



INSTRUCTIONS TO RESPONDENTS

THE ATTACHED SOLICITATION SHOULD BE RETURNED AS FOLLOWS:

When mailing or hand delivering your response, please place a label in the lower left-hand corner of the sealed mailing envelope. If response requires more than one envelope, place a label on each sealed envelope. Below is an example of the format:

Bid No.: BXX-XXXX-XXXXXXXXXX
Bid Opening: MM/DD/YY, 00:00 p.m.
Purchaser: Purchaser Name

US 1st CLASS MAIL

Texas Department of Transportation
General Services Division
Camp Hubbard, Bldg. 5
125 E. 11th Street
Austin, TX 78701-2483

or

HAND DELIVERY

Texas Department of Transportation
General Services Division
Camp Hubbard, Bldg. 5
3800 Jackson Ave.
Austin, TX 78731

or

COURIER SERVICE, CERTIFIED MAIL, EXPRESS MAIL

Texas Department of Transportation
General Services Division
Camp Hubbard, Bldg. 5
200 East Riverside Drive
Austin, TX 78704

or

FAX TO:

(512) 374-5484 (Fax Number for Bids)

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 Building and Procurement Commission (TBPC) 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 wish to provide.

TBPC's CMBL information is available online at:

<http://www.tbpc.state.tx.us/communities/procurement/prog/cmb1>, or by phoning 1-512-463-3459.

Revised 01/05/2007

TEXAS DEPARTMENT OF TRANSPORTATION

**Marketing, Advertising and Public Relations Services
for the Texas Traffic Safety Program**

RFP NO. B442008030483000

Open Date: JULY, 8, 2008

Purchaser: Jess R. CASTILLEJA, CTPM, CPPB

Email: jcastill@dot.state.tx.us

MARKETING, ADVERTISING AND PUBLIC RELATIONS SERVICES
FOR THE TRAFFIC SAFETY PROGRAM
RFP No. B442008030483000

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ATTACHMENT A IS PROVIDED FOR YOUR INFORMATION

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SCHEDULE 1 THROUGH 5 MUST BE RETURNED WITH RFP SUBMISSION

Schedule 1 – Personnel Staff Hourly Pricing	1 page
Schedule 2 – Execution of Proposal.....	3 pages
Schedule 3 – Company Qualifications and Experience.....	1 page
Schedule 4 – Key Personnel Qualifications and References	1 page
Schedule 5 – Respondent References	1 page
TxDOT Terms and Conditions, November 2007.....	13 pages
State of Texas HUB Subcontracting Plan	11 pages

View instructional video on how to complete the HUB Subcontracting Plan forms on the Comptroller of Public Accounts' web site at:

<http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

RFP INSTRUCTIONS TO RESPONDENT

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. **B442008030483000** at:

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

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

REQUIREMENTS AND ADDITIONAL INFORMATION

PRE-PROPOSAL (RFP) CONFERENCE (if applicable) – NO PRE-PROPOSAL CONFERENCE WILL BE HELD.

QUESTIONS CONCERNING RFP NO. B442008030483000

Deadline for submission of questions is: **June 13, 2008**

TxDOT Response to Questions to be posted on ESBD by: **June 20, 2008**

NOTE: Questions and the responses will be posted on the ESBD at: <http://esbd.cpa.state.tx.us/> under the **RFP NO. B442008030483000**.

ALL QUESTIONS AND INQUIRIES CONCERNING THIS RFP SHALL BE SUBMITTED VIA E-MAIL TO:

Jess R. Castilleja, CTPM, CPPB
E-mail: jcastill@dot.state.tx.us

ANY RESPONDENT THAT DIRECTLY CONTACTS TxDOT OR CONTRACTED PERSONNEL WORKING ON THIS PROJECT TO ASK QUESTIONS ABOUT THIS RFP INSTEAD OF CONTACTING THE PURCHASER WILL BE DISQUALIFIED.

SUBMISSION INFORMATION

Pursuant to the Provisions of Chapter 2156, Subtitle D, Title 10, Texas Government Code and Rules adopted by the Texas Procurement and Support Services (TPASS), response will be received at this office until **3:00 P.M., CT, July 8, 2008**.

INCLUDE RFP NO. B442008030483000 AND DUE DATE ON ALL SUBMITTAL PACKAGES.

The RFP opening will be held at the Texas Department of Transportation, General Services Division, Purchasing section, 3800 Jackson Avenue, Bldg. 5, Austin, Texas 78731.

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 time of opening. Prices and other proposal details will only be divulged after award of purchase order.

RFP INSTRUCTIONS TO RESPONDENT (cont)

EVENTS AFTER RECEIPT OF RESPONSE - THESE DATES ARE TENTATIVE AND SUBJECT TO CHANGE AT ANYTIME.

TBD – To be determined.

1. Evaluation of RFP Responses by Evaluation Panel July 9-11,2008
2. Respondent Presentations TBD 2008
3. Negotiations(if applicable) TBD 2008
4. Best And Final Offer (BAFO) (if applicable) TBD 2008
5. Purchase Order Award TBD 2008
6. Post Award Meeting TBD 2008

SUPPLEMENT TO TxDOT TERMS AND CONDITIONS for SOLICITATION B442008030483000

TERM OF SERVICE

Term of service will be for 36 month period, upon issuance of purchase order with an option to renew for two additional 36 month periods.

ESTIMATED QUANTITIES

Quantities are estimated. TxDOT does not guarantee to purchase any minimum quantity. TxDOT reserves the right to increase the quantity(ies) of the purchase order at the original terms and conditions. The vendor will be notified in writing by a purchase order change notice of any requirements for additional quantities.

EXCEPTIONS OR ADDITIONS TO TxDOT TERMS AND CONDITIONS DATED, NOVEMBER 2007

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**:

- Part I, Para. 1.12 is modified to read: Any proposal may be withdrawn in writing prior to the date and time set for receipt of response. Any offer not so withdrawn shall constitute an irrevocable offer, **for a period of 90 days**, to provide the service set forth in the attached specifications, or until a selection has been made by the agency.

In the event of any conflict, terms contained in the document shall prevail in the order as listed in the Table of Contents.

STATE OF TEXAS HUB SUBCONTRACTING PLAN

(Required forms are included with this posting)

In accordance with Texas Government Code, Chapter 2161, the TxDOT Director of Purchasing has determined that subcontracting opportunities are probable in connection with this solicitation. Accordingly, a CPA HUB Subcontracting Plan is a required part of the response.

Failure to submit the CPA HUB Subcontracting Plan 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 CPA HUB Subcontracting Plan 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 response may result in the disqualification of the subcontractor.

Subcontractors providing service under the purchase order shall meet the same requirements and provide the same service level as required from the primary vendor.

No subcontract under the purchase order shall relieve the primary vendor of its responsibility to oversee the work performed under the purchase order by its subcontractors. The primary vendor shall be held liable for all work performed by its subcontractors and shall be responsible for all charges and expenses incurred by its subcontractors.

SUPPLEMENT TO TxDOT TERMS AND CONDITIONS (cont)

If the selected contractor/vendor decides to subcontract any part of the contract after award, as provision of the contract, the contractor/vendor must comply with provisions of the TAC Section §111.14 prior to any modifications or performance in the awarded contract involving subcontracting as authorized by TxDOT.

If the contractor/vendor subcontracts any of the work without prior authorization and without complying with TxDOT contract specifications or TxDOT's subcontracting plan the contractor/vendor has breached the contract and is subject to remedial actions per Texas Government Code and TAC Section §111.14 subcontracting.

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

Off-Set Printing	Class and Item 966-61
Productions Services	Class and Item 915-82
Public Advertising	Class and Item 915-71
Marketing Services	Class and Item 961-53

TEXAS DEPARTMENT OF TRANSPORTATION
GENERAL SERVICES DIVISION

SPECIFICATION NO.
TxDOT 915-03-21D*
REVISED: MAY 2008

MARKETING, ADVERTISING AND PUBLIC RELATIONS SERVICES
FOR THE TEXAS TRAFFIC SAFETY PROGRAM

PUBLICATION

This specification is a product of the Texas Department of Transportation (TxDOT). It is the practice of TxDOT to support other entities by making this specification available through the National Institute of Governmental Purchasing (NIGP). This specification may not be sold for profit or monetary gain. If this specification is altered in any way, the header, and any and all references to TxDOT must be removed. TxDOT does not assume nor accept any liability when this specification is used in the procurement process by any other entity.

1. SCOPE: This solicitation is a Request for Proposal (RFP) to provide marketing, advertising and public relation services for TxDOT's Texas Traffic Safety Program, Traffic Operations Division Traffic Safety Section (TRF-TS). The marketing, advertising and public relation services shall assist TxDOT in meeting the objectives of the Texas Traffic Safety Program by:
 - 1.1. Increasing public knowledge, perception, and understanding of traffic safety issues including, but not limited to, excessive speed, impaired driving, safety belt use, child passenger safety, aggressive drivers, distracted drivers, pedestrian and bicycle safety, and to promote desirable patterns of behavior in the highway traffic and transportation system environment overall.
 - 1.2. Emphasizing the societal and economic impact to taxpayers of transportation crashes, injuries, and fatalities.
2. DEFINITIONS OF TERMS AND ACRONYMS
 - 2.1. PM – Vendor Project Manager.
 - 2.2. WO – Work Order.
3. APPLICABLE LAWS AND STANDARDS: The vendor shall provide the specified service requirements in accordance with all federal, state and local applicable laws, standards and regulations necessary to perform the services, including, but not limited to:
 - 3.1. Texas Highway Safety Plan.
 - 3.2. Traffic Operations Division – Highway Traffic Safety Manual.
 - 3.3. Texas State Library in accordance with the Texas Government Code, §441.101.

* This Specification Supersedes Specification No. TxDOT 915-03-21D, Dated September 2002.

4. RESPONDENT QUALIFICATIONS: The respondent shall:
 - 4.1. Be a company engaged in the business of providing marketing, advertising and public relations services for a minimum of five years within the last seven years. Recent start-up businesses do not meet the requirements of this solicitation. 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.
 - 4.2. Be in good financial standing, not in any form of bankruptcy, current in payment of all taxes and fees such as state franchise fees and not currently involved in any type of litigation.
 - 4.3. When financial statements are requested, TxDOT will review the respondent's audited or un-audited financial statement to this solicitation 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 perform the contract or 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 perform the contract or provide the service. Factors to be reviewed include:
 - 4.3.1. Balance sheets.
 - 4.3.2. Net working capital.
 - 4.3.3. Current asset ratio.
 - 4.3.4. Liquidity ratio.
 - 4.3.5. Auditor(s) notes.
 - 4.3.6. Any notes to the financial statements.
5. REFERENCES: The respondent shall submit a minimum of three references to substantiate the qualifications and experience requirements for similar services completed within the past seven 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. Schedule 5 – Respondent References).
6. KEY PERSONNEL QUALIFICATIONS: The respondent shall provide the following key personnel:
 - 6.1. PM: The respondent shall designate a PM with a minimum of three years experience within the last seven years in project management for similar services.
 - 6.2. KEY PERSONNEL: The respondent shall designate account executive, account directors, and account team members with a minimum of three years of experience within the last five years in the services referenced in Para. 9.
7. VENDOR REQUIREMENTS: The vendor shall:
 - 7.1. Adhere to the TxDOT Terms and Conditions identified on the solicitation.
 - 7.2. Provide all labor, materials and equipment necessary to meet requirements of the specified services throughout the term of the purchase order.

- 7.3. Have experience planning and implementing innovative and effective marketing, advertising, and public relations strategies for a state agency or other organization involving a large bureaucracy, multiple partner organizations, and complex issues.
- 7.4. Have staff members to work on multiple projects simultaneously.
- 7.5. Have a staffed office within a 15 mile radius of Austin, Texas for the duration of the purchase order. TxDOT may require the vendor to maintain a staffed office, open 8 a.m. to 5 p.m. weekdays (excluding federal holidays).
- 7.6. Promptly notify TxDOT in writing of events which have a significant impact on WO, including:
 - 7.6.1. Problems, delays or adverse conditions which will prevent the meeting of time or work schedules.
 - 7.6.2. Favorable developments which will enable meeting time or work schedules sooner than anticipated.
- 7.7. Providing project briefings upon request.
- 8. KEY PERSONNEL REQUIREMENTS
 - 8.1. The PM's primary responsibility shall be the day-to-day operation of the service in accordance with the requirements of the purchase order.
 - 8.2. Be permanent staff members.
 - 8.3. Ensure PM is dedicated to TxDOT projects 100 percent.
 - 8.4. Communicate orally and in writing in English and other languages as required.
- 9. SERVICE REQUIREMENTS: The vendor shall:
 - 9.1. Begin work on this project within 15 state working days of award of the purchase order or on the agreed upon date between TxDOT and the vendor.
 - 9.2. Recommend and develop strategies to most effectively achieve desired results through the creation of marketing, advertising and public relations information campaigns, initiatives and activities.
 - 9.3. Provide professional marketing, advertising and public relations services to implement strategies and assist TxDOT in managing communication issues as they arise.
 - 9.4. Align targeted information campaigns and activities with priorities identified in TxDOT's Highway Safety Plan. Applicable marketing, advertising and public relations services may include, but not be limited to:
 - 9.4.1. Determining appropriate goals, objectives and strategies for achieving desired outcomes, including identifying concepts, messages, target audiences, activities, rationale and justification for activities, research needs, evaluation processes and measurements, media markets, and all other activities associated with the recommended strategies.

- 9.4.2. Collaborating with TxDOT and vendor's research firm to identify and meet research needs, including reviewing survey instruments, discussion guides, and other research tools, preparing concepts or storyboards to test with members of the target audience(s) and applying research findings to overall marketing, advertising and public relations strategies.
- 9.4.3. Developing, producing and distributing creative materials including, but not limited to, print, audio-visual, and Internet materials that are designed for the target audience(s), research-based, and appropriate for selected venues and media.
- 9.4.4. Purchasing media time or space for programs and messages appropriate to the identified target audience(s). Advertising media may include, but not be limited to:
 - 9.4.4.1. Print, television, and radio advertisements.
 - 9.4.4.2. Outdoor (billboards).
 - 9.4.4.3. Public service announcements (including closed caption).
 - 9.4.4.4. Audio files.
 - 9.4.4.5. Educational materials and promotional items.
 - 9.4.4.6. Internet projects.
 - 9.4.4.7. Soliciting free media time or space for public service announcements as appropriate.
 - 9.4.4.8. Maintaining records of all vendor-assisted and non-assisted placements, including all print, audio-visual and Internet publicity.
- 9.4.5. Providing reports on the types and amount of complimentary promotional assistance provided.
- 9.4.6. Soliciting involvement and support of partner organizations where appropriate.
- 9.4.7. Planning and implementing innovative and effective special events and activities that engage the public in meaningful ways and achieve desired results.
- 9.4.8. Evaluating marketing, advertising and public relations activities and campaigns for effectiveness using appropriate evaluation processes and measurements. This may include tracking awareness, attitudes, and practices of target audience(s) during various stages of campaigns and activities to determine effectiveness in achieving desired goals, objectives and outcomes.
- 9.4.9. Using standard methods as approved by TxDOT to calculate and report earned media value for all publicity generated.
- 9.4.10. Providing written narratives of data gathered through evaluation methods.

- 9.4.11. Planning, developing, and implementing culturally appropriate marketing, advertising and public relations strategies and campaigns. This shall include performing all necessary phases of development and implementation in the dominant language of the target audience(s) as required.

9.5. MASTER WORK PLAN

- 9.5.1. The vendor shall submit a quarterly Work Plan for all active projects. Each Work Plan shall be submitted to TxDOT not more than ten calendar days prior to beginning work. TxDOT will approve or deny Work Plan in writing within five state working days of receipt.
- 9.5.2. In addition to identification and scheduling of projected activities, each Work Plan shall include measurable objectives and estimated costs. Work Plan activities may be amended as necessary and as mutually agreed to between TxDOT and the vendor. Costs not approved in writing by TxDOT will not be eligible for reimbursement.

9.6. Work Order: The vendor shall submit a WO for each project on the approved TxDOT Project List (Ref. Para. 22.2.).

- 9.6.1. Each WO shall include a Work Plan with a project schedule showing milestones and deliverables.
- 9.6.2. TxDOT may request additional WO's for special projects or other work to be performed on an as needed basis.

10. VENDOR DELIVERABLES: The vendor shall submit:

- 10.1. All documentation (i.e., WO, Media Plans, and Performance Reports) in a format approved by TxDOT. All documentation delivered shall be clear, concise, complete, and in compliance with standards required by TRF-TS Contract Manager in conjunction with definition and scheduling of tasks with the vendor.
- 10.2. REPORTS: The following reports to TRF-TS Contract Manager electronically through the E-grants Management system per TxDOT provided format and in accordance with TRF-TS procedures as outlined in the most current Traffic Operations – Highway Safety Manual. TxDOT will provide access to E-grants system upon award of purchase order.

NOTE: TxDOT's Traffic Safety Electronic Grants Management system, or E-Grants, is a web-based solution for the application, scoring and management of grants within TxDOT's Traffic Safety Program. The web site is located at:

<https://www.txdot.gov/apps/egrants/>

- 10.2.1. Submit monthly progress reports not later than 30 days after the end of each reporting period.
- 10.2.2. A final report, which is a summary of the year's project activities, shall be submitted on each WO within 45 days of the end of the federal fiscal year (September 30).

- 10.2.3. The vendor shall file the appropriate number of copies of all products, films, recordings, reports or documents produced for this service with the Texas State Library in accordance with the Texas Government §441.101. Texas State Library web site is located at:

<http://www.tsl.state.tx.us/govt/>

11. PERSONNEL CONTINUITY AND REPLACEMENT

- 11.1. TxDOT recognizes those 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 and 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.
- 11.2. The vendor agrees that the PM and key personnel assigned to all projects shall remain available throughout the entirety of each project and throughout the term of the purchase order as long as those individuals are employed by the vendor.
- 11.3. If TxDOT determines the PM or key personnel are unable to perform in accordance with the service requirements or to communicate effectively, the vendor shall immediately remove that person.
- 11.4. 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) will 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.

12. VENDOR PERSONNEL SAFETY: The vendor's personnel shall observe all safety policies, rules and requirements at all times, including but not limited to wearing hard hats, safety shoes, and goggles when on the right of way. The vendor shall provide its personnel with all required safety equipment meeting all TxDOT requirements.

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

- 13.1. Strategies and processes to promote quality.
- 13.2. Procedures to periodically measure and report quality performance to TxDOT throughout the term of the purchase order.
- 13.3. Performing internal audits of vendor's operations.
- 13.4. Employing external audit firms to conduct audits of the vendor's operations when requested by TxDOT.
- 13.5. Controls to assure quality and consistency throughout the term of the purchase order.

14. SUBCONTRACTING

- 14.1. Subcontractors providing service under the purchase order shall meet the same service requirements and provide the same quality of service required of the vendor.

- 14.2. No subcontract under the purchase order shall relieve the primary vendor of responsibility for the services.
 - 14.3. The vendor shall be the primary contact for TxDOT and subcontractor(s).
 - 14.4. The vendor shall manage all, quality and performance, project management, and schedules for subcontractors. The vendor shall be held solely responsible and accountable for the completion of all work for which the vendor has subcontracted.
 - 14.5. TxDOT reserves the right to request the removal of vendor's subcontractor staff deemed unsatisfactory by TxDOT.
 - 14.6. Subcontracting shall be at the vendor's expense.
 - 14.7. SOLICITATIONS OVER \$100,000: TxDOT will make an initial determination of whether subcontracting is probable. It is the respondent's determination if they choose to subcontract any of the work under this purchase order with a Texas Certified Historically Underutilized Business (HUB) or other businesses.
 - 14.7.1. If TxDOT has determined that subcontracting opportunities are probable, the class and items in which HUBs may be registered will be noted in the solicitation.
 - 14.7.2. The respondent shall identify all proposed HUB and other subcontractors at the time of response submittal. The required forms with video instructions can be found at the following website:

<http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>
 - 14.8. HSP PRIME CONTRACTOR PROGRESS ASSESSMENT REPORT: After award of the purchase order, the vendor shall report all HUB and non-HUB subcontractor information using the HSP Prime Contractor Progress Assessment Report form. The report shall be submitted to the TxDOT contract manager monthly. The report shall be submitted monthly even during the months the vendor is not invoicing TxDOT. All payments made to subcontractors shall be reported. TxDOT may verify the amounts being reported as paid by requesting copies of cancelled checks paid to subcontractors.
 - 14.9. TxDOT retains the right to check subcontractor's background and make a determination to approve or reject the use of submitted subcontractor(s). Any negative responses may result in disqualification of the subcontractor.
 - 14.10. During the term of the purchase order, if the vendor determines a need for a subcontractor change, TxDOT shall be notified in writing by the vendor within ten days of any proposed change. The vendor shall be required to provide references and work history for any proposed subcontractor to TxDOT. No change will be allowed without written authorization by TxDOT.
15. BUSINESS CONTINUITY PROCEDURES AND DISASTER RECOVERY PLAN: The respondent shall submit business continuity procedures and a disaster recovery plan (limit one page) which shall include the following:
- 15.1. Business continuity procedures 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.

- 15.2. A disaster recovery plan for this service shall be maintained. The vendor shall be responsible for all cost of disaster recovery.

16. TRAVEL

- 16.1. All travel and per diem shall be pre-approved in writing by TxDOT and will be reimbursed at current Texas legislated rates and rules or General Services Administration Federal rates. These expenses shall be clearly detailed and receipts attached to a copy of the invoice.

- 16.1.1. Reimbursable travel expenses include: personal vehicle mileage, commercial transportation, hotel accommodations, parking and meals.

- 16.1.2. Reimbursement will comply with the current Texas Mileage Guide and Texas State Travel Guide. These guides are located through the Window on State Government or General Services Administration web sites located at:

www.window.state.tx.us/comptrol/texastra.html

and

<https://fm.x.cpa.state.tx.us/fm/pubs/travallow/index.php>

www.gsa.gov/perdiem

- 16.2. TxDOT may require meetings periodically between the vendor and TxDOT in Austin, Texas, to discuss various contract activities as well as unscheduled meetings with a short notice. Travel expense will not be reimbursed for travel to and from these meetings. Hourly rates will be paid only for time actually spent in the meeting.

- 16.3. All out of state travel shall be approved in advance, in writing, by TxDOT.

17. SECURITY: The vendor and its representatives conducting business on behalf of TxDOT shall comply with all directions from the security personnel of any facility entered. Failure to comply with the directions of the security personnel may result in cancellation of the purchase order, physical removal from facility, or other appropriate actions.

18. 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.

19. FEDERAL FUNDING: The purchase order will be supported in part with federal funds, therefore, the following federal laws and standards apply, including the following:

- 19.1. Title 42 U.S.C. §§ 2000d-2000d-7, with the exception of sections 2000d-5 and 2000d-6, also known as – Title VI of the Civil Rights Act of 1964.

- 19.2. Title 49 C.F.R. Subtitle A – Office of the Secretary of Transportation.

- 19.3. OMB Circular A-87 – Office of Management and Budget Circular relating to Cost Principles for State, Local and Indian Tribal governments.

- 19.4. OMB Circular A-102 – Office of Management and Budget Circular relating to Grants and Cooperative Agreements with State and Local Governments.

- 19.5. OMB Circular A-133 – Office of Management and Budget Circular relating to Audits of States, Local Governments and Non-Profit Organizations.
20. 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 revision on a Purchase Order Change Notice (POCN).
21. INVOICING INSTRUCTIONS: The vendor shall provide a comprehensive and detailed invoice with reference to the basis for each item charged. Original documentation that validates the charges shall be attached. The original invoice shall be sent to the address shown on the purchase order or emailed to FIN_Invoices@dot.state.tx.us to ensure timely payment and shall include the following:
- 21.1. Complete 16-digit purchase order number.
- 21.2. Vendor Employer Identification Number (EIN).
- 21.3. Date and time of service.
- NOTE: The vendor is notified that all receipts may be subject to open records request. Credit card numbers or other sensitive information shown on submitted receipts shall be “blacked out” by the vendor. TxDOT is not responsible for any unauthorized charges made due to the vendor’s failure to obscure card numbers or other sensitive information.
- 21.4. Location of service.
- 21.5. Technician’s name with hours totaled.
- 21.6. An invoice requiring correction shall be re-submitted with a new invoice date.
22. PAYMENT REQUIREMENTS: TxDOT will make payment to the vendor for approved costs incurred in accordance with the following.
- 22.1. All artwork, public information, studies, reviews, account service work, special event coordination and copyrighting shall be billed monthly per Schedule 1 – Personnel Staff Hourly Pricing.
- 22.2. Paid media may be billed at a gross rate, such that the vendor may receive up to a 15 percent commission.
- 22.3. The cost of services rendered or materials produced by organizations on TxDOT’s behalf and not a part of the vendor’s organization (out-of-vendor expenditures) shall be billed at actual cost (i.e., long-distance telephone calls, mailing, shipping, photocopying, and printing).
23. TxDOT RESPONSIBILITIES: TxDOT will:
- 23.1. Provide a Contract Manager.
- 23.2. Provide an approved Project List for each fiscal year.

- 23.3. Provide technical assistance and approval of all finished products provided by the vendor prior to release or implementation of any material developed. Approval or denial will be made in writing by TRF-TS Contract Manager.
- 23.4. Approve all report formats.
- 23.5. Grant written approval of vendor's Work Plan (Ref Para. 9.6.). Approval or denial will be made in writing by TRF-TS Contract Manager.
- 23.6. Schedule periodic meetings with the vendor to monitor the progress of projects.
- 24. RESPONSE SUBMISSION: Failure to provide the required information will result in disqualification of the response. The response submission shall be in the following format:
 - 24.1. GENERAL FORMAT: The respondent shall submit one signed and dated original (marked Original) and five copies (marked Copy) of requirements under this section. The submission shall be on one sided 8-1/2 x 11 inch paper and shall be tab-indexed Sections 1 - 9. Plastic spine-bound or wire bound submittals are highly discouraged. Include only the information specified for each section.
 - 24.2. ORIGINAL RESPONSE: The original response shall include the following:
 - 24.2.1. Section 1 – Schedule 1 – Personnel Staff Hourly Pricing.

NOTE: Include five copies of the Schedule 1 – Personnel Staff Hourly Pricing in a sealed, separate envelope with the original submittal.
 - 24.2.2. Section 2 – Schedule 2 – Original, signed and dated Execution of Proposal.
 - 24.2.3. Section 3 – Financial Standing
 - 24.2.3.1. The respondent shall 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. 4.3.).
 - 24.2.3.2. Additional information demonstrating financial stability and ability to meet the financial responsibilities for the requirement to perform this service.
 - 24.2.4. Section 4 – Schedule 3 – Company Qualifications and Experience: The respondent shall demonstrate successful past performance through submission of documentation of relevant qualifications and experience:
 - 24.2.4.1. Name, address, phone number, and email address of the person TxDOT should contact with any questions regarding the response submission.
 - 24.2.4.2. Provide a brief description of related or similar services performed within the last five years.
 - 24.2.4.3. Name and title of person submitting proposal.

- 24.2.4.4. Documentation of respondent history, to include experience and capabilities in the areas of service to be provided and number of years in business, size and scope of operation.
- 24.2.5. Section 5 – Key Personnel Qualifications and References: The respondent shall provide brief profiles of individuals who will be part of respondent's key personnel to develop and implement the service requirements. Profiles shall include:
 - 24.2.5.1. Individual's name and title.
 - 24.2.5.2. Education.
 - 24.2.5.3. Current employer.
 - 24.2.5.4. Years of experience.
 - 24.2.5.5. Languages (written and spoken).
 - 24.2.5.6. Description of skills and experience for a minimum three years experience within the last seven years for similar services.
 - 24.2.5.7. Explanation of the need for and duties of each position of the proposed team shown on Schedule 1 – Personnel Staff Hourly Rates (limited to 150 total words per team member).
- 24.2.6. Section 6 – Demonstration of Capability: The respondent's approach and ability to meet the service requirements as specified in the solicitation shall be demonstrated. The respondent shall also provide an example of a project completed within the last five years that included marketing, advertising and public relations that demonstrates having met similar requirements as specified in Para. 9., Service Requirements. Description shall include:
 - 24.2.6.1. Goals and objectives of the project, campaign or initiative.
 - 24.2.6.2. Market research approach, to include Target Audience, Stakeholder Groups, Messaging, Campaign Strategies and other related information.
 - 24.2.6.3. Project Work Plan with milestones and deliverables.
 - 24.2.6.4. Purchase of air time, promotional events, products or partnerships including any "added value."
 - 24.2.6.5. Initial and final budget.
 - 24.2.6.6. Tools, methods and processes used to evaluate the effectiveness of the project, campaign or initiative.
 - 24.2.6.7. Approach used to advise, plan and implement innovative and effective marketing, advertising and public relations strategies to achieve the desired results.

- 24.2.6.8. Approach used to develop, produce and disseminate innovative and effective creative materials including, advertisements and public service announcements for publications, brochures, radio, television and the Internet.
- 24.2.6.9. Approach used to purchase media time and space appropriate for the target audience(s).
- 24.2.6.10. Approach used to plan for purchase of air time, promotional events, products or partnerships including any "added value".
- 24.2.6.11. Approach used to plan and implement innovative, effective, and culturally appropriate strategies, activities, and campaigns for a Hispanic audience whose dominant language is Spanish.
- 24.2.6.12. Provide samples of work products specifically executed for the project described. Work products shall be clearly labeled as described in Para. 23.2.7.11. and submitted in plastic sleeves. Products that do not fit into plastic sleeves should be photographed, printed and submitted in plastic sleeves. Work products may include: publications, billboards, speeches, news releases, presentations, storyboards, video or audio advertisements or public service announcements, manuals, internet material or other work products developed by respondent.
- 24.2.6.13. Any video and audio submissions shall be compiled and provided in either VHS or DVD format and included with the original response and all copies. The compiled audio and visual work samples shall not exceed ten minutes in length.
- 24.2.7. Section 7 – Demonstration of a Project Plan for TRF-TS: The respondent shall complete Schedule 1 – Personnel Staff Hourly Pricing based on this project plan. The respondent shall provide a three year plan to address the requirements specified in Para. 1, Scope and Para. 9, Service Requirements of this solicitation. Respondent Demonstration of Project Plan shall include the following:
 - 24.2.7.1. Goals and objectives.
 - 24.2.7.2. Approach to market research, to include Target Audience; Stakeholder Groups; Traffic Safety Messages and Campaign Strategies
 - 24.2.7.3. Project WO with milestones and deliverables
 - 24.2.7.4. Approach to development and implementation of innovative and effective marketing, advertising and public relations strategies to achieve the desired results.
 - 24.2.7.5. Approach to develop, produce and disseminate innovative and effective creative materials including advertisements and public service announcements for publications, brochures, radio, television and the Internet.

- 24.2.7.6. Approach to develop and implement innovative, effective, and culturally appropriate strategies, activities, and campaigns for a Hispanic audience whose dominant language is Spanish.
- 24.2.7.7. Plan for purchase of air time, promotional events, products or partnerships including any "added value."
- 24.2.7.8. Tools, methods and processes to evaluate the effectiveness of the project, campaign or initiative.
- 24.2.7.9. The respondent shall provide samples of planned creative work products. Work products shall be clearly labeled as described in Para. 24.2.7.11 and submitted in plastic sleeves. Products that do not fit into plastic sleeves should be photographed, printed and submitted in plastic sleeves
- 24.2.7.10. Work products may include creative concepts for planned publications, billboards, speeches, news releases, presentations, storyboards, video or audio advertisements or public service announcements, manuals, Internet material or other work products planned by respondent.
- 24.2.7.11. Any video and audio submissions shall be compiled and provided in either VHS or DVD format and included with the original response and all copies. The compiled audio and visual work samples shall not exceed ten minutes in length.
- 24.2.8. Section 8 – Quality Assurance Plan.
- 24.2.9. Section 9 – Business Continuity Procedures and Disaster Recovery Plan.
- 24.2.10. Section 10 – Schedule 5 – Respondent References.
- 24.2.11. Section 11 – HUB Subcontracting Plan.
- 24.3. COPIES: The five reproduced copies (marked Copy) shall include only the following tab-indexed sections:
 - 24.3.1. Section 4 – Schedule 3 – Company Qualifications and Experience.
 - 24.3.2. Section 5 – Schedule 4 – Key Personnel Qualifications and References.
 - 24.3.3. Section 6 – Demonstration of Capability.
 - 24.3.4. Section 7 – Demonstration of a Project Plan for TRF-TS.
 - 24.3.5. Section 8 – Quality Assurance Plan.
 - 24.3.6. Section 9 – Business Continuity Procedures and Disaster Recovery Plan.
 - 24.3.7. Section 10 – Schedule 5 – Respondent References.

25. RESPONSE EVALUATION: Only complete responses with the listed required submittal documents and meeting minimum qualifications will be considered (Ref. Attachment A – Minimum Response Submission and Qualification Requirements). Failure to meet the minimum qualifications and submit the required documents will result in a response being declared non-responsive.
- 25.1. STEP 1 – 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.
- 25.1.1. Respondent qualifications and response submission information will comprise 60 percent of the evaluation total.
- 25.1.2. Pricing submitted for the solicitation requirements will be 40 percent of the evaluation total.
- 25.2. STEP 2 – ORAL PRESENTATION: TxDOT may request that the respondent give an oral presentation to TxDOT. A TxDOT evaluation committee will evaluate and score each oral presentation. All responses will be evaluated according to the respondent's ability to demonstrate expertise in marketing, advertising and public relations as outlined in the written response. This presentation will aid in determining whether the specific vendor is well-qualified on the basis of ability, creativity and responsiveness.
- 25.2.1. 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.
- 25.2.2. TxDOT may provide the respondent with a list of proposed key personnel required to attend and participate in the meeting.
- 25.2.3. The respondent and proposed (key or respondent) personnel should be prepared to address any questions that may be asked by TxDOT evaluators.
- 25.3. TxDOT reserves the right to continue discussions or negotiations 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 respondent(s).
- 25.5. STEP 3 – 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. TxDOT may award to a single vendor, multiple vendors, or use any combination that best serves the interest of TxDOT.
- 26.1. BEST VALUE: TxDOT will be the sole judge of best value. Best value criteria may include, but is not limited to:
- 26.1.1. Best meets the goals and objectives of the solicitation as stated in the Service Requirements.
- 26.1.2. Provides the most customer focused solution that will best meet the needs of the traveling public.
- 26.1.3. Experience in successfully providing services in the solicitation.
- 26.2. TYPES OF AWARD
- 26.2.1. Single Award: One purchase order awarded to a single vendor.
- 26.2.2. Multiple Award: A multiple award is the award of multiple purchase orders for the same line item(s) from a single solicitation to two or more vendors to provide the same or similar goods or services.
27. POST AWARD MEETING: The vendor shall be required to attend a post award meeting in Austin, Texas with TxDOT Traffic Operations, Traffic Safety Section within 15 calendar days after the award of the purchase order or a mutual agreed to date by TxDOT and vendor. The purpose of the meeting is to discuss the terms and conditions of the purchase order and to provide additional information regarding work plans, which shall be executed by both parties, wherein 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 contract 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 request.
29. CONTRACT ADMINISTRATION: Administration of the purchase order is a joint responsibility of the TxDOT, Traffic Operation, Traffic Safety Section 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 who will serve as the Contract Manager and point-of-contact between the agency and the vendor. The Contract Manager does not have any express or implied authority to vary the terms of the 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 Texas Comptroller of Public Accounts Contract Management Guide, latest edition.

ATTACHMENT A
MINIMUM RESPONSE AND QUALIFICATIONS SUBMISSION REQUIREMENTS
(PROVIDED FOR INFORMATION ONLY)
SOLICITATION NO. B442008030483000

Respondent: _____

RESPONSE SUBMISSION REQUIREMENTS	SUBMITTED		COMMENTS
	YES	NO	
1. Section 1 – Schedule 1 – Personnel Staff Hourly Pricing (Ref. Para. 24.2.1.).			
2. Section 2 – Schedule 2 – Original, signed and dated Execution of Proposal (Ref. Para. 24.2.2.).			
3. Section 3 – Financial Standing (Ref. Para. 24.2.3.).			
4. Section 4 – Schedule 3 – Company Qualifications and Experience (Ref. Para. 24.2.4.).			
5. Section 5 – Schedule 4 – Key Personnel Qualifications and References (Ref. Para. 24.2.5.).			
6. Section 6 – Demonstration of Capability (Ref. Para. 24.1.6.).			
7. Section 7 – Demonstration of a Project Plan for TRF-TS (Ref. Para 24.2.7.).			
8. Section 8 – Quality Assurance Plan (Ref. Paras. 13 & 24.2.8.).			
9. Section 9 – Business Continuity Procedures and Disaster Recovery Plan (Ref. Paras. 15 & 24.2.9.).			
10. Section 10 – Schedule 5 – Respondent References (Ref. Para. 24.2.10.).			
11. Section 11 – HUB Subcontracting Plan (Ref. Para. 24.2.11.).			

ATTACHMENT A (CONTINUED)
MINIMUM RESPONSE AND QUALIFICATIONS SUBMISSION REQUIREMENTS
(PROVIDED FOR INFORMATION ONLY)
SOLICITATION NO. B442008030483000

Respondent: _____

RESPONSE SUBMISSION REQUIREMENTS	SUBMITTED		COMMENTS
	YES	NO	
1. Be an established company engaged in the business of providing marketing, advertising and public relations services for a minimum of five years within the last seven years (Ref. Para. 4.1.).			
2. PROJECT MANAGER: The respondent shall designate a PM with a minimum of three years experience within the last seven years for similar services (Ref. Para. 6.1.).			
3. KEY PERSONNEL: The respondent shall designate account executive, account directors, and account team members with a minimum of three years of experience within the last five years (Ref. Para. 6.2.).			

Date Reviewed: _____

Reviewer Name and Title: _____

Signature: _____

SCHEDULE 1
PERSONNEL STAFF HOURLY PRICING
SOLICITATION NO. B442008030483000

Respondent Name _____

Hourly rates shall be for the initial 12-month period. The term of the purchase order will be for a period of 36 months. TxDOT DOES NOT GUARANTEE A SPECIFIC NUMBER OF HOURS.

INSTRUCTIONS

Respondent shall provide Titles, Descriptions, Estimated Hours, Hourly Rate and Extended Total to meet staffing requirements in order to complete Section 7 – Demonstration of Project Plan for TRF-TS of RFP. Respondent may use an alternate title for the response positions referenced in Para. 6 – Key Personnel as long as job duties remain the same. Failure to submit a realistic hourly rate (i.e., *not* \$0) for all listed positions may result in the proposal being considered non-responsive. For each staff position listed, respondent shall provide estimated hours and hourly rate.

PERSONNEL STAFF HOURLY PRICING				
TITLE	DESCRIPTION	EST. HOURS	HOURLY RATE	EXTENDED PRICING TOTAL
Project Manager				
Account Executive				
Account Director				
Total hours must equal 10,000 hours				
TOTAL EXTENDED HOURS FOR 12 MONTH PERIOD SHALL NOT EXCEED HOURS			10,000	\$
TOTAL EXTENDED HOURS X 3 YEARS = HOURS			30,000	

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SCHEDULE 2
EXECUTION OF PROPOSAL – RFP
SOLICITATION NO. B442008030483000

By signature hereon, Respondent certifies that: All statements and information prepared and submitted in the response to this RFP are current, complete, and accurate.

Respondent has not given, offered to give, nor intends to give at anytime 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.

Neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent or anyone acting for such firm, corporation, or institution has (1) violated the anti-trust laws of the state of Texas under Texas Business and Commerce Code, Chapter 15, or the federal anti-trust laws; or (2) communicated the contents of this Proposal either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for this RFP.

When a Texas business address shown hereon that address is, in fact, the legal business address of Respondent and Respondent qualifies as a Texas Resident Bidder under 1 TAC §111.2.

Under Government Code §2155.004, no person who prepared the specifications or this RFP has any financial interest in Respondent's Proposal. If Respondent is not eligible, then any contract resulting from this RFP shall be immediately terminated. Furthermore, "under Section §2155.004, Government Code, the vendor (Respondent) certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

Under Family Code §231.006, relating to child support obligations, Respondent and any other individual or business entity named in this solicitation are eligible to receive the specified payment and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate.

Any Proposal submitted under this RFP shall contain the names and social security numbers of person or entity holding at least a twenty-five percent ownership interest in the business entity submitting the Proposal.

Under Government Code §669.003, relating to contracting with an executive of a state agency, Respondent represents that no person who, in the past four years, served as an executive of the Texas Department of Transportation (TxDOT) or any other state agency, was involved with or has any interest in this Proposal or any contract resulting from this RFP. If Respondent employs or has used the services of a former executive head of TxDOT or other state agency, then Respondent shall provide the following information: Name of former executive, name of state agency, date of separation from state agency, position with Respondent, and date of employment with Respondent.

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.

- SCHEDULE 2 (CONTINUED)**
EXECUTION OF PROPOSAL – RFP
SOLICITATION NO. B442008030483000

SCHEDULE 2 (CONTINUED)
EXECUTION OF PROPOSAL – RFP
SOLICITATION NO. B442008030483000

Source Preferences

- _____ 1. Products of persons with mental or physical disabilities.
- _____ 2. Vendors that meet or exceed air quality standards. For contracts to be performed in whole or in part, in a designated non-attainment area or an affected county, as those terms are defined by Health and Safety Code §386.001, Texas Emissions Reduction Plan.
- _____ 3. Manufacturer that has a recycle program for computer equipment.
- _____ 4. Contractor providing foods of higher nutritional value.

Specification Preferences

- _____ 1. Products made of recycled materials, remanufactured, or environmentally sensitive materials including recycled steel.
- _____ 2. Energy efficient products.
- _____ 3. Rubberized asphalt paving material.
- _____ 4. Recycled motor oil and lubricants.

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SCHEDULE 3
COMPANY QUALIFICATIONS AND EXPERIENCE
SOLICITATION NO. B442008030483000

Respondent shall use this schedule to clearly show how they meet the requirements set forth in the response submission (Ref. Para. 9).

Respondent Name:	
Addresses: Physical: Mailing:	
Phone Number: Fax Number:	
Person to contact with questions regarding the solicitation. Name: Phone Number: Email address:	
Number of years in business:	
Name and title of person signing the RFP response:	
DOCUMENTATION OF COMPANY QUALIFICATIONS AND EXPERIENCE:	
Qualifications and experience in the areas of services to be provided. Respondent should address the following:	

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SCHEDULE 4
KEY PERSONNEL QUALIFICATIONS AND REFERENCES
SOLICITATION NO. B442008030483000

Respondent Name: _____

The respondent shall complete one profile not to exceed two pages for each individual to be assigned to this purchase order. TxDOT reserves the right to reject the proposed Key Personnel if references or past working performance are questionable or unfavorable.

KEY PERSONNEL INFORMATION		RESPONSE			
FULL NAME:					
NUMBER OF YEARS EMPLOYED BY RESPONDENT:					
TITLE					
KEY PERSONNEL QUALIFICATIONS		# YRS EXP.	FROM	TO	HOW/WHERE OBTAINED
NUMBER OF YEARS EXPERIENCE IN (REQUIRED SERVICE):					
SPECIFIC EDUCATION, QUALIFICATIONS, TRAINING, CERTIFICATIONS:					

Reference: No. _____

Name of Organization:					
BUSINESS ADDRESS:					
BUSINESS CITY:					
BUSINESS STATE:			ZIP:		
CONTACT PERSON NAME:					
CONTACT PERSON TITLE:					
PHONE NUMBER:			FAX:		
E-MAIL ADDRESS:					
Project Title:					
PROJECT DESCRIPTION AND DOLLAR AMOUNT:					
ROLES AND RESPONSIBILITIES OF THE PROPOSED STAFF DURING THIS PROJECT					
PROJECT START DATE:			PROJECT END DATE:		
CLIENT COMMENTS:					

This page may be reproduced as needed to document each reference.

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SCHEDULE 5
RESPONDENT REFERENCES
SOLICITATION NO. B442008030483000

Respondent's Name: _____

Company Name:		
Address:		
City:	State:	Zip Code:
Phone Number:	Fax Number:	
Point of Contact:		

Reference Response (to be filled in by TxDOT):

Company Name:		
Address:		
City:	State:	Zip Code:
Phone Number:	Fax Number:	
Point of Contact:		

Reference response (to be filled in by TxDOT):

Company Name:		
Address:		
City:	State:	Zip Code:
Phone Number:	Fax Number:	
Point of Contact:		

Reference response (to be filled in by TxDOT):

THIS PAGE OR A REASONABLE FACSIMILE SHALL BE RETURNED WITH THE RESPONSE. FAILURE TO RETURN THIS PAGE OR A REASONABLE FACSIMILE WILL RESULT IN THE RESPONSE BEING CONSIDERED NON-RESPONSIVE. ANY NEGATIVE RESPONSE(S) MAY RESULT IN DISQUALIFICATION OF THE RESPONSE.

TEXAS DEPARTMENT OF TRANSPORTATION
TERMS AND CONDITIONS

PART I
GENERAL TERMS AND CONDITIONS

Part I of the General Terms and Conditions shall apply to all solicitations [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). Parts II and III are solicitation specific additions to Part I.

This procurement falls under the statutory authority of Texas Government Code (TGC), Title 10, Subtitle D, Section 2151, et seq. (commonly known as the "Purchasing Act"). 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 CPA Rule 34TAC §20.31 and other applicable Federal and State statutes and rules herein cited.

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

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.

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 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.

1. REQUIREMENTS AND ADDITIONAL INFORMATION

- 1.1. TxDOT's automated purchasing system requires pricing per unit shown and extensions. 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 shown.
- 1.2. Respondent guarantees product offered will meet or exceed specifications identified in this solicitation.
- 1.3. Respondent shall submit the number of responses required and in the manner stated in the specification or on the solicitation.
- 1.4. 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/closing date.
- 1.5. 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/closing. Late responses will not be considered under any circumstances.
- 1.6. 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.
- 1.7. 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.

* This Revision Supersedes Previous Revision, Revised: September, 2007.

- 1.8. All prices shall be firm for acceptance for thirty (30) days from solicitation response date unless otherwise stated in the solicitation. "Discount from list" pricing is not acceptable unless requested. Cash discount will not be considered in determining the low response; however, all cash discounts offered will be taken if earned.
- 1.9. Price(s) shall not increase during the term of the purchase order or the agreement unless otherwise stated in the specification. Vendor shall give price reductions to TxDOT that result from reduced cost to the vendor during the term of the purchase order.
- 1.10. Failure to sign the solicitation manually in the required space will disqualify the response. The person signing the response must have authorization to bind the company in contract. 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.
- 1.11. Any alterations to a response made before opening/closing date and time shall be initialed by respondent or authorized agent. Response cannot be altered or amended after opening/closing date and time.
- 1.12. A response may be withdrawn if requested in writing prior to the opening/closing date and time. A response may be withdrawn from consideration after the opening/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 paragraph 1.24.
- 1.13. At the time of opening/closing for negotiated solicitations (Request for Offers or Request for Proposal), only the names of respondents will be announced. Prices will not be disclosed.
- 1.14. Persons with special needs or disabilities who plan to attend any prebid conference or bid opening and who require auxiliary aids or service should contact the individual noted on the solicitation as the point of contact at least three (3) days prior to meeting so appropriate arrangements can be made.
- 1.15. Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in response unless otherwise specified in the solicitation. Excise Tax Exemption Certificate will be furnished by TxDOT on request.
- 1.16. 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.
- 1.17. In compliance with the provisions of Texas Government Code Section 2155.074, Section 2155.075, Section 2156.007, Section 2157.003 and Section 2157.125, 34 TAC §20.36, information obtained from the CPA's Vendor Performance Tracking System (<http://www2.cpa.state.tx.us/stpurch/ventoc.html>) may be used in evaluating responses to solicitations for goods and services to determine the best value for the state.
- 1.18. TxDOT reserves the right NOT to consider a response from a bidder whose goods or services to TxDOT have been documented as unsatisfactory in providing the same goods or service.
- 1.19. Consistent and continued tie response pricing may lead to rejection of the response by TxDOT and/or investigation for antitrust violations.
- 1.20. 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. All FAX responses must be signed in space provided 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.

- 1.21. 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. TxDOT encourages suggested changes and environmental enhancements for possible inclusion in future revisions of this specification.
- 1.22. 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 cancellation of the purchase order. Vendor's employees shall comply with TxDOT's policy prohibiting smoking in TxDOT buildings.
- 1.23. WORK HOURS: All work by the vendor shall be performed between the hours of 8:00 a.m. and 5:00 p.m., unless otherwise specified, only on working days observed by TxDOT. Working days are usually Monday through Friday of each week.
- 1.24. DISCLOSURE OF RESPONSE: All information submitted with a response is subject to and will be handled in accordance with Government Code, Chapter §441.180, *et sequitur*, concerning Preservation and Maintenance of State Records and Other Historical Resources and in accordance with the Texas Public Information Act (PIA), Government Code, Chapter 552.

All information submitted in a response must be retained by TxDOT for the period specified in TxDOT's record retention schedule created under Government Code §441.180, *et sequitur*. The information may not be returned to the respondent.

The PIA allows the public to have access to information in the possession of a governmental body through an open records request. Therefore, the respondent must 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. SPECIFICATIONS

- 2.1. The goods furnished or service performed shall be in accordance with the purchase specifications. TxDOT will decide all questions, which may arise as to the interpretation of the specifications and the quality, or acceptability of goods furnished or work performed. If the solicitation is for a service, TxDOT will decide the manner of performance and the rate of progress of the work and the acceptable fulfillment of the service on the part of the vendor.
- 2.2. 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. Show manufacturer, brand or trade name, and other description of product offered on response. If offer is for other than example(s) shown, include illustrations and complete description of product in the solicitation response. 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.
- 2.3. Unless otherwise specified, all items offered shall be new and in first class condition, including shipping and storage containers. Verbal agreements to the contrary will not be recognized.
- 2.4. Product samples, when requested, must be furnished at no cost to TxDOT. If not destroyed in examination or testing, product samples will be returned upon request, at respondent's expense. Each product sample shall be marked with respondent's name and address, and TxDOT solicitation number. Do not enclose in or attach response to product sample.

- 2.5. 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.
- 2.6. Manufacturer's standard warranty shall apply unless otherwise stated in this solicitation.
- 2.7. All electrical items shall meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.
3. **TIE RESPONSES:** Award will be made in accordance with Rule 34 TAC §20.36 and §20.38 (Preferences). In case of tie bids, one or more preferences described in TAC Rule §20.38 and listed below will be used to make and award. Tie bids which cannot be resolved by application of one or more preferences shall be made by drawing lots.
4. **PREFERENCES:** A respondent may claim a preference under Rule 34TAC §20.38. To claim a preference, a respondent shall identify the preference, on the face of the solicitation. If the appropriate area on the solicitation is not marked, a preference will not be granted unless other documents included in the bid show a right to the preference.

Preferences may be claimed for the following:

TIE-BID PREFERENCES

- ◆ Supplies, materials or equipment produced in Texas or offered by a Texas bidder
- ◆ Agricultural products produced or grown in Texas
- ◆ Agricultural products and services offered by Texas bidder
- ◆ USA produced supplies, material or equipment
- ◆ Products produced at facilities located on formerly contaminated property
- ◆ Products and services from economically depressed or blighted areas
- ◆ Goods produced or offered by a business owned by a service-disabled veteran who is a Texas resident

SOURCE PREFERENCE

- ◆ Products of persons with mental or physical disabilities
- ◆ Vendors that meet or exceed air quality standards. For contracts to be performed, in whole or in part, in a designated non-attainment area or an affected county, as those terms are defined by Health and Safety Code §386.001 Texas Emissions Reduction Plan.
- ◆ Manufacturer that has a recycle program for computer equipment
- ◆ Contractor providing foods of higher nutritional value

SPECIFICATION PREFERENCES

- ◆ Products made of recycled materials, remanufactured, or environmentally sensitive materials including recycled steel
- ◆ Energy efficient products
- ◆ Rubberized asphalt paving materials
- ◆ Recycled motor oil and lubricants

5. DELIVERY

- 5.1. Response should show number of *days* required to place material, or begin service (if required), at TxDOT's designated location under normal conditions. Failure to state delivery time obligates vendor to complete delivery in fourteen (14) calendar days. Unrealistic delivery promises may cause response to be rejected.
- 5.2. If delay is foreseen, vendor shall give written notice to TxDOT. TxDOT has the right to extend delivery date if reasons appear valid. Vendor shall keep TxDOT advised at all times of the status of the order. Default in promised delivery (without accepted reasons) 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.
- 5.3. No substitutions or cancellations will be permitted without written approval from TxDOT.

- 5.4. Delivery shall be made during normal working hours only, unless prior approval has been obtained from TxDOT or otherwise stated in the solicitation.
- 5.5. Receipt of goods does not constitute acceptance.
6. **INSPECTIONS AND TESTS:** Goods and services will be subject to inspection and test by TxDOT to the extent practicable at all times and places. Tests will be performed on samples submitted with the response or on samples taken from regular shipment. In the event samples tested fail to meet or exceed 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. Authorized TxDOT personnel shall have access to any vendor's place of business for the purpose of inspecting goods and services. Latent defects may result in revocation of acceptance.
7. **AWARD OF PURCHASE ORDER:** 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.
- 7.1. **BEST VALUE CRITERIA FOR PURCHASE OF GOODS OR SERVICES:** When specified in the solicitation, the factors listed in Texas Government Code, Title 10, Subtitle D, Section 2155.074 will also be considered in making a *best value* award. This section allows TxDOT to develop and apply award evaluation criteria for a procurement in order to obtain goods and services that provide the *best value* for TxDOT.
- In determining *best value*, other relevant factors may be considered in addition to purchase price and whether the product meets specifications. Those factors are:
- installation costs; life cycle costs;
 - the quality and reliability of goods and services;
 - the delivery terms;
 - indicators of probable vendor performance;
 - cost of employee training associated with a purchase;
 - the effect of a purchase on agency productivity; and
 - other factors relevant to determining best value for the state in the context of a particular purchase.
- Under these guidelines, a vendor is not automatically awarded a purchase order if it submits the lowest bid response.
- 7.2. In compliance with the provisions of Texas Government Code, Title 10, Subtitle D, Section 2155.074, Section 2155.075, Section 2156.007, Section 2157.003 and Section 2157.125, and Texas Administrative Code, Title 1, Chapter 113.6, information obtained from the Texas Procurement and Support Services' Vendor Performance Tracking System (/procurement/prog/vendor_performance/VPTS) may be used in evaluating responses to solicitations for goods and services to determine the best value for the state.
8. **FUNDING:** Any purchase order resulting from this solicitation is subject to cancellation without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature. The purchase order for this procurement shall be governed, construed and interpreted under the laws of the State of Texas.
9. **ORDERS:** Only authorized TxDOT purchasers have the authority to place orders for goods and services. Purchase orders must be issued by a 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 emergencies, the Purchasing section will confirm such orders with a signed purchase order.
- 9.1. Acceptance of an order and delivery on the part of the Seller without an approved purchase order number or release number issued by TxDOT may result in the rejection of delivery, return of goods at the Seller's cost and/or non-payment.

10. **PAYMENT:** Payment will be made in accordance with the Texas Government Code, Chapter 2251. Vendor shall submit copies of a correct itemized invoice showing the purchase order number, EIN, remit to address, and phone number. TxDOT will incur no penalty for late payment if payment is made in thirty (30) days or less from receipt of goods or services and a correct invoice, whichever is later.

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

11. **TRADEMARKS, COPYRIGHTS, PATENTS AND INTELLECTUAL PROPERTY:** When applicable, each vendor shall obtain necessary permissions, copyrights, trademarks or patents for TxDOT. The vendor agrees to protect TxDOT and the State from claims involving infringement of permissions, copyrights, trademarks or patents. The vendor shall not assert rights at common law or in equity or establish any claim to intellectual property, including, but not limited to, any permissions, statutory copyright any material or information or claim any patent developed in performance of the services authorized. TxDOT will own all rights and has the right to use, reproduce or distribute any or all of such information and other materials without the necessity of obtaining any permission from the vendor and without expense and charge. The vendor agrees to indemnify, hold harmless and defend TxDOT and the State from claims involving infringement of permissions, trademarks, copyrights or patents at the vendor's expense.
12. **VENDOR ASSIGNMENTS:** Vendor hereby assigns purchaser 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 (Texas Business & Commerce Code, Title 2, Chapter 15).
13. **RESPONDENT AFFIRMATION:** Signing this solicitation with a false statement is a material breach of contract and shall void the submitted response or any resulting contracts, and the respondent shall be removed from all solicitation lists. By signature hereon affixed, the respondent hereby certifies that:
- 13.1. 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.
- 13.2. Under Section 2155.004, Government Code, the vendor 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 and/or payment withheld if this certification is inaccurate.
- 13.3. 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 this state, 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.
- 13.4. The respondent has not received compensation for participation in the preparation of the specification for this solicitation.
- 13.5. Under The Family Code Section 231.006, Family Code [relating to child support], 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. Furthermore, 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.
- 13.6. Under Section 669.003, Government Code TxDOT may not enter into a contract with 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 TxDOT executive director, unless the Transportation Commission approves the contract in an open meeting.

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.

- 13.7. 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.
- 13.8. Respondent agrees to comply with Texas Government Code Chapter 2155, Subchapter H Section 2155.444 et seq., pertaining to purchasing preferences.
- 13.9. Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected 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>.
- 13.10. Vendor has not been 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, Katrina or subsequent disasters.
14. **TITLE VI AFFIRMATIONS:** The vendor affirms, with regard to the work performed by it under the purchase order:
- 14.1. 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.
- 14.2. 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.
- 14.3. 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:
- 14.3.1. 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.
- 14.3.2. 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.
- The vendor, sub-recipient or subcontractors shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the performance of the purchase order. The vendor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of TxDOT purchase orders. Failure by the vendor to carry out these requirements is a material breach of the purchase order awarded under this solicitation, which may result in the termination of this purchase order or such other remedy as the Texas Department of Transportation deems appropriate.
- 14.3.3. 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 paragraph 14.3.2 must appear in all subcontracts.

- 14.3.4. **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 Texas Department of Transportation or the Federal Highway Administration to be pertinent 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 Texas Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- 14.3.5. **Sanctions for Noncompliance:** In the event of the vendor's noncompliance with the nondiscrimination provisions of this purchase order, the Texas Department of Transportation shall impose such sanctions as it or the Federal Highway Administration 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: and/or (b) cancellation, termination, or suspension of the purchase order, in whole or in part.
15. **SUBCONTRACTING REQUIREMENTS:** In accordance with Texas Government Code Sections 2161.181-182 and 34TAC §20.11 and pursuant to the Comptroller of Public Accounts HUB Rules, 34 TAC, Sections and 20.14, and Transportation DBE/HUB/SBE Rules, 43 TAC Sections 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 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 Historically Underutilized Business (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>.
16. **PAYMENT OF SUBCONTRACTORS:** As provided by Texas Government Code Section 2251.022 Time for Payment by Vendor: (a) A vendor who receives a payment from a governmental entity shall pay a subcontractor the appropriate share of the payment not later than the 10th day after the date the vendor receives the payment. (b) The appropriate share is overdue on the 11th day after the date the vendor receives the payment.
17. **RESPONDENT EXCEPTIONS OR CONDITIONED RESPONSES:** Respondent exceptions and/or terms conditions attached to a response will not be considered unless specifically referred to and clearly identified as such within the response.
- NOTE: Such exceptions and/or terms and conditions may result in disqualification of the response (e.g., response with the laws of a state other than Texas, requirements for prepayment, limitations on remedies, etc.).**
18. **DISPUTE RESOLUTION:** TxDOT has established a dispute resolution process under 43 TAC §9.1 to attempt to resolve all disputes that may arise between the department and the vendor under any purchase order resulting from this solicitation. The dispute resolution process provided for in Texas Government Code, Chapter 2260 must be used by TxDOT and the vendor to attempt to resolve all disputes arising under this contract.
19. **VENUE AND JURISDICTION:** Venue for any suit concerning this procurement and any resulting purchase order shall be in a court of competent jurisdiction in Travis County, Texas.
20. **VENDOR RESPONSIBILITIES**
- 20.1. 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, 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.

- 20.2. 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 person or subcontractor.
- 20.3. The vendor shall be responsible for damage to TxDOT's equipment, and/or the workplace and its contents, by its work or its subcontractor's, its or its subcontractor's negligence in performance of work, its or its subcontractor's personnel, or its or its subcontractor's equipment. 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.
- 20.4. 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.
- 20.5. 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.
21. **DAMAGE CLAIMS:** The vendor shall defend, indemnify, and hold harmless the state of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of contractor or any agent, employee, subcontractor, or supplier of these entities in the execution or performance of this contract.
22. **CANCELLATION OF A PURCHASE ORDER**
- 22.1. **FOR CAUSE (ABANDONMENT OR DEFAULT):** If the vendor defaults on the purchase order, TxDOT reserves the right to cancel the purchase order without notice 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.
- 22.2. **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.
- 22.3. **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 30 days from the date of change.
23. **FORCE MAJEURE:** TxDOT may grant relief from performance of the purchase order if the vendor is prevented from and/or 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. The burden of proof for the need of such relief shall rest upon the vendor. To obtain relief as stated under paragraph 26.2 or release 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.

24. RIGHT TO AUDIT

24.1. The State Auditor's Office and TxDOT's internal auditors (individually or collectively "state auditor") may conduct an audit or investigation of any entity 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.

24.2. TxDOT has the right to audit the vendor's books and records pertaining to the service during the hours of the normal workday.

25. **RENEWAL OF PURCHASE ORDER:** A blanket purchase order for goods may be renewed for the original price, terms and conditions, and any approved changes. Any changes will be clearly detailed in the amended purchase order.

26. EXTENSION OF PURCHASE ORDER

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

26.2. 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.

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

28. **CONFIDENTIALITY CLAUSE:** TxDOT is governed by laws and regulations that make certain information confidential as well as specifying how public information is released. 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. 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 .

29. SOVEREIGN IMMUNITY

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.

30. LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS

Contractor shall have no authority to act for or on behalf of TXDOT or the State of Texas except as expressly provided for in this Contract. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or TXDOT.

31. FELONY CRIMINAL CONVICTIONS

Contractor represents and warrants that Contractor has not and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TXDOT as to the facts and circumstances surrounding the conviction and Contractor agrees to defense, hold harmless, indemnify TxDOT from any loss or claim due to any such employees.

32. SEVERABILITY CLAUSE

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

PART II

PURCHASE OF SERVICES SPECIFIC TERMS AND CONDITIONS

1. **GENERAL:** The following applies to a solicitation for the purchase of services. These terms and conditions are in addition to those in Part I.
 - 1.1. If applicable to the service, TxDOT recommends that the respondent visit the site and examine the space and/or equipment to be serviced.
 - 1.2. The respondent shall carefully examine these specifications and, if necessary, secure additional information from the TxDOT purchaser to gain a clear and full understanding of the service to be performed.
 - 1.3. If products and/or materials are used in the performance of the service, the vendor shall buy Texas products and/or materials when they are available at a comparable price and acceptable delivery schedule.
2. **COMPETENCE OF VENDOR:** To be entitled to consideration, the vendor shall have available, the necessary organization and facilities to fulfill all the services required 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/permits required for the performance of the service.
3. **INDEMNIFICATION:** It is expressly understood and agreed to by both parties that TxDOT is contracting with the vendor as an independent contractor, and the vendor, as such, agrees to hold TxDOT harmless and to indemnify TxDOT from and against any and all claims, demands and causes of action of every kind and character which may be asserted by any third party, supplier, employee or subcontractor of the vendor out of or in connection with the activities to be performed by the vendor for TxDOT. Vendor understands and agrees that individuals performing services are not state employees.
4. **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. 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.
5. **OWNERSHIP OF MATERIALS, PRODUCTIONS, AND DOCUMENTS**
 - 5.1. All intellectual property rights, including but not limited to publication rights, copyrights, trademarks, patents and trade secrets to all products and/or materials developed hereunder shall be retained by TxDOT.
 - 5.2. Vendor shall ensure that intellectual property rights are secured for TxDOT from all suppliers, contractors and subcontractors.
6. **RENEWAL OF SERVICES**
 - 6.1. The purchase order may be renewed for up to two additional periods of time, or as otherwise stated in the solicitation, provided both parties agree in writing to do so prior to the expiration of the purchase order.
 - 6.2. TxDOT requires a vendor to provide written justification to request a time only extension of a purchase order per Part I, Paragraph 24 above. TxDOT will approve or decline the request for extension in writing.

7. **PAYMENT:** Payment will be made in accordance with Part I, Paragraph 10 using one of the following methods as specified in the solicitation.

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

OR

7.2. On a monthly basis and within thirty (30) days from receipt of a correct invoice or billing statement.

OR

7.3. As otherwise stated in the specifications or in the solicitation document.

8. **INSURANCE:** Prior to beginning work, the vendor shall provide TxDOT with a completed TxDOT Form 1950 or Form 1560 (only TxDOT forms are acceptable) providing the below listed coverage as specified in the solicitation. TxDOT shall be included as an Additional Insured by Endorsement to policies issued for coverage listed in Paragraphs 8.3 and 8.4.

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 cancellation of the purchase order.

Waiver of Subrogation Endorsement in favor of TxDOT shall be a part of each policy for coverage listed. TxDOT will allow deductible policies. The vendor shall pay the deductible amount.

REQUIRED INSURANCE COVERAGE IS SPECIFIED ON THE SOLICITATION DOCUMENT.

- 8.1. **WORKERS' COMPENSATION INSURANCE:** Amount – Statutory, Texas. The vendor is responsible for both Federal and State Unemployment Insurance coverage and Standard Workers' Compensation Insurance coverage. Vendor shall comply with all federal and state tax laws and withholding requirements.

- 8.2. **ACCIDENT INSURANCE:** This insurance is acceptable, in lieu of Workers' Compensation Insurance, if stated on the solicitation document for services that are NOT provided on the highway right of way, and are NOT building or construction services. The successful respondent shall notify the purchaser responsible for the procurement for permission to use this type of insurance in lieu of Workers' Compensation Insurance and to request the TxDOT Accident Insurance Form 1950. Required coverage shall, at a minimum, be inclusive of the following:

- \$300,000 for medical expenses and coverage for a minimum of 104 weeks;
- \$100,000 for accidental death and dismemberment, 70% of employee's pre-injury income for not less than 104 weeks when compensating for loss of income; and
- \$500 for maximum weekly benefit.

- 8.3. **COMMERCIAL GENERAL LIABILITY INSURANCE:** Bodily Injury/Property Damage

8.3.1. Not less than \$300,000 each occurrence with \$600,000 aggregate

OR

8.3.2. Options available: \$1,000,000 per occurrence with \$2,000,000 aggregate; or \$1,000,000 per occurrence with \$3,000,000 aggregate.

- 8.4. **TEXAS BUSINESS AUTOMOBILE POLICY: Not less than:**

- | | |
|--------------------------------|--|
| 8.4.1. Amounts – Bodily Injury | \$250,000 each person
\$500,000 each occurrence |
| 8.4.2. Property Damage | \$100,000 each occurrence |

PART III

REQUEST FOR OFFER (RFO) PURCHASE SPECIFIC TERMS AND CONDITIONS

1. **GENERAL:** The following terms and conditions apply to solicitations advertised under the Request for Offer (RFO) method of purchase. Information technology (IT) products or services purchased using the RFO method of purchase are not available on DIR contracts, TxMAS Schedule 70, or by exemption provided by DIR.
2. **DEFINITIONS**
 - 2.1. **REQUEST FOR OFFER (RFO):** This term is used to identify a solicitation issued to obtain an offer and allow negotiations for prices, terms and conditions for the best value for TxDOT.
 - 2.2. **BEST VALUE:** The lowest overall cost for IT equipment or services will be based on the following factors including, but not limited to:
 - purchase price
 - compatibility to facilitate exchange of existing data
 - capacity for expansion and upgrading to more advanced levels of technology
 - quantitative reliability factors
 - level of training required to bring end-users to a stated level of proficiency
 - technical support requirements for maintenance of data across a network platform and management of the networks hardware and software
3. **BEST VALUE CRITERIA:** Best value criteria will be used on all RFO purchases. For purposes of determining the best value available, TxDOT will consider items, features, etc., which are in addition to requirements listed, as well as factors which, in TxDOT's opinion, add value to the product/service but are not specifically required within the specification.
4. **NEGOTIATIONS**
 - 4.1. Negotiations for "best value" will occur with respondents, instead of making awards for goods and services based solely on the published prices, terms and conditions offered.
 - 4.2. During the evaluation phase, TxDOT reserves the right to conduct formal negotiations with the responsive respondent(s) judged to be the best offer pertaining to price, products, services and terms.
 - 4.3. TxDOT will be the sole judge as to which offer is the most advantageous and in the best interest of TxDOT.
5. **ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, As Required by 1 TAC Chapter 213:**
 - 5.1. 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.
 - 5.2. 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/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 DIR 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/>.
6. **EXEMPTION DECLARATION:** Pursuant to the provisions of the Texas Government Code, Section 2157.005(d) when the requirement specified on the solicitation is for the purchase of a wireless communication device to be used by emergency response personnel to respond to a public safety emergency, the provisions of the Technology Access Clause do not apply.

FEDERAL GENERAL TERMS AND CONDITIONS
for
PURCHASE ORDER AGREEMENT

1. Indemnification

To the extent permitted by law, the Vendor, if other than a State agency, shall save harmless the Texas Department of Transportation (TxDOT) from all claims and liability due to the acts or omissions of the Vendor, its agents or employees. The Vendor also agrees to save harmless TxDOT from any and all expenses, including attorney fees, all court costs and awards for damages, incurred by TxDOT in litigation or otherwise resisting such claims or liabilities as a result of any activities of the Vendor, its agents or employees.

Further, to the extent permitted by law, the Vendor, if other than a State agency, agrees to protect, indemnify, and save harmless TxDOT from and against all claims, demands and causes of action of every kind and character brought by any employee of the Vendor against TxDOT due to personal injuries and/or death to such employee resulting from any alleged negligent act, by either commission or omission on the part of the Vendor or TxDOT.

2. Inspection of Work

TxDOT and, when federal funds are involved, the U. S. Department of Transportation, and any authorized representative thereof, have the right at all reasonable times to inspect or otherwise evaluate the services performed hereunder and the premises in which it is being performed.

If any inspection or evaluation is made on the premises of the Vendor, the Vendor's representatives, or the Vendor's subcontractors, Vendor shall provide, and require its representatives and subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

3. Disputes and Remedies

The Vendor shall be responsible for the settlement of all contractual and administrative issues arising out of procurements entered in support of agreement work.

Disputes concerning performance or payment shall be submitted to TxDOT for settlement with the Executive Director acting as referee.

This agreement shall not be considered as specifying the exclusive remedy for any dispute or violation or breach of agreement terms, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

4. Noncollusion

The Vendor warrants that it has not employed or retained any company or person, other than a bona fide employee working for it, to solicit or secure this agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this agreement.

If the Vendor breaches or violates this warranty, TxDOT shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

5. Reporting

Not later than thirty days after the end of each reporting, as designated in Article 2, the Vendor shall submit a performance report using forms provided or approved by TxDOT. The performance report will include as a minimum (1) a comparison of actual accomplishments to the objectives established for the agreement, (2) reasons why established objectives were not met, if appropriate, and (3) other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

The Vendor shall submit the final performance report within 30 days after the end of each fiscal year.

6. Records

The Vendor agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and work performed hereunder and shall make such materials available at its office during the agreement period and for four years from the date of the final performance report under the agreement. Such materials shall be made available during the specified period for inspection by TxDOT, or the U.S. Department of Transportation and the Office of the Inspector General, if the agreement is federally funded, and any of their authorized representatives for the purpose of making audits, examinations, excerpts, and transcriptions. The Vendor shall retain all records until final completion of any litigation.

7. Audit

The Vendor shall comply with the requirements of the Single Audit Act of 1984, PL 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133, "Audits of States, Local Governments, and Other Non-Profit Organizations," as appropriate.

8. Subcontracts

Any subcontract for professional services rendered by individuals or organizations not a part of the Vendor's organization shall not be executed without prior authorization and approval of the subcontract by TxDOT.

Subcontracts in excess of \$25,000 shall contain all required provisions of this agreement.

No subcontract will relieve the Vendor of its responsibility under this agreement.

9. Termination

TxDOT may terminate this agreement at any time before the date of completion whenever it is determined that the Vendor has failed to comply with the conditions of the agreement. TxDOT shall give written notice to the Vendor at least seven days prior to the effective date of termination and specify the effective date of termination and the reason for termination.

If both parties to this agreement agree that the continuation of the agreement would not produce beneficial results commensurate with the further expenditure of funds, the parties shall agree upon the termination conditions, including the effective date and the portion to be terminated.

TxDOT may terminate this contract at any time, or limit expenditures under this contract, if federal funds are not available for payment of services provided under this contract.

Upon termination of this agreement, whether for cause or at the convenience of the parties hereto, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc. prepared by the Vendor shall, at the option of TxDOT, become the property of TxDOT.

TxDOT shall compensate the Vendor for those eligible expenses incurred during the agreement period which are directly attributable to the completed portion of the work covered by this agreement, provided that the work has been completed in a manner satisfactory and acceptable to TxDOT. The Vendor shall not incur new obligations for the terminated portion after the effective date of termination.

Except with respect to defaults of subcontractors, the Vendor shall not be in default by reason of any failure in performance of this agreement in accordance with its terms (including any failure by the Vendor to progress in the performance of the work) if such failure arises out of causes beyond the control and without the default or negligence of the Vendor. Such causes may include but are not limited to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, however, the failure to perform must be beyond the control and without the fault or negligence of the Vendor.

10. Gratuities

Texas Transportation Commission policy mandates that employees of the Texas Department of Transportation shall not accept any benefits, gifts or favors from any person doing business with or who reasonably speaking may do business with the Department under this agreement. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Department's Executive Director.

Any person doing business with or who reasonably speaking may do business with the Department under this agreement may not make any offer of benefits, gifts or favors to Department employees, except as mentioned here above. Failure on the part of the Vendor to adhere to this policy may result in termination of this agreement.

11. 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 courts or administrative bodies or tribunals in any matter affecting the performance of this agreement, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Vendor shall furnish TxDOT with satisfactory proof of its compliance therewith.

12. Successors and Assigns

TxDOT and the Vendor each binds itself, its successors, executors, assigns and administrators to the other party to this agreement and to the successors, executors, assigns and administrators of such other party in respect to all covenants of this agreement.

The Vendor shall not assign, sublet, or transfer its interest and obligations in this agreement without written consent of TxDOT.

13. Ownership of Documents

Upon completion or termination of this agreement, all documents and other materials prepared by the Vendor or furnished to the Vendor by TxDOT shall be delivered to and become the property of the TxDOT. All sketches, photographs, films, calculations, and other data prepared under this agreement shall be made available, upon request, to TxDOT without restriction or limitation of their further use.

14. Resources

The Vendor warrants that it presently has adequate qualified personnel in its employment for performance of services required under this agreement, or will be able to obtain such personnel from sources other than TxDOT.

Unless otherwise specified, the Vendor shall furnish all equipment, materials, and supplies required to perform the work authorized herein.

All employees of the Vendor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of the Vendor who, in the opinion of TxDOT, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the project.

15. Property Management

The Vendor shall establish and administer a system to control, protect, preserve, use, maintain, and dispose of any property furnished to it by TxDOT or purchased pursuant to this agreement in accordance with its own property management procedures, provided that the procedures are not in conflict with the TxDOT's property management procedures or property management standards, as appropriate, in:

- 49 CFR 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or,
- OMB Circular A-110, "Uniform Requirements for Grants to Universities, Hospitals, and Other Nonprofit Organizations."

16. Procurement Standards

The Vendor shall maintain procurement standards which meet or exceed the requirements, as appropriate, of:

- 49 CFR 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or,
- OMB Circular A-110, "Uniform Requirements for Grants to Universities, Hospitals, and Other Nonprofit Organizations."

17. Reimbursement/Cost Principles

a. The method of payment for this purchase order will be based on actual costs incurred up to and not to exceed the limits specified in Section IV, Contract Amount.

b. The Vendor's expenditures may not exceed any budget category in the Approved Project Budget by an amount greater than 5% of the total budget without a written contract amendment. *However, the Vendor must provide written notification to TxDOT of a change of 5% or less, prior to payment of the Request for Reimbursement that includes the change, indicating the amount and percent change and the reason(s) for it.* The maximum amount payable shall not be increased as a result of exceeding a budget category without a written contract amendment.

c. To be eligible for reimbursement under this contract, a cost must be incurred in accordance with the Approved Project Budget and within the contract period specified in Section IV, Term of Contract.

d. Payment of costs incurred under this contract is further governed by one of the following cost principles, as appropriate, outlined in the Federal Office of Management and Budget (OMB) Circulars:

- A-21, Cost Principles for Educational Institutions, or,
- A-87, Cost Principles for State and Local Governments.

e. The Vendor agrees to submit monthly or quarterly requests for reimbursement, as designated in Section II, Statement of Services to be performed, within 30 days after the end of the billing period. The Vendor will use billing statements acceptable to TxDOT. The original billing statement and two copies are to be submitted to TxDOT.

f. The Vendor agrees to submit the final request for reimbursement for each federal fiscal year under the contract within sixty (60) days of the end of the fiscal year.

g. TxDOT will exercise all good faith to make payments within thirty days of receipt of properly prepared and documented requests for payment. All payments, however, are contingent upon the availability of appropriated funds.

18. Insurance

When directed by TxDOT, the Vendor, if other than a State agency, shall provide or shall require its subcontractors to secure a policy of insurance in the maximum statutory limits for tort liability, naming TxDOT as an additional insured under its terms. When so directed, the Vendor shall provide or shall require its subcontractor to furnish proof of insurance on TxDOT Form 20.102 (12/91), and shall maintain the insurance during the period established in Article 1.

19. Equal Employment Opportunity

The Vendor agrees to comply with Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations (41 CFR 60).

20. Nondiscrimination

During the performance of this agreement, the Vendor, its assigns and successors in interest, agrees as follows:

a. Compliance with Regulations: The Vendor shall comply with the regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21 and Title 23, Code of Federal Regulations, Part 710.405(b), 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 agreement.

b. Nondiscrimination: The Vendor, with regard to the work performed by it during the agreement, shall not discriminate on the grounds of race, color, sex, or national origin 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 the discrimination prohibited by Section 21.5 and Part 710.405(b) of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Vendor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Vendor of the Vendor's obligations under this agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

d. 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 TxDOT, or the U.S. Department of Transportation, to be pertinent to ascertain compliance with such Regulations or directives.

Where any information required of the Vendor is in the exclusive possession of another who fails or refuses to furnish this information, the Vendor shall so certify to TxDOT, or the U.S. Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the Vendor's noncompliance with the nondiscrimination provisions of this agreement, TxDOT shall impose such sanctions as it or the U.S. Department of Transportation may determine to be appropriate, including but not limited to:

- withholding of payments to the Vendor under the agreement until the Vendor complies, and/or
- cancellation, termination, or suspension of the agreement in whole or in part.

f. Incorporation of Provisions: The Vendor shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Vendor shall take such action with respect to any subcontract or procurement as TxDOT may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a subcontractor becomes involved in, or is threatened with litigation with another subcontractor or supplier as a result of such direction, the Vendor may request TxDOT to enter into such litigation to protect its interests; in addition, the Vendor may request the United States to enter into such litigation to protect the interests of the United States.

21. Disadvantaged Business Enterprise

It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently the Disadvantaged Business Enterprise requirements of 49 CFR Part 26 apply to this agreement as follows:

- The Vendor agrees to insure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the opportunity in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, the Vendor shall make good faith efforts in accordance with 49 CFR Part 26 to insure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts.
- The Vendor and any subcontractor shall not discriminate on the basis of race, color, national origin, or gender in the award and performance of contracts funded in whole or in part with Federal funds.

These requirements shall be physically included in any subcontract.

Failure to carry out the requirements set forth above shall constitute a breach of this agreement and, after the notification of TxDOT, may result in termination of the agreement by TxDOT or other such remedy as TxDOT deems appropriate.

22. Debarment/Suspension

The Vendor is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. The Vendor shall require any party to a subcontract or purchase order awarded under this agreement to certify its eligibility to receive federal grant funds, and, when requested by TxDOT, to furnish a copy of the certification.

23. Signatory Warranty

The signatory for the Vendor hereby represents and warrants that she/he is an officer of the organization for which she/he has executed this agreement and that she/he has full and complete authority to enter into this agreement on behalf of the organization. At the time the signatory for the Vendor signs the contract agreement, or within thirty days, he/she will sign a letter designating signature authority by position title for contract-related documents other than the contract agreement or contract agreement amendments. These other contract-related documents will include, but not be limited to, the following: application for project extension, administrative evaluation report, requests for reimbursement (RFR), and routine correspondence.

24. Assurances and Certification

The Vendor attests that the assurances included in Attachment C of this agreement and the certification included in Attachment D of this agreement are accurate and current.

25. Clean Air & Water Act

Vendor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857[h]); Section 508 of the Clean Water Act (33 USC 1368); Executive Order 11738, and Environmental Protection Agency regulations (40 CFR 15). Vendor further agrees to report violations to the grantor agency.

26. Intellectual Property

Intellectual property consists of copyrights, patents, and any other form of intellectual property rights covering any data bases, software, inventions, training manuals, systems design, or other proprietary information in any form or medium.

Copyrights: TxDOT and the federal government reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for government purposes:

- the copyright in any works developed under this agreement or under a subgrant or contract under this agreement; and,
- any rights of copyright to which the Vendor, its subgrantee, or contractor purchases ownership of with financial assistance hereunder.

Patents: Rights to inventions made under this agreement shall be determined in accordance with 37 CFR 401. The standard patent rights clause at 37 CFR §401.14 as modified below is hereby incorporated by reference:

- the terms “to be performed by a small business firm or domestic nonprofit organization” shall be deleted from paragraph (g)(1) or the clause;
- Paragraphs (g)(2) and (g)(3) of the clause shall be deleted; and
- Paragraph (1) of the clause entitled “Communications,” shall read as follows: “(1) Communications. All notifications required by this clause shall be submitted to TxDOT.”

If the grant results in the development of any intellectual property as defined in Transportation Code, Section 201.205, the Department shall own all the rights, title, and interests in and to all data and other information developed under the grant. Each agency may license, reproduce, publish, modify, or otherwise use and authorize others to use the copyright in any work developed under this grant. All such documents will contain a copyright mark acknowledging this joint ownership. There will not be a charge to either agency for such use.



HUB SUBCONTRACTING PLAN (HSP)

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

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to 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 State of Texas Disparity Study. The HUB goals defined in 34 TAC §20.13 are: *11.9 percent for heavy construction other than building contracts, 26.1 percent for all building construction, including general contractors and operative builders contracts, 57.2 percent for all special trade construction contracts, 20 percent for professional services contracts, 33 percent for all other services contracts, and 12.6 percent for commodities contracts.*

- - Agency Special Instructions/Additional Requirements - -

SECTION 1 - RESPONDENT AND SOLICITATION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
Point of Contact: _____ Phone #: _____
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No
- c. Solicitation #: _____

SECTION 2 - SUBCONTRACTING INTENTIONS

After having divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, the respondent must determine what portion(s) of work, including goods or services, will be subcontracted. Note: In accordance with 34 TAC §20.12., a "Subcontractor" means a person who contracts with a vendor to work, to supply commodities, or contribute toward completing work for a governmental entity. Check the appropriate box that identifies your subcontracting intentions:

- ☐ - Yes, I will be subcontracting portion(s) of the contract.
(If Yes, in the spaces provided below, list the portions of work you will be subcontracting, and go to page 2.)
- ☐ - No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources.
(If No, complete SECTION 9 and 10.)

Line Item # - Subcontracting Opportunity Description	Line Item # - Subcontracting Opportunity Description
(#1) -	(#11) -
(#2) -	(#12) -
(#3) -	(#13) -
(#4) -	(#14) -
(#5) -	(#15) -
(#6) -	(#16) -
(#7) -	(#17) -
(#8) -	(#18) -
(#9) -	(#19) -
(#10) -	(#20) -

*If you have more than twenty subcontracting opportunities, a continuation page is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanContinuationPage1.doc>

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

IMPORTANT: You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanContinuationPage2.doc>.

SECTION 3 - SUBCONTRACTING OPPORTUNITY

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # _____ Description: _____

SECTION 4 - MENTOR-PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

☐ - Yes (If Yes, complete SECTION 8 and 10.) ☐ - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

SECTION 5 - PROFESSIONAL SERVICES CONTRACTS ONLY

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

☐ - Yes (If Yes, complete SECTION 8 and 10.) ☐ - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

In accordance with Gov't Code §2254.004, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

SECTION 6 - NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- Provide written notification of the subcontracting opportunity listed in SECTION 3 to three (3) or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.cpa.state.tx.us/cmb/cmbhub.html>, and its HUB Directory, found at <http://www2.cpa.state.tx.us/cmb/hubonly.html>, to identify available HUBs. Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.
- Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>. Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.
- Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than five (5) working days from their receipt of notice to respond, and provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than five (5) working days prior to the submission of your response to the contracting agency.

SECTION 7 - HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY

List three (3) State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.

Company Name	VID #	Notice Date (mm/dd/yyyy)	Was Response Received?
_____	_____	____/____/____	☐ - Yes ☐ - No
_____	_____	____/____/____	☐ - Yes ☐ - No
_____	_____	____/____/____	☐ - Yes ☐ - No

SECTION 8 - SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the portion of work (subcontracting opportunity) listed in SECTION 3. Also, specify the expected percentage of work to be subcontracted, the approximate dollar value of the work to be subcontracted, and indicate if the company is a Texas certified HUB.

Company Name	VID #	Expected % of Contract	Approximate Dollar Amount	Texas Certified HUB?
_____	_____	%	\$	☐ - Yes ☐ - No*
_____	_____	%	\$	☐ - Yes ☐ - No*

*If the subcontractor(s) you selected is not a Texas certified HUB, provide written justification of your selection process below:

Enter your company's name here: _____

Solicitation #: _____

SECTION 9 - SELF PERFORMANCE JUSTIFICATION

(If you responded "No" to SECTION 2, you must complete SECTION 9 and 10.)

Does your response/proposal contain 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/section of your proposal which identifies 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 10 - 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 are true and correct. Respondent understands and agrees that, if awarded any portion of the solicitation:

- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying their compliance with the HSP, including the use/expenditures they have made to subcontractors. (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 their HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to debarment pursuant to Gov't Code §2161.253(d).
- 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 to be performed and must provide documents regarding staff and other resources.

Signature

Printed Name

Title

Date

Enter your company's name here: _____

Solicitation #: _____

SECTION 2 Development of a HSP and Subcontracting Intentions

In the spaces below, continue to list the portions of work (subcontracting opportunities) you intend to subcontract. For each subcontracting opportunity you list, you must demonstrate evidence of Good Faith Effort in developing your HSP by complying with the requirements outlined in the Good Faith Effort Confirmation form (Page 2).

Line Item # - Subcontracting Opportunity Description	Line Item # - Subcontracting Opportunity Description
(#21) -	(#61) -
(#22) -	(#62) -
(#23) -	(#63) -
(#24) -	(#64) -
(#25) -	(#65) -
(#26) -	(#66) -
(#27) -	(#67) -
(#28) -	(#68) -
(#29) -	(#69) -
(#30) -	(#70) -
(#31) -	(#71) -
(#32) -	(#72) -
(#33) -	(#73) -
(#34) -	(#74) -
(#35) -	(#75) -
(#36) -	(#76) -
(#37) -	(#77) -
(#38) -	(#78) -
(#39) -	(#79) -
(#40) -	(#80) -
(#41) -	(#81) -
(#42) -	(#82) -
(#43) -	(#83) -
(#44) -	(#84) -
(#45) -	(#85) -
(#46) -	(#86) -
(#47) -	(#87) -
(#48) -	(#88) -
(#49) -	(#89) -
(#50) -	(#90) -
(#51) -	(#91) -
(#52) -	(#92) -
(#53) -	(#93) -
(#54) -	(#94) -
(#55) -	(#95) -
(#56) -	(#96) -
(#57) -	(#97) -
(#58) -	(#98) -
(#59) -	(#99) -
(#60) -	(#100) -

