

TEXAS DEPARTMENT OF TRANSPORTATION
GENERAL SERVICES DIVISION

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SPECIFICATION NO.
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TESTING AND MATERIALS INSPECTION SUPPORT SERVICES

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.

SPECIFICATION

1. **SCOPE:** This specification describes the service to perform testing and materials inspection support using TxDOT provided equipment. Testing that may be required is listed on Attachment A.
2. **BIDDER QUALIFICATIONS:** TxDOT reserves the right to verify that technician(s) meet the minimum qualifications. The bidder and/or bidder's employee (technician) shall meet or exceed the following minimum requirements.
 - 2.1. Technician(s) shall:
 - 2.1.1. Be certified by the Texas Hot Mix Asphalt Pavement Association according to the Hot Mix Asphalt Certification Program. The technician(s) shall hold the appropriate level of certification (Level 1A, Level 1B, or Level II) for any bituminous testing to be performed.
 - 2.1.2. Be certified by the American Concrete Institute (ACI) Grade I certification for any concrete testing.
 - 2.1.3. One year (demonstrable by reference(s)) of experience in performing asphalt testing.
 - 2.1.4. One year (demonstrable by reference(s)) of experience in performing soils and aggregate testing.
 - 2.2. The following technician(s) shall have completed the basic nuclear safety course required by the Texas Department of Health, Bureau of Radiation Control, and TxDOT. Documentation of any prior radiation exposure will also be required.
 - 2.2.1. Level IA.
 - 2.2.2. Level II.
 - 2.2.3. Soils and aggregate.
 - 2.3. Technician(s) shall possess a valid Class C Texas driver's license if required to travel during work hours.
 - 2.4. Speak, read and write English fluently.
 - 2.5. Ability to communicate effectively both orally and in writing.
 - 2.6. Bidder shall demonstrate each technician's experience, including details about previous experience, how experience was obtained, and how experience can be verified. (Ref. Para. 12).
3. **VENDOR REQUISITE:** Prior to the technician(s) performing any test under the purchase order, the technician(s) shall be qualified under TxDOT's Quality Assurance Program. The programs requirements are published by the Construction Division's Materials Section and are available by contacting TxDOT.
 - 3.1. The vendor shall notify the TxDOT point of contact shown on the purchase order within five days of receipt of the purchase order to set a date and time for the technician(s) to be qualified.

* This Specification Supersedes Specification No. TxDOT 912-75-50, Revised January, 2000

- 3.2. Upon failure of any or all of the three qualification elements, written test, observation, and/or split sample, the technician(s) will have the opportunity to be retested one time within five days.
- 3.3. The vendor will have five working days to provide a technician(s) that is able to be qualified under TxDOT's Quality Assurance Program. If the vendor has not provided a technician(s) that has been qualified under the TxDOT's Quality Assurance Program within five working days, the purchase order will be cancelled.

4. DESCRIPTION OF SERVICES

- 4.1. The vendor's service shall be confined to testing and inspection associated with testing. Evaluation of test results will be performed by TxDOT's engineer(s). As a minimum the technician(s) shall:
 - 4.1.1. Perform laboratory test to verify that construction materials conform to TxDOT specifications.
 - 4.1.2. Prepare material inspection reports and worksheets of laboratory test results.
 - 4.1.3. Inform TxDOT's designated representative of material or production problems or unusual samples.
 - 4.1.4. At TxDOT's request, keep a diary of daily inspection details.
 - 4.1.5. Inspect construction methods and workmanship, incidental and directly related to materials testing and materials production inspection activities.
- 4.2. Testing shall be performed under the direction of TxDOT's designated representative. TxDOT's designated representative is shown on the Invitation for Bid (IFB).
- 4.3. The test site locations are shown on the IFB.
- 4.4. TxDOT will provide testing equipment and maintenance. Vendor shall transport nuclear gauge(s) to and from the project site(s).
- 4.5. The vendor shall provide documentation of test procedures and results on forms provided by TxDOT.
- 4.6. The vendor shall comply with all TxDOT safety regulations in accordance with the TxDOT "Occupational Safety Manual - Volume 2". TxDOT will provide a manual for the vendor's use in the testing laboratory(ies) and will provide copies of pertinent safety procedures upon request. The vendor shall supply the following personal safety equipment for technician(s).
 - 4.6.1. Approved safety hats conforming to OSHA Regulation 1926.100
 - 4.6.2. Approved safety shoes conforming to ANSI Specification Z 41-1963 M 175/C7
 - 4.6.3. Hearing protection
 - 4.6.4. Approved safety glasses with side shields conforming to OSHA Regulation 1926.102
 - 4.6.5. All other safety equipment will be provided as needed by TxDOT
- 4.7. Personal monitoring device for detection of radiation exposures shall be worn when transporting or operating nuclear testing equipment. The personal monitoring device will be provided and monitored by TxDOT. Copies of the monitoring report will be furnished to the vendor upon request.
- 4.8. Testing shall be performed in accordance with TxDOT "Manual of Testing Procedures". TxDOT will provide manuals for the vendor's use in the testing laboratories and will provide copies of individual test procedures upon request. Testing shall be performed on an as-needed basis as directed by TxDOT's designated representative.

5. VENDOR REQUIREMENTS

- 5.1. The vendor shall be responsible for both Federal and State Unemployment Insurance coverage and Standard Workers Compensation insurance coverage and comply with all federal and state tax laws and withholding requirements.
- 5.2. It will be considered a conflict of interest for the vendor to provide services to anyone other than TxDOT on projects that the vendor is providing service under the terms of this contract.

6. EMPLOYMENT INDEMNIFICATION: It is expressly understood and agreed to by both parties that TxDOT is contracting with the vendor as an independent contractor, and that vendor, as such, agrees to hold TxDOT harmless and to indemnify it from and against any and all claims, demands, and causes of action of every kind and character which may be asserted by any employee of the vendor out of or in connection with the activities to be performed by the vendor for TxDOT. Vendor understands and agrees that individual performing services are not state employees.
7. WORK HOURS
 - 7.1. The work hours may be flexible, based on plant production and/or TxDOT's demands, and will be determined by TxDOT's designated representative.
 - 7.2. Some off-shift and weekend work may be required. Off-shift is defined as hours in excess of 40 hours per week, beginning on Saturday and ending on Friday.
8. SUBSTITUTION OF INDIVIDUALS
 - 8.1. TxDOT reserves the right to require replacement of the technician(s) during the service period if performance is determined to be unsatisfactory.
 - 8.2. Orientation to the service requirements will be provided; therefore, it is requested that the same technician be available for the duration of the assignment.
 - 8.2.1. If for any reason the technician(s) leaves before the assignment is complete, the vendor shall replace the technician(s) as soon as possible, but not later than 24 hours thereafter.
 - 8.2.2. TxDOT will receive 16 hours of service FREE OF CHARGE any time any technician(s) is replaced. This will allow for the time required for orientation of the new technician(s).
9. ADDITIONAL PERSONNEL: TxDOT may require the vendor to provide more than one technician. TxDOT will give the vendor 24 hours verbal notification, confirmed in writing, of the need for additional technician(s). The additional technician(s) shall meet the minimum qualifications stated in the specification. Payment will be at the same rate bid.
10. QUANTITIES
 - 10.1. Total work hours are estimated; TxDOT does not guarantee to purchase any minimum number of hours.
 - 10.2. TxDOT reserves the right to increase the quantity(ies) of the purchase order at the same original price, terms and conditions. The vendor will be notified in writing by a purchase order change notice of any requirements for additional quantity(ies).
11. PAYMENT PLAN
 - 11.1. TxDOT will pay the vendor at the technician's hourly rate for actual test hours, provided the technician(s) is successful in passing the qualification.
 - 11.2. An itemized list of hours worked by the technician shall accompany each invoice. Hours will be approved daily by TxDOT's designated representative.
 - 11.3. Partial hours will be paid by rounding to the nearest half-hour as shown below:
 - 11.3.1. Less than 15 minutes - round to zero hours
 - 11.3.2. 15 minutes to 45 minutes (inclusive) - round to ½ hour
 - 11.3.3. Greater than 45 minutes - round to 1 hour
 - 11.4. No payment will be made for official state holidays, lunch hour, illness, or other such occasions when work is not actually performed. The amount of payment will be calculated by multiplying the regular hourly rate by the number of hours actually worked up to 40 hours per week. Payment for hours in excess of 40 hours per week will be calculated by multiplying the off shift hourly rate by the number of off shift hours actually worked.
12. BILLING INSTRUCTIONS
 - 12.1. Vendor shall submit the invoice to the address shown on the purchase order.

- 12.2. Invoice shall include the following information:
- 12.2.1. TxDOT Purchase Order Number.
 - 12.2.2. List item listing by: technician's name, hours worked (regular and off shift), hourly rate, and amount.
13. SUBMISSION OF BID: The following should be submitted with the IFB. Failure to return the required items with the bid response may result in rejection of the bid.
- 13.1. Resumes and proof of required certification demonstrating qualifications of each technician's certification by providing copies of certificates issued by the program.
 - 13.2. The name, address, telephone number and point-of-contact of firms in Texas that the technician(s) has provided testing services within the past 24 months. References may be checked. Reference checks will be used to verify experience, qualifications and customer satisfaction. References must be able to verify minimum qualifications. Any negative responses may result in rejection of the bid.
 - 13.3. Proof that each technician(s) has completed the basic nuclear safety course required by the Texas Department of Health and, if applicable, documentation of any prior radiation exposure.
 - 13.4. Copy of each technician's driver license.
14. AWARD OF PURCHASE ORDER
- 14.1. TxDOT will be the sole judge in determining whether the technician meets the minimum qualifications in Paragraph 2.
 - 14.2. Alternate purchase orders may be issued to the second and third bidders in the event the primary vendor cannot provide a replacement within 24 hours of date required, or on an emergency basis.

ATTACHMENT A

Required testing and appropriate certification may include the following:

Level 1A Test Methods

Tex-200-F	Sieve Analysis of Fine and Course Aggregate
Tex-206-F	Motorized Gyratory Shear Molding Press Operating Procedure
Tex-207-F	Bulk Specific Gravity of Compacted Bituminous Mixtures
Tex-210-F	Vacuum Extraction Using Non-Chlorinated Solvents
Tex-212-F	Determination of Moisture Content of Aggregates and Bituminous Mixtures (Alternate Method)
Tex-222-F	Method of Sampling Bituminous Mixtures
Tex-225-F	Random Selection of Production Samples
Tex-227-F	Theoretical Maximum Specific Gravity of Bituminous Mixtures
Tex-228-F	Determination of Asphalt Content of Bituminous Mixtures by the Nuclear Method
Tex-229-F	Combined HMAC Cold-Belt Sampling and Testing Procedure
Tex-236-F	Determination of Asphalt Content of Bituminous Mixtures by the Ignition Method
Tex-233-F	Preparation of Control Charts for Asphaltic Concrete Paving Projects
Tex-400-A	Method of sampling Stone, Gravel, Sand and Mineral Aggregates

Level 1B Test Methods

Tex-207-F	Bulk Specific Gravity of Compacted Bituminous Mixtures
Tex-207-F	Determination of In-Place Density of Compacted Bituminous Mixtures
Tex-207-F	Procedure for Establishing Roller Patterns (Control Strip Method)
Tex-225-F	Random Selection of Pavement locations for Sampling
Tex-1000-S	Operation of Pavement Profilograph and Evaluation of Profiles

Level II Test Methods

Tex-201-F	Bulk Specific Gravity and Water Absorption of Aggregate
Tex-202-F	Apparent Specific Gravity of Material Finer Than No. 80 Sieve
Tex-203-F	Sand Equivalent Value
Tex-204-F	Design of Bituminous Mixtures
Tex-205-F	Laboratory Method of Mixing Bituminous Mixtures
Tex-207-F	(VMA Calculation) Determination of Density of Compacted Bituminous Mixtures
Tex-226-F	Indirect Tensile Strength Test
Tex-228-F	(Calibration Only) Determination of Asphalt Content of Bituminous Mixtures by The Nuclear Method
Tex-236-F	Determination of Asphalt Content of Bituminous Mixtures by the Ignition Method - Mixture Calibration
Tex-443-F	Absorption and Dry Bulk Specific Gravity of Synthetic Coarse Aggregate
Tex-438-F	(Part II Method B Only) Theoretical Determination of Polish Value and Blended Percentage
Tex-530-F	Effect of Water on Bituminous Paving Mixtures
Tex-531-F	Prediction of Moisture-Induced Damage to Bituminous Paving Mixtures Using Molded Specimens

Functional Lab Testing

Tex-100-E	Surveying and Sampling of Soils for Highways
Tex-101-E	Preparation of Soil and Flexible Base Materials for Testing
Tex-103-E	Determination of Moisture Content in Soil Materials
Tex-104-E	Determination of Liquid Limit of Soils
Tex-105-E	Determination of Plastic Limit of Soils
Tex-106-E	Method of Calculating the Plasticity of Soils
Tex-107-E	Determination of Bar Linear Shrinkage
Tex-113-E	Laboratory Compaction Characteristics & Moisture Density Relationship of Base Materials and Cohesionless Soil
Tex-114-E	Laboratory Compaction Characteristics & Moisture Density Relationship of Subgrade & Embankment Soil
Tex-115-E	Field Method For Determination Of In-Place Density Of Soils And Base Materials
Tex-116-E	Ball Mill Method for Determination of the Disintegration of Flexible Base Materials
Tex-117-E	Triaxial Compression Test for Undisturbed Soils
Tex-128-E	Determination of Soil pH
Tex-203-F	Sand Equivalent Test
Tex-208-F	Test for Stabilometer Value of Bituminous Mixtures
Tex-213-F	Determination of Hydrocarbon-Volatile Content of Bituminous Mixtures
Tex-217-F	Determination of Deleterious Material and Decantation Test for Coarse Aggregates
Tex-224-F	Determination of Flakiness Index

Concrete Testing

Tex-400-A	Method of sampling Stone, Gravel, Sand and Mineral Aggregates
Tex-401-A	Sieve Analysis of Fine and coarse Aggregate
Tex-402-A	Fineness Modulus of Fine Aggregate
Tex-403-A	Saturated Surface- Dry Specific gravity and absorption of Aggregates
Tex-404-A	Determination of Unit Mass (Weight) of Aggregates
Tex-405-A	Determination of Percent Solids and Voids in Concrete Aggregate
Tex-406-A	Material finer than the 75um (No.200) Sieve in Mineral Aggregates
Tex-407-A	Method for Sampling Freshly Mixed Concrete
Tex-408-A	Organic Impurities in Fine Aggregate for Concrete
Tex-409-A	Free Moisture and Water Absorption in Aggregate for Concrete
Tex-413-A	Determination of Deleterious Material in Mineral Aggregate
Tex-415-A	Slump of Portland Cement Concrete
Tex-416-A	Air Content of Freshly Mixed Concrete by Pressure Method
Tex-447-A	Making and Curing Concrete Test Specimens
Tex-448-A	Flexural Strength of concrete Using Simple Beam Third Point loading

Construction Methods and Workmanship

1993 TxDOT Standard Specifications for the Construction of Highways, Streets, and Bridges
1995 TxDOT Standard Specifications for the Construction of Highways, Streets, and Bridges

Required construction inspection may include the following:

Earthwork

Item 132

Embankment

Subbase and Base Courses

Item 247	Flexible Base
Item 260	Lime Treatment for Base Materials Used as Subgrade (Road Mixed)
Item 262	Lime Treatment for Base Courses (Road Mixed)
Item 263	Lime Treated Base (Plant Mixed)
Item 264	Lime and Lime Slurry
Item 265	Lime-Fly Ash (LFA) Treatment for Materials Used as Subgrade
Item 266	Lime-Fly Ash (LFA) Treatment for Base Courses (Road Mixed)
Item 275	Portland Cement Treated Materials (Road Mixed)
Item 276	Portland Cement Treated Base (Plant Mixed)

Surface Courses or Pavements

Item 334	Hot Mix-Cold Laid Asphaltic Concrete Pavement
Item 340	Hot Mix Asphaltic Concrete Pavement
Item 342	Plant Mix Seal
Item 345	Asphalt Stabilized Base (Plant Mix)
Item 360	Concrete Pavement

Structures

Item 409	Prestressed Concrete Piling
Item 416	Drilled Shaft Foundations
Item 420	Concrete Structures
Item 422	Reinforced Concrete Slab
Item 423	Retaining Wall
Item 430	Extending Concrete Structures
Item 439	Concrete Overlay of Structure Decks
Item 462	Concrete Box Culverts and Sewers
Item 464	Reinforced Concrete Pipe
Item 465	Manholes and Inlets
Item 466	Headwalls and Wingwalls
Item 467	Safety End Treatment

Incidental Construction

Item 529	Concrete Curb, Gutter and Combined Curb and Gutter
Item 530	Driveways and Turnouts
Item 531	Sidewalks
Item 534	Structure Approach Slabs
Item 536	Concrete Medians and Directional Islands

Lighting and Signing

Item 656	Foundations for Signs, Traffic Signals and Roadway Illumination Assemblies
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**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 TxDOT. Parts II and III are solicitation specific additions to Part I.

This procurement falls under the statutory authority of Texas Government Code, 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 General Services Commission (GSC) as contained in GSC Rule 1TAC 113.1, et seq.

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 the department.

1. REQUIREMENTS AND ADDITIONAL INFORMATION

- 1.1. Our 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. Respondent guarantees product offered will meet or exceed specifications identified in this solicitation.
- 1.2. 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. Response must be time stamped in our Mail Room or hand delivered to the address on the solicitation before the hour and date specified for the solicitation opening/closing.
- 1.3. Late responses will not be considered under any circumstances. Correctly identified late responses will be returned to respondent unopened.
- 1.4. 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.
- 1.5. 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.
- 1.6. All prices shall be firm for acceptance for 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. Price(s) shall not increase during the term of the purchase order or the agreement unless otherwise stated in the specification. Vendor shall offer price reductions that result in reduced cost to the vendor during the term of the purchase order.
- 1.7. Failure to sign the solicitation manually in the required space will disqualify the response. The person signing the response shall have authorization to bind the company in contract. Solicitation shall include Texas Identification Number (TIN), full firm name and address of company. The TIN is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. Enter this TIN in the space provided on the solicitation. If the TIN is not known, complete the following:
 - 1. ___ - ___ - ___ - ___ - ___ - ___
Enter your Federal Employer's Identification Number.
 - 2. ___ - ___ - ___ - ___ - ___ - ___
Sole owner must also enter Social Security Number.

* This Revision Supersedes Previous Revision Revised February 2001.

- 1.8. Response cannot be altered or amended after opening/closing time. Any alterations made before opening/closing time should be initiated by respondent or authorized agent. Response may be withdrawn if requested in writing prior to the opening/closing date and time. No response can be withdrawn after opening/closing time without approval by TxDOT based on a written, acceptable reason.
- 1.9. At the time of opening/closing for negotiated or multi-step solicitations, only the names of respondents will be announced. Prices will not be disclosed.
- 1.10. 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.
- 1.11. TxDOT reserves the right to accept or reject all or any part of any response, waive minor technicalities and make 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.
- 1.12. Consistent and continued tie response pricing may lead to rejection of the response by TxDOT and/or investigation for antitrust violations.
- 1.13. Facsimile (FAX) responses may be submitted to the FAX number provided on the solicitation. All FAX responses must be signed in space provided. 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.
- 1.14. 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. TxDOT encourages suggested changes and environmental enhancements for possible inclusion in future revisions of this specification.
- 1.15. TxDOT is committed to maintaining an alcohol- and drug-free workplace. Possession, use, 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.
- 1.16. 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.

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 (TGC), Title 10, Subtitle D, 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. Samples, when requested, must be furnished free of expense to TxDOT. If not destroyed in examination, samples will be returned upon request, at respondent's expense. Each sample should be marked with respondent's name and address, and TxDOT solicitation number. Do not enclose in or attach response to sample.
- 2.5. TxDOT will not be bound by any oral statement or representation contrary to the written specifications of this solicitation. All addenda to and interpretations of this solicitation shall be in writing. Any addenda or interpretation that is not in writing 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 1 Texas Administrative Code (TAC) Section 113.6(b)(3) and 113.8 (Preferences).

4. **PREFERENCES** A respondent may claim a preference under Rule 1TAC 113.8. 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:

- ◆ Supplies, materials or equipment produced in Texas or offered by a Texas bidder
- ◆ Agricultural products grown in Texas
- ◆ Agricultural products offered by Texas bidder
- ◆ USA produced supplies, material or equipment
- ◆ Products of persons with mental or physical disabilities
- ◆ Products made of recycled materials
- ◆ 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 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 status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications, authorizes TxDOT to purchase goods or services elsewhere and charge full increase, if any, in cost and handling to defaulting vendor.

5.3. No substitutions or cancellations permitted without written approval of TxDOT.

5.4. Delivery shall be made during normal working hours only, unless prior approval has been obtained from TxDOT or otherwise stated in 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.

7.1. 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.

7.2. The purchase order is void if sold or assigned to another company without written approval of 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.

- 8. **PAYMENT:** Payment will be made in accordance with the Texas Prompt Payment Law, TGC, Subtitle F, Chapter 2251. Vendor shall submit two copies of a correct itemized invoice showing the purchase order number, payee I.D., remit to address, and phone number on all copies. TxDOT will incur no penalty for late payment if payment is made in 30 days or less from receipt of goods or services and a correct invoice, whichever is later.

NOTE: Warrants will not be issued to a vendor without a current Texas Identification Number and will be held by the State Comptroller if there is a tax liability.

- 9. **PATENTS OR COPYRIGHTS:** The vendor agrees to protect TxDOT and the State from claims involving infringement of patent or copyrights.
- 10. **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. Section 1, et seq. [1973]), and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967). Inquiries pertaining to this solicitation must give solicitation number and opening/closing date.
- 11. **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:

- 11.1. 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.
- 11.2. The respondent is not currently delinquent in the payment of any franchise tax owed to the State of Texas under Chapter 171 TAX Code. Under TGC, Title 10, Subtitle D, Section 2155.004, the respondent certifies that the individual or business entity named in this response is eligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.

If you have questions regarding the Sales Tax or Franchise Tax requirements, contact the Texas Comptroller's Office at 1-800-252-1381 or access the website at www.open.cpa.state.tx.us for tax information or <http://open.cpa.state.tx.us/vendor/tpsearch1.html> to check the Vendor Account Information to be sure your account is current.

- 11.3. 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, codified in Section 15.01, et seq., Texas Business and Commerce Code, 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.
- 11.4. The respondent has not received compensation for participation in the preparation of the specifications for this solicitation.
- 11.5. Under TGC, Title 5, Subtitle D, Section 231.006, Family Code (relating to child support), the individual or business entity named in this solicitation is eligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 11.6. Respondent certifies that they are in compliance with TGC, Title 6, Subtitle A, Section 618.001, relating to contracting with an executive of a state agency. If Section 618.001 applies, respondent will provide the following information as an attachment to this solicitation response: Name of former executive, name of state agency, date of separation from state agency, position with respondent, and date of employment with respondent.
- 11.7. The response includes the names and Social Security Numbers of each person with a minimum of 25% ownership of the business entity submitting the response. Respondents that have pre-registered this information on the GSC Centralized Master Bidders List have satisfied this requirement. If not pre-registered, complete the following:

Enter name above and Social Security Number below

Enter name above and Social Security Number below

Enter name above and Social Security Number below

Enter name above and Social Security Number below

- 11.8. 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.
- 11.9. 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 contractor in the execution or performance of this contract.
- 11.10. Respondent agrees to comply with TGC, Title 10, Subtitle D, Section 2155.4441, pertaining to service contract use of products produced in the state of Texas.
12. **SUBCONTRACTING REQUIREMENTS:** In accordance with Texas Government Code, Title 10, Subtitle D, Sections 2161.181-182 and Texas Administrative Code (TAC), Title 1, Section 111.11 and pursuant to the General Services Commission's (GSC) HUB Rules, TAC, Title 1, Section 111.13 and 111.14, 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/insdot/orgchart/gsd/purchasing/purchasing.htm>
13. **VENDOR EXCEPTIONS OR CONDITIONED RESPONSES:** Vendor exceptions and/or terms and 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.).
14. **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 TGC, Title 10, Subtitle F, Chapter 2260 must be used by TxDOT and the vendor to attempt to resolve all disputes arising under this contract.
15. **VENDOR PERFORMANCE:** Vendors are advised that performance will be reported to the GSC. In accordance with TGC, Title 10, Subtitle D, Chapters 2155.074 and 2155.075, vendor performance may be used as a factor in the award of a future solicitation.
16. **VENDOR RESPONSIBILITIES**
- 16.1. 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. When required, the vendor shall furnish TxDOT with satisfactory proof of its compliance.
- 16.2. The vendor shall be responsible for damage to TxDOT's equipment, and/or the workplace and its contents, by its work, its negligence in work, its personnel, or its equipment. The vendor shall be responsible and liable for the safety, injury, and health of its working personnel while its employees are performing work for TxDOT.
- 16.3. The vendor shall provide all labor and equipment necessary to furnish the goods or perform the service. All employees of the vendor shall be a minimum of 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.
- 16.4. 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.
17. **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 re-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.

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. The respondent shall carefully examine these specifications and, if necessary, secure additional information from the TxDOT purchaser that may be requisite to a clear and full understanding of the work.
 - 1.2. 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 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 in services of this type shall be employed under and for the purchase order. Vendor shall obtain any licenses/permits required for the performance of the service.
3. **RIGHT TO AUDIT:** TxDOT has the right to audit the vendor's books and records pertaining to the service during the hours of the normal workday.
4. **RENEWAL OF SERVICES:** The purchase order may be renewed for an additional period of time not to exceed the original service period, or as otherwise stated in the specification, provided both parties agree in writing to do so prior to the expiration of the purchase order. The renewed purchase order shall be for the original price, terms and conditions, and any approved changes.
5. **CANCELLATION:** The purchase order may be cancelled, without penalty, by either party by providing 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.
6. **PAYMENT:** Payment will be made in accordance with Part I, Para. 8 using one of the following methods as specified on the solicitation.
 - 6.1. The service was completed to the satisfaction of TxDOT, and within 30 days from receipt of a correct invoice or billing statement.
 - 6.2. On a monthly basis and within 30 days from receipt of a correct invoice or billing statement.
 - 6.3. As otherwise stated in the specifications or on the solicitation document.
7. **INSURANCE:** Prior to beginning work, the vendor shall provide TxDOT with a completed TxDOT Certificate of Insurance Form 20.102 or Form 1950 (only TxDOT forms are acceptable) providing the below listed coverage. TxDOT shall be included as an Additional Insured by Endorsement to policies issued for coverage listed in 7.3 and 7.4.

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. Such coverage shall remain in effect during the full term of service. Required insurance coverage is specified on the solicitation document.

 - 7.1. **WORKERS' COMPENSATION INSURANCE:** Amount – Statutory, Texas
 - 7.1.1. 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.

1.1.3. **Best Value:** The lowest overall cost for Automated Information System (AIS) 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
- compliance with applicable Department of Information Resources (DIR) statewide standards validated by criteria adapted by the department by rule TAC (1 TAC 113.9).

1.2. **VENDOR REQUIREMENTS**

1.2.1. Vendors that are not approved QISV, may respond to the RFO. However, vendors must seek QISV status and vendor shall be an approved QISV no later than the submission date and time of the RFO. Vendors may check their status with the GSC by calling 512-463-5315 or at www.gsc.state.tx.us/hubsolicitation/solicitationsrvs.html

1.2.2. The respondent shall submit the required number of responses specified on the solicitation. Responses should be unbound. Ring binders or excessive information are not preferred. Responses may be tab indexed.

1.3. **BEST VALUE CRITERIA:** Best value criteria will be used on all catalogue purchases.

1.3.1. 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.

1.3.2. Negotiations for "best value" will occur with catalogue vendors, instead of making selections for goods and services based solely on the published prices, terms and conditions in the catalogues.

1.3.3. TxDOT will be the sole judge as to which offer is the most advantageous and in the best interest of TxDOT.

1.3.4. During the evaluation phase, TxDOT reserves the right to conduct formal negotiations pertaining to a respondent's initial responses, specifications, and prices.

1.3.5. Negotiations will be conducted only with responsive respondents who submitted sealed responses and were judged to be the best offers.

1.4. **TECHNOLOGY ACCESS CLAUSE:** "The Vendor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to the Texas Department of Transportation that the technology provided to the Texas Department of Transportation for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

1.4.1. providing equivalent access for effective use by both visual and non-visual means;

1.4.2. presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and

1.4.3. being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

- 1.4.4. For purposes of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance."



NOTE: Copies of the endorsements listed below are not required as attachments to this certificate.

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VMC

CERTIFICATE OF INSURANCE

The named contractor shall not commence work until he/she has obtained the minimum insurance specified in Section II, below, and obtained the following endorsements: the Texas Department of Transportation as an **Additional Insured** for coverages 3 and 4, and a **Waiver of Subrogation** in favor of the same department under coverages 2, 3 and 4. Only certificates of insurance published by this department are acceptable as proof of insurance. Commercial carriers' certificates are unacceptable.

SECTION I - IDENTIFICATION DATA

1.1 Insured Contractor's Name

1.2 Street/Mailing Address

1.3 City

1.4 State

1.5 Zip

1.6. Phone Number

Area Code () - Ext.

SECTION II - TYPE OF INSURANCE

Type	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability Not Less Than:
2. WORKERS' COMPENSATION	2.1 _____	2.2 _____	2.3 _____	Statutory - Texas
Endorsed with a Waiver of Subrogation in favor of the Texas Department of Transportation.				
3. COMMERCIAL GENERAL LIABILITY				
Bodily Injury/Property Damage	3.1 _____	3.2 _____	3.3 _____	\$325,000 combined single limit each occurrence and in the aggregate
Endorsed with the Texas Department of Transportation as an Additional Insured and endorsed with a Waiver of Subrogation in favor of the Texas Department of Transportation.				
4. TEXAS BUSINESS AUTOMOBILE POLICY				
A. Bodily Injury	4.1 _____	4.2 _____	4.3 _____	\$100,000 ea. person \$300,000 ea. occurrence
B. Property Damage	4.4 _____	4.5 _____	4.6 _____	\$25,000 ea. occurrence
Endorsed with the Texas Department of Transportation as an Additional Insured and endorsed with a Waiver of Subrogation in favor of the Texas Department of Transportation.				
5. UMBRELLA POLICY (If Applicable)				
	5.1 _____	5.2 _____	5.3 _____	\$ _____

SECTION III - CERTIFICATION

This Certificate of Insurance neither affirmatively or negatively amends, extends, or alters the coverage afforded by the above insurance policies issued by the insurance company named below.

Cancellation of the insurance policies shall not be made until THIRTY DAYS AFTER the undersigned agent or his/her company has sent written notices by certified mail to the contractor and the Texas Department of Transportation.

THIS IS TO CERTIFY to the Texas Department of Transportation, acting on behalf of the State of Texas, that the insurance policies above meet all the requirements stipulated above and such policies are in full force and effect.

6.1 Name of Insurance			7.1 Name of Authorized Agent		
6.2 Company Address			7.2 Agent's Address		
6.3 City	6.4 State	6.5 Zip	7.3 City	7.4 State	7.5 Zip
7.6 Authorized Agent's Phone No. Area Code () - Ext.			Original Signature of Authorized Agent		
			Date		

Certificate of Insurance Requirements:

Only the TxDOT's certificate of insurance forms are acceptable as proof of insurance.

The named insured on the certificate and the name of the contractor, as it appears on the contract with the TxDOT, must be the same. (**Note:** In a case where the contract is in the name of a party such as "John Jones dba Jones Construction Company," the named insured on the C.O.I. may be "Jones Construction Company" and vice versa. Also the abbreviations of "Co." for "Company" and "Inc." for "Incorporated" are acceptable.)

Over-stamping and/or typed entries made on the certificate of insurance by the agency/insuring company are unacceptable if such entries change the provisions of the certificate in any manner.

The following apply to **Workers' Compensation** coverage:

- If a contractor has *any* employees, in addition to himself/herself, then the contractor is required to have workers' compensation insurance.
- The word STATUTORY, under limits of liability, means that the benefits allowed under the Texas Workers' Compensation Law will be paid by the insurer.
- Relatives of the contractor (spouse, sons, daughters) must be covered by workers' compensation insurance.

GROUP HEALTH insurance and/or ACCIDENT INSURANCE may not be substituted for WORKERS' COMPENSATION insurance.

Commercial General Liability insurance is usually sold in only Combined Single Limit coverage. In the event the coverages are specified separately, they must be *at least* these amounts:

Bodily Injury	— \$300,000 each occurrence
Property Damage	— \$ 25,000 each occurrence
	\$ 25,000 aggregate

Note: This coverage was previously known as Comprehensive General Liability insurance. Some older policies may still carry this identification. This is acceptable.

MANUFACTURERS' AND CONTRACTORS' LIABILITY insurance is not an acceptable substitute for COMMERCIAL GENERAL LIABILITY insurance.

The coverage amount for a TEXAS BUSINESS AUTOMOBILE POLICY or Comprehensive Automobile Liability may be shown as a minimum of \$325,000 Combined Single Limit by a typed or printed entry and deletion of the specific amounts listed for Bodily Injury and Property Damage.

BASIC AUTOMOBILE LIABILITY insurance is *not* an acceptable substitute for a TEXAS BUSINESS AUTOMOBILE POLICY or COMPREHENSIVE AUTOMOBILE LIABILITY insurance.

The signature of the agent must be original in ink; stamped/typed/printed signatures are unacceptable.

This form may be reproduced. Any color paper is acceptable.

The certificate of insurance, once on file with the department, is good for subsequent contracts *provided* adequate coverage is still in effect. With an original on file, other TxDOT offices will accept copies.