subsystems are functioning as designed.
- 10.10.3.3. The vendor has completed the installation qualification and provided all associated documentation to TxDOT.
- 10.10.3.4. All new application system interfaces with external systems are functioning as designed and without system conflicts.
- 10.10.3.5. All system data conforms to expected output, and data integrity is verified.
- 10.10.3.6. All user acceptance testing of the system feature and functionality has been successfully completed.
- 10.10.3.7. Training of TxDOT personnel has been completed.
- 10.10.3.8. The system has been in production ("live") at all TxDOT locations without malfunction and free of defects for a period of 30 days following successful user acceptance testing.
- 10.10.4. TESTING AND ACCEPTANCE PLAN: The vendor shall have a testing and acceptance plan that may include, but is not limited to:
- 10.10.4.1. Functional testing including:
- 10.10.4.1.1. Website testing (functionality) on all individual modules or components prior to integration into a system or subsystem.
- 10.10.4.1.2. Component integration testing (subsystem and system) to ensure that appropriate communications, links and data sharing occur properly.

- 10.10.4.2. Performance testing to ensure integrated system satisfies service level targets under normal workloads.
- 10.10.4.3. Stress testing of the application to determine failure point of the system under extreme levels of usage and counter actions effectiveness.
- 10.10.4.4. Preliminary beta testing by TxDOT.
- 10.10.4.5. Design of testing scenarios with documented expected results that address the items described in Paras. 10.10.4. – 10.10.4.4.
- 10.10.4.6. Processes and methodologies for correcting problems based on test results using regression testing techniques to ensure changes made for subsequent tests do not adversely affect those already tested.
- 10.10.4.7. Final user acceptance and integration testing.
- 10.10.4.8. Provision of a production “Go Live” plan.
- 10.10.5. TECHNICAL DOCUMENTATION: The vendor shall prepare all technical documentation, for review and approval by TxDOT. Technical documentation shall include, but not be limited to::
 - 10.10.5.1. Development process, including logical data design, physical data design and interface development.
 - 10.10.5.2. Mapping functionality.
 - 10.10.5.3. Reporting.
 - 10.10.5.4. Implementation approach.
 - 10.10.5.5. Implementation and installation of software components.
 - 10.10.5.6. Data migration.
 - 10.10.5.7. Final system requirements specification.
 - 10.10.5.8. Final system design specification.
- 10.11. Maintenance And Hosting Agreement: The vendor’s solution shall provide a planned maintenance, upgrade, and data management strategy. TxDOT will consider a multi-year agreement with volume discount pricing. The vendor shall::
 - 10.11.1. Provide Web hosting for www.texashighways.com on a Virtual Private Server (VPS) or better hosting environment. A suitable development and testing environment/site must also be provided.
 - 10.11.2. Provide designated server space for all web hosting and data storage. Respondent may offer options for storage of server space and data storage to be considered by TxDOT.

NOTE: The site currently uses about 40+ GB of disk space with 50+ GB of traffic per month. A minimum of 1GB RAM required. Site must be able to support upwards of 200,000 page views a month.
 - 10.11.3. Work with TRV editors to resolve issues as they arise.

- 10.11.4. Be proactive about system update and maintenance to keep sites secure, including timely upgrades to software programs, application servers (Apache, PHP, MySQL), client apps, and updates/upgrades to Joomla and related content modules, plugins, and add-ons.
- 10.11.5. Coordinate planned software and data upgrades schedules with TRV prior to implementation.
- 10.11.6. Coordinate software upgrades with TxDOT to ensure that version incompatibilities are not created.
- 10.11.7. Coordinate and schedule planned maintenance and upgrades with TxDOT. The vendor shall schedule any required maintenance for the environments covered under the resulting purchase order.
- 10.11.8. Have procedures to ensure all potentially affected users are notified when a system may be unavailable while maintenance is being performed.
- 10.11.9. Ensure agreement has clearly defined roles, responsibilities, and coordination processes.
- 10.11.10. Ensure agreement has clearly identified roles and responsibilities and ownership during disaster preparedness and recovery.
- 10.11.11. Ensure agreement has clearly defined process for testing recovery services at a minimum of once per year with documentation for each recovery process

11. VENDOR DELIVERABLES:

- 11.1. All written deliverables shall be phrased in terms and language that can be easily understood by non-technical personnel (e.g., laypersons without subject matter expertise).
- 11.2. All document deliverables shall be in formats (hard copy and electronic) specified by TxDOT. At a minimum, the formats shall be in industry-accepted standards (e.g., Microsoft® (MS) Word, MS PowerPoint, MS Project, PDF).
- 11.3. The vendor shall submit each deliverable on or before its due date. Any deliverable specified in the approved project plan which has not been accepted or rejected within ten working days after receipt of the deliverable by TxDOT, shall be deemed accepted.
- 11.4. Written acceptance or rejection of a deliverable shall be accompanied by a statement of known defects in the deliverable. If a deliverable is rejected, the vendor shall correct and resubmit it within five days.
- 11.5. Written acceptance or rejection of a deliverable shall be effective when it is posted in the mail, faxed, or sent electronically to the vendor.
- 11.6. After every deliverable has been accepted or deemed accepted by TxDOT, the vendor may submit its invoice. TxDOT will pay the invoice within the limits established by state law.
- 11.7. If vendor completes the deliverables, and these deliverables are accepted by TxDOT before the agreed upon due date, then invoicing and payment may be accelerated accordingly.
- 11.8. Deliverables shall be provided on the dates specified. Any changes to the delivery date must have prior written approval by TxDOT
- 11.9. All deliverables shall have acceptance criteria established and a time period for testing or acceptance.

11.10. If the deliverable cannot be provided within the scheduled time frame, the vendor shall contact the TxDOT Project Manager in writing with a reason for the delay and the proposed revised schedule. The request for a revised schedule shall include the impact on related tasks and the overall project.

11.11. REPORTS AND MEETINGS:

11.11.1. The vendor shall submit reports as requested by TxDOT. Reports and format standards will be approved by TxDOT and shall be delivered to the designated TxDOT representative.

11.11.2. The vendor shall submit weekly written reports of the project. These are due to TxDOT contract manager by the close of business on Wednesday of each week throughout the term of the purchase order.

11.11.3. Status Reporting and Performance Reviews: The vendor and TxDOT will conduct monthly project status and performance reviews to ensure that measurable progress has been achieved and that standard practices are being adhered to. In order to facilitate performance reviews, the vendor shall submit monthly progress reports detailing work completed and project milestones reached. This report shall be due to TxDOT no later than the tenth calendar day of each month. TxDOT may require this report in an electronic format that shall be agreed upon between the vendor and TxDOT. At minimum, the report shall contain:

11.11.3.1. Project title and purchase order number.

11.11.3.2. Description of the progress of each task and the percentage completed.

11.11.3.3. Meetings attended, purpose, dates, attendees, description, and outcomes and decisions.

11.11.3.4. Major issues and anticipated solutions.

11.11.3.5. Budget expenditures.

11.11.3.6. Work planned for the following month.

11.11.3.7. Updated project schedule.

11.11.4. Quarterly performance reports.

12. WARRANTY REQUIREMENTS

12.1. PERFORMANCE WARRANTY: Work performed under the purchase order shall meet all applicable standards and codes. The vendor shall guarantee all work included in the purchase order against any defects in workmanship; and shall satisfactorily correct, at no cost to TxDOT, any such defect that may become apparent within a period of one year after completion of work. The warranty period shall commence upon date of acceptance by TxDOT.

13. VENDOR PERFORMANCE: Vendor performance will be monitored on a regular basis by TxDOT. TxDOT may consider the following performance by the vendor as unsatisfactory performance.

13.1. An unsatisfactory performance determination includes, but is not limited to:

13.1.1. One service "call back" to correct the same problem within 30 calendar days.

13.1.2. Software upgrades not made on a monthly basis or as needed

- 13.1.3. Two instances within one year of response time, as defined in this specification, to an authorized service call exceeding the two-hour limit.

NOTE: Unsatisfactory performance may result in a negative vendor performance report, or cancellation of the purchase order or both.

- 13.2. An exceptional performance determination includes, but is not limited to:

- 13.2.1. Deliverables made early upon TxDOT member request.

- 13.2.2. Vendor commended for exceptional customer service or exceptional service provided.

- 13.2.3. Provided technical/training/set-up assistance when not required.

14. PERSONNEL CONTINUITY AND REPLACEMENT

- 14.1. TxDOT recognizes that events beyond the control of the vendor such as the death, physical or mental incapacity, long-term illness, or the voluntary termination of employment of the PM or any key personnel will require the vendor propose a replacement. In the event such a replacement is necessary, vendor agrees that personnel shall not begin work on the project without prior written approval from TxDOT.

- 14.2. The PM or any key personnel shall remain available for the entire term of the purchase order as long as that individual is employed by the vendor.

- 14.3. If TxDOT determines the PM or key personnel is unable to perform in accordance with the service requirements or to communicate effectively; the vendor shall immediately remove that person.

- 14.4. Proposed replacement personnel shall meet minimum qualifications and have experience comparable to the person(s) being replaced. Replacement personnel shall be provided at no additional cost to TxDOT. Resume(s) and reference(s) may be requested for the proposed replacement(s). TxDOT may reject any replacement if references or past working performance is questionable or unfavorable. TxDOT will be the sole judge of the qualifications of the proposed replacement personnel.

15. QUALITY ASSURANCE PLAN: The vendor shall provide a comprehensive, continuous, and measurable quality assurance program. The plan shall include:

- 15.1. Strategies and processes to promote quality.

- 15.2. Procedures to periodically measure and report quality performance to TxDOT throughout the term of the purchase order.

- 15.3. How often the vendor conducts internal audits and engages external audit firms to conduct audits of its operations.

- 15.4. Controls to be used within the project to assure quality and consistency throughout the term of the purchase order.

- 15.5.

16. BUSINESS CONTINUITY PROCEDURES AND DISASTER RECOVERY PLAN: The respondent shall submit the respondent's business continuity procedures and disaster recovery plan (limit

one page) which shall include procedures that shall be implemented to fulfill all requirements of the purchase order including, but not limited to: fire, theft, natural disaster, technical difficulty, workforce problems, equipment failure, or other disruption of business.

NOTE: Business continuity and a disaster recovery plan for this service shall be maintained by the vendor throughout the term of the purchase order. The vendor shall be responsible for all costs of disaster recovery.

17. TRAVEL:

All travel and per diem shall be included in the unit price.

18. CANCELLATION OF A PURCHASE ORDER

18.1. **FOR CAUSE:** TxDOT reserves the right to cancel the purchase order without notice . The defaulting vendor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work unless the specification or scope of work is significantly changed. If vendor defaults on the purchase order, TxDOT may purchase the goods or service elsewhere and charge any increase in cost to the defaulting vendor. TxDOT may impose sanctions, debar or suspend the vendor for abandonment or default(s) on the purchase order. This provision does not limit any other remedies TxDOT may have at law.

18.2. **FOR CONVENIENCE:** The purchase order may be cancelled in whole or in part, without penalty, by either party by providing thirty (30) days written notice to the other party. TxDOT will pay the vendor the purchase order price prorated for acceptable service performed up to the date specified in the notice of cancellation. Termination under this paragraph shall not relieve the vendor of any obligation or liability that has occurred prior to cancellation. The vendor shall refund any balance of unused prepaid funds.

19. CONFLICT OF INTEREST: The vendor, vendor's personnel and vendor's subcontractor(s) shall affirm not to have, nor acquire any interest during the term of the purchase order that would conflict in any manner with the performance of the vendor's obligations in regards to services authorized.

20. LIQUIDATED DAMAGES:

20.1. Liquidated damages of \$800 per calendar day will be assessed if the vendor neglects, fails, or refuses to complete the work within the time specified in the purchase order. Each calendar day a project exceeds the agreed completion date will be considered as a breach of contract unless the vendor has been granted an extension in writing by TxDOT.

20.2. Failure to perform in accordance with the specification and terms and conditions of the purchase order, after having been notified in writing by TxDOT of the specific deficiency (i.e. site dysfunction or outage), may result in TxDOT requiring the vendor to pay liquidated damages at \$1,500 per calendar day until the deficiency is corrected. If the deficiency is not corrected within 14 days, the vendor may be considered in default.

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

21. AMENDMENTS: TxDOT and the vendor reserve the right to amend the purchase order by mutual written agreement at any time during the term of service, as may be necessary to achieve the highest quality of production by the most efficient and cost-effective means or to include a different element or special feature that was not contemplated or fully developed at the time of

solicitation. The amendment process will be accomplished through a Purchase Order Change Notice (POCN).

22. INVOICING INSTRUCTIONS: The vendor shall provide:

22.1. ORIGINAL INVOICE: A comprehensive and detailed invoice with reference to the line item on the purchase order or Schedule 1 – Pricing for each item charged. The original invoice shall be e-mailed to FIN_Invoices@txdot.gov unless otherwise shown on the purchase order to ensure timely payment and shall include the following:

22.1.1. Complete 16-digit purchase order number.

22.1.2. Vendor Federal Employer Identification Number (EIN).

22.1.3. Date of service.

NOTE: Invoices requiring correction shall be re-submitted with a new invoice date.

22.2. COPY OF INVOICE AND SUPPORTING DOCUMENTATION: A copy of the invoice and original supporting documentation that validates the invoice charges shall be e-mailed to the designated TxDOT representative.

23. TxDOT RESPONSIBILITIES: TxDOT will:

23.1. Provide a contract manager as the point of contact.

23.2. Provide access to appropriate data systems and information.

23.3. Provide contract administration, perform periodic audits or field reviews as needed to ensure that the vendor is operating the program under the requirements of Texas state law, the terms of the Department of Information Resources (DIR) contract and the agreement executed between TxDOT and the vendor.

24. RESPONSE SUBMISSION

24.1. GENERAL FORMAT: The respondent shall submit one signed and dated original (marked Original) and should submit six copies (marked Copy) and one copy on DVD or flash drive. The submission should be in separate loose leaf binders on one sided 8-1/2 x 11 inch paper and be tab-indexed corresponding to the sections listed below. Plastic spine-bound or wire-bound submittals are highly discouraged. Include only the information specified for each section.

24.2. ORIGINAL RESPONSE: Failure by the respondent to submit the documentation listed below may disqualify the respondent from further consideration. The response submission shall be submitted in the following format:

24.2.1. Section 1 – Schedule 2 – Original, completed, signed and dated Request for Offer (RFO)

NOTE TO RESPONDENT: If addendums are generated as part of this solicitation, include the original signed and dated addendum(s) in Section 1.

24.2.2. Section 2 – Schedule 1 – Pricing

- 24.2.3. Section 3 – Schedule 3 - Respondent Qualifications and Experience:
Complete and return detailing respondent qualifications and experience.
- 24.2.4. Section 4 – Schedule 4 – Key Personnel Qualifications and References:
Complete and return for each proposed key or respondent personnel position.
- 24.2.5. Section 5 – Demonstration of Capability: The respondent's approach and ability to meet the service requirements as specified in the solicitation shall be demonstrated. The response should be specific and address all requirements described in the solicitation in the order presented in Para. 10. The respondent shall submit written documentation addressing how the vendor intends to meet the following:
 - 24.2.5.1. Project Management Approach: The respondent shall describe approach and ability to meet the project management requirements as specified in the SOW. The response should be specific and address all requirements described in the solicitation.
 - 24.2.5.1.1. Organizational Structure– Submit proposed organizational structure showing roles and responsibilities and lines of authority including any subcontractors. The organization chart shall show how the vendor shall integrate TxDOT staff resources with their project team.
 - 24.2.5.1.2. Staffing Plan: Include a staffing plan demonstrating staff qualification and experience, including subcontractors. This plan should describe the number of staff proposed, the functions they will perform, and the percentage of time they will be assigned to this project during the purchase order term.
 - 24.2.5.1.3. Background: Description of the approach, business objectives and critical success factors.
 - 24.2.5.1.4. Assumptions: Regarding implementing the modules as defined within this SOW
 - 24.2.5.1.5. Scope: Understanding of the scope of the project, including what is considered in and out of scope.
 - 24.2.5.1.6. Timeline: A high-level timeline of the proposed approach for each component, listing the major milestones and deliverables in a Gantt chart accessible in Microsoft Project 2000®, or compatible product approved by TxDOT.
 - 24.2.5.2. Web Design Requirements: The respondent shall describe approach and ability to meet the project requirements as specified in the solicitation. The response should be specific and address all requirements described in the solicitation in the order presented in Para. 10.9.
 - 24.2.5.3. Implementation Approach: The respondent shall describe approach and ability to meet the development and implementation

requirements as specified in the solicitation. The response should be specific and address all requirements described in the solicitation in the order presented in Para. 10.10.

24.2.5.4. Maintenance and Hosting Agreement: Respondent shall describe approach to meeting maintenance and hosting requirements specified in Para.10.11.

24.2.5.5. Deliverables: The respondent shall describe approach to completing deliverables as required in Para. 11.

24.2.5.6. Service Level Agreement

24.2.5.6.1. Describe and provide your Service Level Agreement (SLA) for Network Up-time.

24.2.5.6.2. Describe and provide your Service Level Agreement (SLA) for Server Up-time.

24.2.5.6.3. What is average resolution time for business critical issues?

24.2.5.6.4. What is average resolution time for reported issues?

24.2.5.6.5. Provide information on issue resolution procedures and cost impact, if any, should issue not be resolved within the hours defined in the Service Level Agreement (SLA)

24.2.5.6.6. What is your Customer Service Guarantee? Describe how it is measured.

24.2.5.6.7. Describe your methodology for reimbursement for non-compliance.

24.2.5.6.8. What monthly metrics and supporting documentation is provided to validate Service Level Agreements (SLA's) is being met?

24.2.5.6.9. Will TxDOT be notified in advance when hosted solution will be down for routine maintenance?

24.2.5.6.10. Is maintenance conducted during non-business hours?

24.2.6. Section 6 – Business Continuity and Disaster Recovery Plan: Respondent shall submit a business continuity and disaster recovery plan detailing how the respondent proposes to meet the specifications in the event vendor service is interrupted. The plan shall detail the vendor's backup and recovery process (Ref. Para. 17.).

24.3. The following **should** be submitted with the response. Failure by the respondent to submit the documentation listed below **may** disqualify the respondent from further consideration.

24.3.1. Section 7 – Respondent References.

- 24.3.2. Section 8 – Quality Assurance Plan: The respondent should provide a comprehensive, continuous, and measurable quality assurance program.
- 24.3.3. Section 9 – Financial Standing
 - 24.3.3.1. Submit the most recent three years audited financial statements, or if audited financial statements are unavailable, un-audited financial statements shall be submitted and certified as true, correct and accurate by the chief financial officer or treasurer of the respondent's company (Ref. Para. 5.2.).
 - 24.3.3.2. Additional information demonstrating financial stability and ability to meet the financial responsibilities for the requirements to perform this service.

25. RESPONSE EVALUATION

- 25.1. STEP 1 – REVIEW OF RESPONSES BY PURCHASING: 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.
- 25.2. STEP 2 – INITIAL EVALUATION: A TxDOT evaluation committee will evaluate and score each response based on established criteria. Respondents shall not contact members of the evaluation team. Responses will be evaluated according to the respondent's ability to best satisfy TxDOT requirements. Respondent's submission is evaluated and scored on a weighted system to determine the best value as follows:
 - 25.2.1. Respondent qualifications and experience will comprise 60% of the evaluation total.
 - 25.2.2. Pricing submitted for the solicitation requirements will be 40% of the evaluation total.
- 25.3. STEP 3 – ORAL PRESENTATION: TxDOT may request that selected respondents, including key personnel participate in oral presentation.
 - 25.3.1. The TxDOT evaluation committee will evaluate and score each oral presentation. All responses will be evaluated according to the respondent's ability to best satisfy TxDOT requirements.
 - 25.3.1.1. The initial selection of respondents qualifying to proceed to this step will maintain the pricing weight at 40%. The initial evaluation score of the qualifications and submission information will be replaced with the oral presentation score at 60%.
 - 25.3.1.2. TxDOT will advise each respondent in writing of the location, date and time of the scheduled oral presentation. A minimum of two weeks' notice will be given to the respondent(s) selected for the oral presentation phase.
 - 25.3.1.3. TxDOT may provide the respondent with a list of proposed key personnel required to attend and participate in the meeting.

- 25.3.1.4. Respondent and proposed key personnel should be prepared to address any questions that may be asked by TxDOT evaluators.
 - 25.3.2. TxDOT reserves the right to continue discussions with selected respondent(s).
- 25.4. **NEGOTIATIONS:** Upon completion of oral presentation evaluation scoring, TxDOT reserves the right to enter into negotiations with one or more selected respondents.
- 25.5. **STEP 4 – BEST AND FINAL OFFER (BAFO):** TxDOT reserves the right to request a BAFO from selected respondent(s).
 - 25.5.1. The respondent(s) shall submit a final price and any added value. If more than one respondent reaches this level, the negotiated terms, references, BAFO and added values will be the considered in the award. TxDOT will make the final determination on the best value.
 - 25.5.2. TxDOT may award the purchase order for the service without requesting a BAFO.
- 26. **AWARD:** TxDOT reserves the right to award a purchase order(s) to the company that provides the best value to TxDOT in performance of this service.
 - 26.1. **BEST VALUE:** TxDOT will be the sole judge of best value. Best value criteria may include, but are not limited to:
 - 26.1.1. Best meets the goals and objectives of the solicitation as stated in the Service Requirements.
 - 26.1.2. Best meets the quality and reliability of the proposed goods and services.
 - 26.1.3. Effect of the proposed solution on agency productivity.
 - 26.1.4. Provides the most customer focused solution that will best meet the needs of the traveling public.
 - 26.1.5. Experience in successfully providing services in the solicitation.
 - 26.2. **TYPE OF AWARD**
 - 26.2.1. Single Award: One purchase order awarded to a single vendor.
- 27. **POST AWARD MEETING:** Vendor may be requested to attend a post award meeting in person or via teleconference, or in Austin, Texas with TxDOT within 10 calendar days after the award of the purchase order. The purpose of the meeting is to discuss the terms and conditions of the purchase order and to provide additional information regarding the purchase order. Vendor(s) and TxDOT shall identify specific goals, strategies and activities planned for meeting particular program area objectives.
- 28. **TRANSITION OF TxDOT PROPERTY:** TxDOT will provide assistance as needed for the efficient and smooth transfer of all TxDOT property, including but not limited to: Publications, documents, property, equipment and other material which TxDOT retains ownership rights related to work provided under a previous or current purchase order.
 - 28.1. **BEGINNING PHASE:** The vendor awarded a purchase order as a result of this solicitation, shall, at the request of TxDOT, be responsible for contacting the previous

vendor to request the transfer of all TxDOT property. The transition of TxDOT's property shall occur within an agreed upon time frame to assure the new vendor can begin providing services as required by TxDOT.

- 28.2. **CANCELLATION OR TERMINATION OF THE PURCHASE ORDER:** At the end of the purchase order term or if the purchase order is cancelled by either party, the vendor(s) shall return all TxDOT property to TxDOT or transfer all TxDOT property to the TxDOT designated vendor(s) immediately upon TxDOT's request.
29. **CONTRACT ADMINISTRATION:** Administration of the purchase order is a joint responsibility of the TxDOT Contract Administrator and TxDOT Purchasing. TxDOT Purchasing staff will be responsible for administering the contractual business relationship with the vendor.
 - 29.1. Any proposed changes to work to be performed, whether initiated by TxDOT or the vendor, must receive final written approval in the form of a Purchase Order Change Notice signed by the authorized TxDOT purchasing agent.
 - 29.2. Upon issuance of purchase order, TxDOT will designate an individual to serve as the Contract Manager and point of contact between TxDOT and the vendor. The Contract Manager does not have any express or implied authority to vary the terms of the purchase order, amend the purchase order in any way or waive strict performance of the terms or conditions of the purchase order. This individual's contract management and contract administration responsibilities include, but are not limited to:
 - 29.2.1. Monitoring the vendor's progress and performance and ensuring services conform to established specification requirements.
 - 29.2.2. Managing the financial aspects of the contract including approval of payments.
 - 29.2.3. Meeting with the vendor as needed to review progress, discuss problems and consider necessary action.
 - 29.2.4. Identifying a breach of contract by assessing the difference between contract performance and non-performance.
 - 29.2.5. Other areas as identified by the Comptroller of Public Accounts Contract Management Guide, latest edition.

**TEXAS DEPARTMENT OF TRANSPORTATION
TERMS AND CONDITIONS**

PART 1. INTRODUCTION

1.01 GENERAL: These Terms and Conditions shall apply to all solicitations for goods and/or services [including without limitation any Request for Quote (RFQ), Invitation for Bids (IFB), Request for Offer (RFO) and Request for Proposal (RFP)] offered by the Texas Department of Transportation (TxDOT) (“solicitations”) and any purchase order issued by TxDOT (“purchase order”). The term “respondent” shall mean any party who responds to a solicitation for goods and/or services offered by TxDOT, including the vendor. The term “vendor” shall mean the party listed as vendor on the purchase order.

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

1.03 TITLE VI ASSURANCE: TxDOT, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4, hereby notifies all respondents that it will enforce compliance with this law, investigate alleged violations and affirmatively ensure that in any purchase order entered into pursuant to TxDOT procurements, minority business enterprises will be afforded full opportunity to submit responses and will not be discriminated against on the grounds of race, color, national origin, sex, age or disability in consideration for an award.

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

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

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

PART 2. GENERAL INSTRUCTIONS

2.01 SPECIFICATIONS

- (a) The respondent shall carefully examine the solicitation. The respondent shall be responsible for securing any additional information from the TxDOT purchaser needed to gain a clear and full understanding of TxDOT's requirements.
- (b) TxDOT will not be bound by any oral statement or representation contrary to the written specifications of this solicitation. Any revision, clarification, or interpretations pertaining to this solicitation will be in writing and issued by TxDOT as an Addendum. Any changes or interpretation not in an Addendum will not legally bind TxDOT.

* This Revision Supersedes Previous Revision, Revised August 2013.

- (c) The goods furnished or services performed shall be in accordance with the specifications set forth in the solicitation and with these Terms and Conditions. TxDOT will provide clarifications of the specifications and determine the quality and acceptability of goods products furnished or work performed. If the solicitation is for a service, TxDOT will determine the manner of performance, the rate of progress of the work and whether the vendor's performance of the service is acceptable.
- (d) Any catalog, brand name or manufacturer's reference used in the solicitation is descriptive only (not restrictive), and is used to indicate type and quality desired. Responses on brands of like nature and quality will be considered unless advertised as proprietary or sole source under Texas Government Code Section 2155.067. The respondent shall show manufacturer, brand or trade name, and other description of the product offered in response to the solicitation. If offer is for other than example(s) shown in the solicitation, include illustration(s) and complete description(s) of product(s) in the response to the solicitation. If respondent takes no exception to specifications or reference data in the response, the vendor will be required to furnish brand names, numbers, etc., as specified.
- (e) Unless otherwise specified, all goods offered shall be new and in first class condition, including shipping and storage containers. Verbal agreements to the contrary will not be recognized.
- (f) Manufacturer's standard warranty shall apply unless otherwise stated in this solicitation.
- (g) All electrical items shall meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.

2.02 RESPONSE SUBMISSIONS

- (a) Respondent shall submit the number of responses required in the manner stated in the specification or on the solicitation.
- (b) Response should be submitted on the solicitation form. If submitting multiple responses, each response should be placed in a separate envelope, correctly identified with the solicitation number and opening or closing date. If no solicitation form is provided, responses shall be submitted as required in the specification.
- (c) Response must be time stamped in TxDOT's Mail Room or hand delivered to the address on the solicitation before the hour and date specified for the solicitation opening or closing. Late responses will not be considered under any circumstances. Late responses will be returned unopened to the respondent.
- (d) Documentation provided with the response should be complete and comprehensive. TxDOT will not be responsible for locating or securing information not included in the response. Failure to furnish required documentation with the response may result in the response being deemed incomplete and non-responsive, resulting in rejection. TxDOT will not be responsible for any expenses relating to responses or development of documentation that may result from this solicitation.
- (e) Failure to sign the solicitation manually will disqualify the response. The person signing the response must have authorization to contractually bind the company. The solicitation response shall include an Employer Identification Number (EIN), full firm name and address of company. The EIN should be entered in the space provided on the solicitation.
- (f) Facsimile (FAX) responses may be submitted to the FAX number provided in the solicitation for procurements less than \$25,000, unless otherwise stated in the solicitation. For procurements \$25,000 and greater, FAX responses will not be considered unless otherwise stated in the solicitation. TxDOT will not be responsible for failure of electronic equipment or operator error. Responses that are late, illegible, incomplete, or otherwise non-responsive will not be considered.
- (g) E-mailed responses may be accepted if stated on the solicitation. E-mailed responses must be in Portable Document Format (pdf), signed by the respondent and attached to the e-mail to be considered for award.

- (h) RESPONDENT EXCEPTIONS OR CONDITIONED RESPONSES: Exceptions taken by the respondent to TxDOT's Terms and Conditions or respondent's Terms and Conditions attached to a response will not be considered unless specifically referred to and clearly identified as such within the response.
- (i) TxDOT reserves the right to accept or reject all or any part of any response, waive minor technicalities and make an award to best serve the interests of the State. TxDOT reserves the right to reject any response not prepared and submitted in accordance with the solicitation requirements.
- (j) Response should indicate number of days required to deliver goods, or begin service (if required), at TxDOT's designated location. Failure to indicate delivery time obligates vendor to complete delivery in fourteen (14) calendar days.
- (k) Samples, when requested must be furnished at no cost to TxDOT. TxDOT may perform tests on samples. If not destroyed in testing, samples will be returned upon request at respondent's expense. Each sample shall be marked with respondent's name and address, and TxDOT solicitation number. Samples shall not be enclosed or attached to a response unless specified in the solicitation.

2.03 PRICING

- (a) TxDOT's automated purchasing system requires pricing to be submitted per unit, multiplied by the quantity and extended. Unit prices shall govern in the event of extension errors. If a trade discount is offered on the solicitation response, it should be deducted and net line extensions should be shown.
- (b) All prices shall be firm for thirty (30) days from the solicitation response date unless otherwise stated in the solicitation. "Discount from list" pricing is not acceptable unless requested. Cash discounts are acceptable, but are not considered in making an award.
- (c) All purchases are on a firm, fixed price basis unless otherwise stated in the solicitation.
- (d) Price(s) shall not increase during the term of the purchase order unless otherwise stated in the solicitation. Vendor shall give price reductions to TxDOT that result from reduced cost to the vendor during the term of the purchase order.
- (e) All prices shall be F.O.B. destination, freight prepaid and allowed. This means the vendor shall prepay and include the freight charges in the unit price.
- (f) Purchases made for State use are exempt from the State and Local Sales tax and Federal Excise tax. Do not include tax in response pricing unless otherwise specified in the solicitation. State Sales tax and Federal Excise Tax Exemption Certificates will be furnished by TxDOT on request.
- (g) The purchase order may contain a "Total Cost Not to Exceed" statement. Vendor shall not perform any work that may exceed either the purchase order total or the not-to-exceed total without prior written authorization from TxDOT.
- (h) Consistent and continued tie response pricing may lead to rejection of the response by TxDOT and investigation for antitrust violations.

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

2.05 RECEIPT OF PROPOSALS AND BID OPENINGS

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

- (c) **DISCLOSURE OF RESPONSE:** All information submitted in an accepted response must be retained by TxDOT for the period specified in TxDOT's record retention schedule created under Government Code Section 441.180, et sequitur. The information will not be returned to the respondent. The Public Information Act (PIA), Government Code Chapter 552, allows the public to have access to information in the possession of a governmental body through an open records request. Therefore, the respondent shall clearly identify in the response any confidential or proprietary information. Proprietary information identified by the respondent in the response, will be kept confidential by TxDOT to the extent permitted by state law. TxDOT merely raises the exception on behalf of the vendor. TxDOT takes no legal position on disclosure. TxDOT will use best efforts to give the respondent or the awarded vendor an opportunity to present to the Office of the Attorney General its arguments for non-disclosure of its identified confidential or proprietary information.

2.06 ALTERATIONS OR WITHDRAWAL OF RESPONSES

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

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

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

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

- (1) life cycle costs;
- (2) the quality and reliability of goods and services;
- (3) the delivery terms;
- (4) indicators of probable vendor performance;
- (5) cost of employee training associated with a purchase;
- (6) the effect of a purchase on agency productivity; and
- (7) other factors relevant to determining best value for the state in the context of a particular purchase.

- (b) **BEST VALUE CRITERIA FOR RFO PURCHASES:** Best value criteria will be used on all information technology equipment or service purchases. Those best value criteria include but are not limited to:
 - (1) compatibility to facilitate exchange of existing data;
 - (2) capacity for expansion and upgrading to more advanced levels of technology;
 - (3) quantitative reliability factors;
 - (4) level of training required to bring end-users to a stated level of proficiency;
 - (5) technical support requirements for maintenance of data across a network platform and management of the networks hardware and software;
 - (6) items, features, etc., which are in addition to requirements listed, as well as factors which, in TxDOT's opinion, add value to the product or service but are not specifically required within the solicitation.
- (c) **NEGOTIATIONS FOR RFO AND RFP PURCHASES:** TxDOT reserves the right to conduct formal negotiations with respondent(s) judged to have the best offer pertaining to price, goods, services and terms.
- (d) TxDOT reserves the right to reject a response from a respondent whose goods or services to TxDOT or other state agencies have been documented as unsatisfactory in providing the same goods or service.
- (e) **TIE RESPONSES:** In case of tie responses, one or more preferences described in Government Code Chapter 2155 and 34 TAC §20.36 and §20.38 will be used to make an award. Tie responses which cannot be resolved by application of one or more preferences shall be made by drawing lots.

2.08 PREFERENCES: A respondent may claim a preference under 34 TAC §20.38. To claim a preference, a respondent shall identify the preference on the solicitation or on the Execution of Proposal. If the appropriate area on the solicitation 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.

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

2.10 INSPECTIONS AND TESTS: Goods will be subject to inspection and test by TxDOT to the extent practicable at all times and places. Tests will be performed on samples taken from regular shipment. In the event samples tested fail to meet all conditions and requirements of the specification, the cost of the sample used and the cost of the testing shall be borne by the vendor. Goods which have been delivered and rejected in whole or in part may, at TxDOT's option, be returned to the vendor or held for disposition at vendor's risk and expense. Latent defects may result in revocation of acceptance. Acceptance of services shall be based on attainment of performance in accord with specifications and the purchase order.

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

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

- A score of less than 90% in the Vendor Performance System,
- Currently under a Corrective Action Plan through the CPA,
- Having repeated negative Vendor Performance Reports for the same reason,
- Having purchase orders that have been cancelled or terminated in the previous 12 months for non-performance (i.e. late delivery, etc.).

Vendor performance information is located on the CPA web site at:

http://www.window.state.tx.us/procurement/prog/vendor_performance/

TxDOT may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108) TxDOT may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TxDOT, and any negative findings, as determined by TxDOT, may result in non-award to the Respondent.

PART 3. RESPONDENT AFFIRMATIONS

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

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

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

3.04 CERTAIN BIDS AND CONTRACTS PROHIBITED: Under Government Code Section 2155.004, the respondent certifies that the individual or business entity named in this bid or contract is eligible to receive the specified contract and acknowledges that this contract may be terminated or payment withheld if this certification is inaccurate.

3.05 ANTITRUST LAWS: Neither the respondent nor the firm, corporation, partnership, or institution represented by the respondent, or anyone acting for such firm, corporation or institution has violated the antitrust laws of the State of Texas, or the Federal Antitrust Laws, nor communicated directly or indirectly the solicitation made to any competitor or any other person engaged in such line of business.

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

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

3.08 INELIGIBILITY UNDER FAMILY CODE: Under Section 231.006, Family Code, the vendor certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Any respondent subject to Section 231.006 must include names and Social Security numbers of each person with at least 25% of ownership of the business entity submitting the response. This information must be provided prior to award.

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

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

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

3.10 DEBT TO THE STATE: Respondent agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

3.11 RESPONDENT ELIGIBILITY

- (a) Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subject to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity, and that respondent is in compliance with the State of Texas statutes and rules relating to procurement, and that respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at: <http://www.epls.gov>.

- (b) Respondent certifies that Respondent has not been: (i) convicted of a felony in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina or any other disaster occurring after September 24, 2005; or (ii) assessed a penalty in a federal civil or administrative action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005
- (c) Respondent certifies that it is not:
 - (1) A person required to register as a lobbyist under Government Code Chapter 305.
 - (2) A public relations firm.
 - (3) A government consultant.

3.12 NEPOTISM DISCLOSURE

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

PART 4. GENERAL TERMS AND CONDITIONS

4.01 ORDERS

- (a) Only authorized TxDOT purchasers have the authority to place orders for goods and services. Purchase orders must be issued by a TxDOT purchaser prior to a vendor providing the goods or service. The only exceptions are payment card orders and bona fide emergencies. In the case of an emergency, the Purchasing Section will confirm such orders with a signed purchase order.
- (b) Vendor acceptance of a purchase order and delivery of goods or services without an approved purchase order number or release number issued by TxDOT may result in the rejection of delivery, return of goods at the vendor's cost and also result in non-payment.

4.02 FUNDING: Any purchase order resulting from this solicitation is contingent upon the availability of funding, and is subject to termination without penalty, either in whole or in part, if funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations.

4.03 INVOICING

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

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

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

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

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

OR

- (b) As otherwise stated in the solicitation document.

OR

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

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

4.05 INTELLECTUAL PROPERTY

- (a) All intellectual property developed and created in the course of the services rendered pursuant to the purchase order are works for hire and all intellectual property rights, including but not limited to publication rights, copyrights, trademarks, patents and trade secrets, to all products and materials developed and created pursuant to the purchase order shall be owned by TxDOT.
- (b) Vendor shall ensure that TxDOT's intellectual property rights, including but not limited to publication rights, copyrights, trademarks, patents and trade secrets, are secured from all suppliers, contractors and subcontractors.
- (c) When applicable, each vendor shall obtain necessary licenses, copyrights, trademarks or patents for TxDOT's use.
- (d) The vendor shall not assert rights at common law or in equity or establish any claim to TxDOT's intellectual property, including, but not limited to, licenses, claiming common law ownership of intellectual property, obtaining registrations for copyrights, trademarks, trade secrets or patents for any intellectual property developed in performance of the services authorized.
- (e) THE VENDOR AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND TXDOT AND THE STATE FROM CLAIMS INVOLVING INFRINGEMENT OF THIRD PARTIES' LICENSES, TRADEMARKS, COPYRIGHTS OR PATENTS AT THE VENDOR'S EXPENSE.

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

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

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

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

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

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

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

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

4.14 RIGHT TO AUDIT

- (a) The State Auditor's Office and TxDOT's internal auditors (individually or collectively "state auditor") may conduct an audit or investigation (Government Code Section 2262.003) of any entity or person receiving funds from the state directly under this purchase order or indirectly through a subcontract under this purchase order. Acceptance of funds directly under this purchase order or indirectly through a subcontract under this purchase order acts as acceptance of the authority of the state auditor to conduct an audit or investigation in connection with those funds. Any entity subject to an audit or investigation by the state agrees to provide access to any information the state auditor considers relevant to the investigation or audit.
- (b) TxDOT has the right to audit the vendor's books and records pertaining to the service during normal work hours.
- (c) Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Vendor and the requirement to cooperate is included in any subcontract it receives.

4.15 INDEMNIFICATION: Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, VENDORS, 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 the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Infringement:

- (a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER 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 THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
- (b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by:
 - (1) use of the product or service for a purpose or in a manner for which the product or service was not designed,
 - (2) any modification made to the product without Vendor's written approval,
 - (3) any modifications made to the product by the Vendor pursuant to Customer's specific instructions,
 - (4) any intellectual property right owned by or licensed to Customer, or
 - (5) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.
- (c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense;
 - (1) procure for the Customer 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 Customer's use is non-infringing.

Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

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

- (b) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION, AND/OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER IN OR ARISING OUT OF ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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

4.17 CONFIDENTIALITY CLAUSE: TxDOT is governed by laws and regulations that make certain information confidential as well as specifying how public information is released (see Government Code Chapter 552). The vendor, its employees or subcontractors shall not divulge any information relative to TxDOT business at any time to a third party without the prior written approval of TxDOT. The vendor will notify TxDOT within 24 hours of receipt of any third party requests for information that was provided by TxDOT for use in performing the purchase order, including this purchase order. All information created by or accessible to a vendor while providing a good or service for TxDOT is confidential. If applicable to a service, upon award of a purchase order, the vendor may be required to complete and sign TxDOT Form 1828b, Information Resource Security Compliance and Confidentiality Agreement.

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

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

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

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

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

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

PART 5. INSURANCE

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

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

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

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

5.05 WORKERS' COMPENSATION INSURANCE FOR BUILDING AND CONSTRUCTION SERVICES: The vendor is responsible for providing Workers' Compensation Insurance for Building and Construction Services. Building or construction includes:

- erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
- remodeling, extending, repairing, or demolishing a structure; or
- otherwise improving real property or an appurtenance to real property through similar activities.

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

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

- (1) Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
- (2) Duration of the project - includes the time from the beginning of the work on the project until the vendor's/person's work on the project has been completed and accepted by the governmental entity.

- (3) Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the vendor has undertaken to perform on the project, regardless of whether that person contracted directly with the vendor and regardless of whether that person has employees. This includes, without limitation, independent vendors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- (b) The vendor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the vendor providing services on the project, for the duration of the project.
- (c) The Vendor must provide a certificate of coverage to TxDOT prior to being awarded the purchase order.
- (d) If the coverage period shown on the vendor's current certificate of coverage ends during the duration of the project, the vendor must, prior to the end of the coverage period, file a new certificate of coverage with TxDOT showing that coverage has been extended.
- (e) The vendor shall obtain from each person providing services on a project, and provide to TxDOT:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so TxDOT will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the vendor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- (f) The vendor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- (g) The vendor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the vendor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- (h) The vendor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- (i) The vendor shall contractually require each person with whom it contracts to provide services on a project, to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the vendor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the vendor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

- (4) obtain from each other person with whom it contracts, and provide to the vendor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify TxDOT in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- (j) By signing the purchase order or providing or causing to be provided a certificate of coverage, the vendor is representing to TxDOT that all employees of the vendor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the vendor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (k) The vendor's failure to comply with any of these provisions is a breach of contract by the vendor which entitles TxDOT to declare the purchase order void if the vendor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

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

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

PART 6. VENDOR PERSONNEL MANAGEMENT

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

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

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

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

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

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

6.07 FELONY CRIMINAL CONVICTIONS: Vendor represents and warrants that vendor or vendor's employees have not 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 defense, hold harmless, indemnify TxDOT from any loss or claim due to any such employees.

6.08 SUBCONTRACTING REQUIREMENTS: In accordance with Government Code Sections 2161.181-182 and 34 TAC §20.11 and pursuant to the CPA Historically Underutilized Business (HUB) Rules, 34 TAC, §20.14, and Transportation DBE/HUB/SBE Rules, 43 TAC 9.50-.57 (relating to Disadvantaged Business Enterprises, HUB and Small Business Enterprises, DBE/HUB/SBE) all state agencies entering into a contract with an expected value of \$100,000 or more over the life of the contract (including renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine if it is probable for subcontracting opportunities under the contract. If subcontracting opportunities are probable the state agency will state such probability in its bids, proposals, offers, or other applicable expression of interest and require the submission of a HUB Subcontracting Plan (HSP). The HSP, if acceptable to the agency, will be a provision of the contract. The HSP, if required, may be found at: <http://www.dot.state.tx.us/gsd/purchasing/purchasing.htm>.

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

- (l) A vendor who receives a payment from a governmental entity shall pay a subcontractor the appropriate share of the payment not later than the 10th day after the date the vendor receives the payment.
- (m) The appropriate share is overdue on the 11th day after the date the vendor receives the payment.

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

- (b) Vendor and its subcontractors shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The vendor shall not participate either directly or indirectly in any discriminatory employment practices. Failure by the vendor to carry out these requirements is a material breach of any contract awarded and may result in the termination of the contract or such other remedy as TxDOT deems appropriate.
- (c) In any solicitations for subcontractors, including procurements of materials or leases of equipment and in all solicitations either by competitive bidding or negotiation made by the vendor for work to be performed under a subcontract, each potential subcontractor or supplier shall be notified by the vendor of the vendor's and subcontractor's obligations under its purchase order relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

- (d) During the performance of this purchase order, the vendor, for itself, its assignees and successors in interest (hereinafter referred to as the "vendor") agrees as follows:
- (1) Compliance with Regulations: The vendor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations (CFR), Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this purchase order.
 - (2) Nondiscrimination: The vendor, with regard to the work performed by it during the purchase order, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The vendor shall not participate either directly or indirectly on the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the purchase order covers a program set forth in Appendix B of the Regulations.
 - (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the vendor's obligations under this purchase order and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability. The assurances in (2) above must appear in all subcontracts.
 - (4) Information and Reports: The vendor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TxDOT or the Federal Highway Administration (FHWA) to be pertinent and to ascertain compliance with such Regulations, orders and instructions. Where any information required of a vendor is in the exclusive possession of another who fails or refuses to furnish this information the vendor shall certify to the TxDOT or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
 - (5) Sanctions for Noncompliance: In the event of the vendor's noncompliance with the nondiscrimination provisions of this purchase order, TxDOT shall impose such sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a) withholding of payments to the vendor under the purchase order until the vendor complies; or
 - b) cancellation, termination, or suspension of the purchase order, in whole or in part.
 - (6) Incorporation of Provisions: The vendor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.
- (e) The vendor shall take such 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 however, that, in the event a vendor becomes involved in, or is threatened with, litigations with a subcontractor or supplier as a result of such direction, the vendor may request TxDOT enter into such litigation to protect the interests of TxDOT, and, in addition, the vendor may request the United States to enter into such litigation to protect the interests of the United States.

PART 7. DISPUTE RESOLUTION

7.01 DISPUTE RESOLUTION: TxDOT has established a dispute resolution process under 43 TAC §9.1 and §9.2 to resolve disputes that may arise between TxDOT and the vendor under any purchase order resulting from this solicitation. The dispute resolution process provided for in Government Code Chapter 2260 must be used by TxDOT and the vendor to resolve disputes arising under the purchase order, including without limitation any claim for breach of contract. The contested case process provided in Chapter 2260 is the vendor's sole and exclusive process for seeking a remedy for an alleged breach of contract by TxDOT if the parties are unable to resolve their disputes as described above. Notwithstanding any provision of the purchase order to the contrary, unless otherwise agreed in writing by TxDOT, the vendor shall continue performance and shall not be excused from performance during the period of contract claim or dispute is pending; however, the vendor may suspend performance during the pendency of such claim or dispute if the vendor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

PART 8. CONTRACT TERMS

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

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

8.03 TERMINATION OF A PURCHASE ORDER

- (a) **FOR CAUSE:** If vendor fails to provide a good or service according to the provisions of the purchase order or fails to comply with any term or condition of the purchase order, or if any representation or certification made in the purchase order or any related document is false, incomplete or inaccurate, TxDOT may terminate the purchase order upon written notice to the vendor and either re-solicit or award the purchase order to the next lowest responsive and responsible respondent. The defaulting vendor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work unless the specification or scope of work is significantly changed. If vendor defaults on the purchase order, TxDOT may purchase the goods or service elsewhere and charge any increase in cost to the defaulting vendor. TxDOT may impose sanctions, debar or suspend the vendor for abandonment or default(s) on the purchase order. This provision does not limit any other remedies TxDOT may have at law or equity.
- (b) **FOR CONVENIENCE:** The purchase order may be terminated in whole or in part, without penalty, by either party by providing thirty (30) days written notice to the other party. TxDOT will pay the vendor the purchase order price prorated for acceptable service performed up to the date specified in the notice of termination. Termination under this paragraph shall not relieve the vendor of any obligation or liability that has occurred prior to termination. The vendor shall refund any balance of unused prepaid funds.

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

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

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

8.07 RENEWAL OF PURCHASE ORDER FOR NEGOTIATED GOODS OR SERVICES

- (a) The purchase order may be renewed for up to three additional like periods of time at the same terms and conditions, or as otherwise stated in the solicitation, provided both parties agree in writing to do so prior to the expiration of the purchase order.
- (b) For purchase orders issued using the RFP or RFO method of purchase, TxDOT reserves the right to negotiate additional time if circumstances require. TxDOT and the vendor may negotiate additional time and price based on the deliverable or need in the best interest of the state and TxDOT.

8.08 EXTENSION OF PURCHASE ORDERS

- (a) TxDOT reserves the right to extend a purchase order for time only past the stated term to allow the vendor to complete the requirements or to accommodate unanticipated events or requirements prior to the expiration of the purchase order.
- (b) A purchase order in its final renewal period may be further extended for time and money for a period up to ninety (90) days at the option of TxDOT.
- (c) The vendor may request a time only extension of a purchase order by submitting written justification to TxDOT. TxDOT will approve or decline the request for extension in writing.

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

8.10 BINDING EFFECT AND SURVIVAL OF OBLIGATIONS

- (a) By executing this purchase order, the vendor binds itself, its respective successors and assignees, to the faithful performance of the terms and conditions and provisions of the purchase order.
- (b) Expiration or termination of this purchase order for any reason shall not release vendor from any liabilities or obligations set forth in the terms and conditions and purchase order or any work order that are expressly stated to survive any such expiration or termination or which by their nature are intended to be applicable following such expiration or termination, including any and all provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification.
- (c) The term of service stated on the purchase order is binding on the vendor regardless of the term on the originating agency contract or its purchase order.

ATTACHMENT A

ASSET MANAGEMENT REPORTING REQUIREMENTS

Vendors **must** provide a “Monthly Asset Report” for Asset Management and tracking of related information for each IT software (SW), IT hardware (HW), or IT HW/SW maintenance support purchase order issued. The electronic “Monthly Asset Report”, shall be submitted within ten (10) working days after the conclusion of the month in which Products were delivered. The report will be prepared in ‘.csv’ or Excel file format, and shall be sent to: IT_VendorManagement@txdot.gov **Subject: Monthly Asset Report**

Failure to provide such data timely and accurately could have adverse impact on SLA achievement, Invoice Payment and overall customer satisfaction. Time is of the essence for delivery of these requirements and the provision of these requirements is a material element of this Purchase Order.

Shipment Tracking Information MUST be included for all IT software, IT hardware, and IT maintenance support purchase orders. TxDOT reserves the right to refuse delivery of shipments that are not properly and readily identifiable.

Software Vendors must provide:

- Description of Product/Service - Brief description of Product/service (server, user, perpetual, fixed or floating license, etc.)
- Software license, media and/or documentation - indicate media format (if provided) and if documentation is included.
- License number bar-coded on label
- PO number that ordered software
- Manufacturer – Publisher, Developer or owner of license code (Microsoft)
- Manufacturer Make - (Product name – Access, etc.)
- Manufacturer Model - Version number, Windows Professional, SR2
- Operating system, If unique (Windows 8)
- License number, if different from key number
- Key number - Number used to permit activation of 1 or more licenses
- Quantities Ordered – Quantity ordered as indicated on the Purchase Order
- Quantities Shipped – Quantity shipped to the location
- Quantities Invoiced – Quantity of product submitted on Vendor invoice
- Shipment Date - Date of actual shipment of items, or date of actual Service provided
- Unique Invoice Number - Vendor’s unique invoice number(s) associated with each of the Products and Services Provided

Hardware Vendors must provide:

- Shipping Labels on the delivery box that clearly identify product
- Bar-coded serial number
- PO number that ordered equipment on label
- Quantities Ordered – Quantity ordered as indicated on the Purchase Order

- Quantities Shipped – Quantity shipped to the location
- Quantities Invoiced – Quantity of product submitted on Vendor invoice
- Shipment Date - Date of actual shipment of items, or date of actual Service provided
- Unique Invoice Number - Vendor’s unique invoice number(s) associated with each of the Products and Services Provided
- Vendor - Name of Vendor receiving/responding to the Purchase Order
- Description of Product/Service - Brief description of the Product or Service provided. The description should be the same on the quote provided by the Vendor and entered on the Purchase Order. Indicate Server or Desktop/Laptop, if applicable.
- Manufacturer (Mfr) - Manufacturer of the Product being provided or of the Product the Service is covering.
- Manufacturer Make - Product Name (i.e., Dell, Cisco, etc.)
- Manufacturer Model - Model Name (i.e., C640, Inspiron, etc.)
- Manufacturer Part Number - Manufacturer’s Part Number, if applicable
- Warranty Start Date – Date in which Manufacture or Vendor warranty beings
- Serial or License Number - Serial or license number of the Product being provided or in the case of maintenance or warranty, the product the service covers.

The following information will be reported for all IT hardware/software and related IT maintenance Purchase Orders:

- Description of Product/Service - Brief description of Product service (Standard, Silver, Gold, Platinum, support - 24x7, 8x5M-F, etc.)
- Period of Performance (Start/End date of support coverage)
- Purchase Order Number - The Purchase Order number that authorized the Vendor for the Product or Service
- Vendor - Name of Vendor receiving/responding to the Purchase Order
- Description of Product/Service - Brief description of the Product or Service provided. The description should be the same on the quote provided by the Vendor and entered on the Purchase Order. Indicate Server or Desktop/Laptop, if applicable.
- Manufacturer (Mfr) - Manufacturer of the Product being provided or of the Product the Service is covering.
- Manufacturer Make - Product Name (i.e., Dell, Cisco, etc.)
- Manufacturer Model - Model Name (i.e., C640, Inspiron, etc.)
- Manufacturer Part Number - Manufacturer’s Part Number, if applicable
- Warranty Start Date – Date in which Manufacture or Vendor warranty beings
- Serial or License Number - Serial or license number of the Product being provided or in the case of maintenance or warranty, the product the service covers.
- Location of Equipment - “Ship to:” address where the Product was shipped, or where the Service was provided.
- Quantities Ordered – Quantity ordered as indicated on the Purchase Order
- Quantities Shipped – Quantity shipped to the location
- Quantities Invoiced – Quantity of product submitted on Vendor invoice
- Shipment Date - Date of actual shipment of items, or date of actual Service provided
- Unique Invoice Number - Vendor’s unique invoice number(s) associated with each of the Products and Services Provided

- Maintenance Provider must include: Hardware/Software on maintenance support by Manufacturer, Make, Model, Manufacturer's part number



HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract in place for five (5) years or less meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements"; complete:
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements"; complete:
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract
 - Section 2 b. - List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete:
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

SECTION-1: RESPONDENT AND REQUISITION INFORM

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Requisition #: _____ Bid Open Date: _____
(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION-2: SUBCONTRACTING INTENTIONS RESPONDENT

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b, of this SECTION and continue to Item c of this SECTION.)
- No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If No, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract</u> * in place for <u>five (5) years or less</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract</u> * in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>).

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- No (If No, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract* in place with for five (5) years or less meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

**Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Enter your company's name here: _____ Requisition #: _____

SECTION-2: SUBCONTRACTING INTENTIONS RESPONDENT (CONTINUATION SHEET)

a. This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>five (5) years or less.</u>	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years.</u>	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

**Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Enter your company's name here: _____ Requisition #: _____

SECTION-3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- Yes (If *Yes*, in the space provided below list the specific page(s)/section(s) of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- No (If *No*, in the space provided below explain how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

SECTION-4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature	Printed Name	Title	Date <small>(mm/dd/yyyy)</small>
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Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method A (Attachment A)

Enter your company's name here: _____	Requisition #: _____
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IMPORTANT: If you responded "Yes" to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://window.state.tx.us/procurement/prog/hub/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf>.

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: Description:

SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB

Company Name	Texas certified HUB	VID Number (Required if Texas certified HUB)	Approximate Dollar Amount	Expected Percentage of Contract
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: _____	Requisition #: _____
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IMPORTANT: If you responded "Yes" to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://window.state.tx.us/procurement/prog/hub/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If *Yes*, to continue to SECTION B-4.)
- No / Not Applicable (If *No* or *Not Applicable*, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://mycpa.state.tx.us/tpasscmblsearch/index.jsp>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	VID Number	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			- Yes - No
			- Yes - No
			- Yes - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.

- d. List two (2) trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		- Yes - No
		- Yes - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

Enter your company's name here: _____	Requisition #: _____
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SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: Description:

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas certified HUB	VID Number <small>(Required if Texas certified HUB)</small>	Approximate Dollar Amount	Expected Percentage of Contract
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%

c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

SECTION: A PRIME CONTRACTOR'S INFORMATION

Company Name: _____	State of Texas VID #: _____
Point-of-Contact: _____	Phone #: _____
E-mail Address: _____	Fax #: _____

SECTION: B CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____	Phone #: _____
Point-of-Contact: _____	Bid Open Date: _____
Requisition #: _____	(mm/dd/yyyy)

SECTION: C SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than Select on _____ Date (mm/dd/yyyy) Central Time.

In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications: - Not Applicable

4. Bonding/Insurance Requirements: - Not Applicable

5. Location to review plans/specifications: - Not Applicable