

**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.

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.