



**REQUEST FOR QUALIFICATIONS
FOR ARCHITECTURAL AND ENGINEERING SERVICES
FOR TRANSIT MAINTENANCE FACILITY**

Concho Valley Council of Governments

San Angelo, Texas

RFQ #: CVCOG-21-Transit-Q-0005

Contact:

Allye Potter

Contracts & Open Records Officer

allye.potter@cvcog.org

Deadline for Questions: 05/21/2021

Deadline for Submission: 3:00 p.m. 06/14/2021

PART 1 GENERAL INFORMATION

1.1 Agency Information:

The Concho Valley Council of Governments (CVCOG) is a voluntary organization of local governments to foster a cooperative effort in resolving problems, policies, and plans that are common and regional. Included in the CVCOG are the following departments:

- Area Agency on Aging
- Foster Grandparents
- Senior Companions
- Concho Valley Transit
- 211 Texas
- Criminal Justice
- Homeland Security
- Head Start
- Aging & Disability Resource Center
- 911 ER Communications
- CV Economic Development District
- Solid Waste
- CVCOG Administration

Concho Valley Council of Governments is a political subdivision of the State of Texas, hereafter shall be referred to as CVCOG.

1.2 Background:

CVTD's transit program provides general public transportation to the urban and non-urbanized areas across West Texas for access to employment, education, shopping, recreation, health care and social services. Curb-to-curb traditional demand response service is available to our passengers who request pick-ups and or drop-off.

CVTD Transportation Services include Fixed Routes throughout San Angelo that connect the general public to more than 110 bus stop locations across six main routes that include Angelo State University and Goodfellow Air Force Base. CVTD also provides free rides throughout the rural counties of the Concho Valley, county to county, county to San Angelo, and San Angelo to county.

ADA (Americans with Disabilities Act) Paratransit is available through CVTD to persons with disabilities who are unable to navigate the Fixed Route System, reach destinations through Fixed Route, or reach the bus stop independently. This requires the individual and their physician to fill out an application in order to receive curb-to-curb transportation. Similarly, CVTD also provides transportation for medical trips for those who are approved for Medicaid transportation. Furthermore, Seniors 65 years of age or older may benefit from Elderly and Disabled Transportation. While this is a grant funded service, and therefore temporary in nature; as available, CVTD is able to provide free curb-to-curb transportation for those who are eligible through disability or age.

1.3 **General Information:**

Currently CVTD does not operate or own a vehicle maintenance facility. Area third party maintenance vendors perform vehicle maintenance oversight. In 2016 and 2020, CVTD explored the feasibility of establishing its own vehicle maintenance center to create cost reductions and efficiency within the operation as it relates directly to vehicle maintenance and operation. The results of the study indicated a maintenance center would be feasible for the agency.

In conjunction with CVCOG, CVTD has procured up to seventeen acres with a Class A office building and maintenance warehouse. CVCOG and CVTD acquired the property listed below to have a secure facility for bus storage for transit and to develop an in-house maintenance facility. The CVCOG will be utilizing the large office building to consolidate the entire CVCOG into one facility to streamline administrative processes.

- 5430 Link Road, A in San Angelo, Texas 76904
 - Property consists of 2 potential tracts:
 - Tract #1 - Large upscale office building with over 75,000 sq. ft. of asphalt and concrete parking, total of 5 acres, built in 2014. Total of 41,800 sq. ft. with approximately 80 individual offices, 8 conference/training rooms and multiple labs and break areas throughout.
 - **Tract #2 - 2,400 sq. ft. warehouse on 12 acres with base material throughout and perimeter fencing, automatic gates opening to Old Christoval Rd.**
 - See attachments section and separate attachments

1.4 **Project Description/Purpose:**

The purpose of this RFQ is for CVTD to obtain proposals for the services of an experienced and qualified firm or individual(s) to provide CVTD's Architectural and Engineering services to oversee all aspects of the design and construction for a new vehicle maintenance and transit operations facility.

The existing shop style metal building on the property is approximately 2,400 square feet. It consists of a 40'x40' shop area featuring two (2) 10'x12' overhead doors and a single unisex bathroom. The remainder of the building is a 20'x40' storage area. Attached to the west side of the building is a 15'x40' overhang. The existing bays on the current structure are approximately 30'x14'. The current eave height of the building is 16'.

The proposed maintenance facility will need to be sized to accommodate a fleet of approximately 55 buses. The largest buses in the fleet will be up to 35 feet in length. A typical recommended number of bays for a maintenance facility would be 1 bay per 15 buses, or in this case 4 bays. Since the existing bays and doors on the existing structure are too small to serve the current maintenance facility needs, all maintenance bays would have to be a part of new construction.

The facility will require 4 maintenance bays, one wash bay, one lube bay, parts storage, a tire room, battery room, break room, oil and fluid storage room, and an office area for up to 10 employees. See attached 2020 Feasibility Study for more information.

The awarded A/E Firm/Individual will conceive and execute the project with respect to the planning, design, and construction phase management of the project. A designated A/E Liaison will act as a Project Manager (“PM”) to provide professional Federal Transit Administration related project management services including, but not limited to:

- 1. Preliminary Engineering and Environmental Studies**
- 2. Final Design**
- 3. Procurement and Oversight of Contractor during Construction phases**
- 4. Project Closeout Assistance**

The Construction Team(s) for this project have not been selected. Chosen A/E contractor will work with the CVCOG Contract Officer to write an RFP for construction services, help find potential bidders via advertisements per the CVCOG and state/federal procurement rules, act as PM managing the construction phase of the contract, etc.

The successful A/E firm will contract directly with CVCOG/CVTD and will work cooperatively with project team members to provide the architectural and engineering services requested and complete the full scope of the project within budget and on schedule.

This RFQ is the first step in the process for selecting an A/E firm. The RFQ provides the information necessary to prepare and submit Qualifications for consideration by the CVTD. The CVTD may select the top three (3) or more of the top ranked qualified Contractors to present their qualifications during a follow-up interview and/or award a contract.

After selecting the most qualified Contractor, the CVCOG will negotiate the detailed professional services to be provided by the A/E and a suitable fee(s) for those services. The CVCOG will request a fee proposal from the most qualified Contractor, with supporting information demonstrating that the requested fee is justified by the level of effort (and related personnel costs) required to provide the services necessary for the design and execution of the Project.

Potential Contractors should be aware that, except in unusual cases, the CVTD does not consider billable time incurred while traveling to and from the Project site, CVTD’s offices, and/or Board meetings, as necessary to the completion of the Project. Potential Contractors whose offices are located where such time-consuming travel will be regularly required in the performance of services for the Project, should consider this policy when deciding whether or not to submit their Qualifications.

- 1.4.1 **Pre-Submittal Conference:** A pre-submittal conference will be held at the date, time and location described below. **Attendance is optional.**

Wednesday, May 12th; 3:00 PM, CST

5507 Christoval Rd,
San Angelo, Texas 76904

A tour will be included as a part of the conference agenda. This may be the only opportunity for potential Contractors to view the Project site before the submittal of Qualifications.

- 1.4.2 **Public Information:** All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, *et seq.*) after the solicitation is completed. The awarded contractor strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of RFQ information.

- 1.4.3 **Clarifications and Interpretations:** Any clarifications or interpretations of this RFQ that materially affect or change its requirements will be emailed by the CVCOG/CVTD as an Addendum(s). A Request for Clarifications form is included in the attachments for contractors to question issues and/or to request any substitutions. Contractors shall consider only those clarifications and interpretations that the CVCOG/CVTD issues by addenda prior to the submittal deadline. Interpretations or clarifications in any other form, including oral statements, will not be binding on the CVCOG/CVTD and should not be relied on in preparing Proposals. **It is the responsibility of all Contractors to check the status of formal addenda five (5) days prior to the submittal deadline.**

- 1.4.4 **No Reimbursement for Costs:** Contractor acknowledges and accepts that any costs incurred from the contractor's participation in this RFQ shall be at the sole risk and responsibility of the Contractor.

- 1.4.5 **Eligible Contractors:** Only individuals or firms from lawfully formed business organizations may apply. The CVTD will contract only with the individual and/or firm that submits a responding proposal and is not on hold with the Texas and Federal Government. Individuals and/or firms will be on contract and will not be considered an employee of CVTD and/or CVCOG nor will the firm and/or individual be eligible for any benefits provided by CVCOG.

1.5 **Definitions**

Addendum: An addition or supplement to a solicitation document. Addenda are issued prior to the proposal opening date.

Award: The act of accepting a bid, proposal or offer; thereby resulting in a contract between CVCOG and a contractor.

Contract: A written document referring to promises for which the law establishes enforceable duties and remedies between a minimum of two (2) parties.

Contractor: A supplier of goods and/or services to CVCOG.

Fiscal Year (FY): The 12-month period covered by the State of Texas's yearly budget, September 1 through August 31.

Purchase Order: A signed written acceptance of an offer from a contractor. A purchase order may serve as the legal and binding contract between parties. *The CVTD/CVCOG does not issue external purchase orders.

Responsive Proposal: Responsive means that a Proposals must conform in all material respects to the requirements stated in any portion of the solicitation package. Responsiveness is determined from the Proposals documents themselves and, with very few exceptions, is determined with no discussions or further input from the Contractors.

Responsible Contractor: A responsible Contractor's company, which based on its Proposals, references, and any other pertinent information, has demonstrated it has the ability, willingness, and integrity to perform successfully under the terms and conditions of the Award and any contract resulting from the solicitation.

Request for Qualifications (RFQ): A Request for Qualifications (RFQ) is generally used for professional services wherein the Contractors are evaluated based solely on their qualifications and skills. This solicitation method is more like an application process, where it is very clear what is expected from the vendor. Price is negotiated after the agency selects its preferred Contractor based on how well the Contractors met the published qualifications.

- 1.6 **Term:** CVCOG anticipates awarding a **one-year service contract**. This contract can be renewed for up to four one-year service periods upon approval of both parties to the contract. Properly submitted proposals will not be returned to Contractors.

CVCOG reserves the right to award to more than one contractor if it deems necessary.

- 1.7 All contractors are encouraged to send any questions **in writing** to Allye Potter, Contracts & Open Records Officer, at allye.potter@cvcog.org by **05/21/2021**. Answers and any supplemental materials pertaining to submitted questions will be posted to the CVTD (www.cvtd.org) and CVCOG (www.cvcog.org) websites in the form of addenda addressing each submitted question.

*Except as provided in this RFQ and as otherwise necessary for the conduct of ongoing CVCOG business operations, **proposers are expressly and absolutely prohibited from engaging in communications with CVCOG personnel who are involved in any manner in the review and/or evaluation of the proposals, selection of a proposer, and/or negotiation or formalization of a contract.***

- 1.8 Contractors shall submit sealed proposals in an envelope with **two (2) original printed copies and with 1 electronic copy on a disk or zip drive**. It is the responsibility of the Contractors to have the submissions in this office by the specified time and date of opening: 06/14/21; 3:00 p.m. Our office does not take responsibility for any submissions not delivered to the Procurement Division.

Please address the envelope and insert the RFQs number as shown below:

PROPOSALS NO. CVCOG-21-Transit-Q-0005
Concho Valley Council of Governments
Attn: Allye Potter
Contracts & Open Records Officer
2801 W. Loop 306, Suite A
San Angelo, Texas 76904

1.8.1 **Estimated Timeline of RFQ:**

CVCOG publishes RFQ for A/E Services.....	04-23-2021
Optional pre-submittal meeting at 5507 Christoval Rd.....	05-12-2021
RFQ Submittal Questions Deadline.....	05-21-2021
Deadline for submittal of Qualifications.....	06-14-2021
CVCOG announces “short list” of firms selected for interviews (if required)...	06-24-2021
Interviews of short-listed firms (if required).....	06-25-2021
CVCOG negotiates A/E fee and executes Agreement.....	07-02-2021

PART 2 SCOPE OF WORK

The contract period is approximately **June 2, 2021 to June 1, 2022**, with the option to renew on a yearly basis, not to exceed five (5) fiscal years. Project may be broken into phases for completion as needed.

2.1 **Required Scope of Services:**

- All services will be supervised by an A/E firm and/or individual currently licensed in the State of Texas and all contract documents and/or schematics will bear the seal of a licensed Architect and/or Engineer in accordance with State of Texas law.
- Design building improvements to include structural engineering, electrical engineering, mechanical engineering, civil engineering and architectural analysis of the approximately 2,400 square foot existing building with expansion to the requested maintenance facility that will be approximately 7,900 square foot
- Work with stakeholders to determine most appropriate final design;

- Provide to the CVCOG Contract Officer a scope of work for the construction bid package and help evaluate the construction bid responses during the tabulation and award process, conducting the pre-bid conference, attend the bid opening, help with the evaluation of bids, and subsequent recommendation of lowest responsive bidder;
- Conduct a pre-construction conference and issue the notice to proceed upon approval by CVTD/CVCOG
- Provide construction engineering including regular on-site supervision of construction work, facilitating and recording construction meetings, construction administration, preparing inspection reports, and review and certification of contractors pay application;
- Assure project compliance with all federal and state labor standards as applicable, including reviewing payroll reports to assure compliance with prevailing wage requirements; assuring that required equal opportunity, labor standards, and wage determinations have been posted; and conducting regular on-site interviews with a representative sample of construction personnel (working for any contractors and/or subcontractors) to assure compliance with federal Davis-Bacon and or state prevailing wage labor standards.
- Provide quality control to ensure the contractor and subcontractors are providing materials, labor and products consistent with what is identified in the design and specifications;
- Provide quality control to ensure compliance with technical specifications and conformance with codes and standards;
- Review and approve all contractor requests for payment and submit approved requests to CVTD for payment processing;
- Provide one complete set of as-built, reproducible plan drawings to the CVTD upon project completion; and
- Conduct final inspection and testing.

2.2 Preliminary Requirements of PM:

- Coordinate all planning, financing, and implementation on behalf of CVTD.
- An environment assessment was performed in October 2019 for the entire property. PM must evaluate and determine if a more in-depth environmental analysis is needed. PM should perform an environmental analysis of the identified site for the vehicle maintenance center in accordance with the Texas Administrative Code (43 TAC, Part 1, Chapter 2, Subchapter A, and Section 218(b)) as well as

meeting relevant National Environmental Protection Agency (NEPA) regulations related to air quality, and requirements for historical preservation and protection of public lands.

- During the construction bidding phase, PM will work with CVCOG and CVTD staff to review/comment on the set of final drawings, specifications, bid documents, addendums, bids/bid protests and recommendations from the designer as to any award recommendations or rejections. This includes filed sub-contractors as well as general contractors.
- PM will ensure that building design and construction incorporates methodologies promoted by value engineering, LEED, and incorporate the use of current technology and products that reduce energy consumption, reduce ongoing building operating costs, and reduce carbon emissions, if and where possible.
- PM should provide insight into any additional design input and review, cost and schedule contract(s), logistical planning and construction observation.
- PM should maintain a construction log, including, but not limited to, recording any occurrence of construction work that might result in a claim for change in Contract Sum or Contract Time.
- PM will develop a Project Management Plan (PMP) along the guidelines recommended by TxDOT and the Federal Transit Administration (FTA) for the duration of the project. A timetable with milestones should be included in this PMP. It is expected that this document will be considered a “working document”, subject to revision as conditions warrant and approved by the CVTD and CVCOG Executive Directors. The Project Manager is expected to meet the milestones of the project, or ensure that milestones are met by other contractors. PM should create and maintain project implementation schedules detailing all elements, responsibilities, deadlines, etc., for the project.
- PM should assist CVTD in public relations, including preparation of project information and making presentations regarding the project at internal and public meetings.
- PM will assist CVTD in maintaining and tracking project budgets and cost information.
- PM will work with other project team members, both external and internal, to ensure the successful implementation of the project including identifying, addressing, and minimizing potential obstacles that may arise and notifying CVTD when corrective action is required.
- PM will conduct progress meetings in conjunction with CVTD and other consultants as necessary.

- PM should prepare and provide monthly project status reports to the project team, which will include planned and actual schedule performance and identification of any unresolved issues.
- PM will prepare reports regarding project planning, development, and progress matters as necessary for CVTD/CVCOG.
- PM will provide to the CVCOG Contract Officer names of contractors and/or subs to check the DBE registry for the DBE Goals
- PM will act as a liaison during construction phase(s) putting Contract Officer in contact with crews for Davis Bacon paperwork.
- PM will provide project closeout services which may include, but not be limited to, substantial completion certification, certificate of occupancy, moving coordination and set-up, final completion, project completion certification, record documents, O & M manuals, warranties, instructions, project acceptance recommendation, monitor status, and completion of the punch list items. PM should provide CVTD with the necessary documentation needed to “closeout” application with TxDOT.

Closing contractual activities requires the Project Manager to oversee final settlement of project contracts, acceptance of contract deliverables, collection of contract documents and records (such as as-built drawings, operation and maintenance manuals, and warranties, etc.), and approval of final payments. The Project Manager’s responsibilities for administrative closeout relate to demobilizing the project team and completing activities with other stakeholders, arranging the disposition of project records, closing of funding and financing agreements, and performing an evaluation of project success and lessons learned.

The Project Manager should follow the contract’s terms and conditions to settle and close the project’s construction contract agreements. The Project Manager will confirm the completion and acceptability of the following activities:

- **Manuals and Training** – The contractor delivers the operations and maintenance (O&M) manuals for the facilities constructed and equipment installed and provides any associated training of Agency staff in their use.
- **Beneficial Occupancy** – A contract is substantially complete when the permitting authority issues a Certificate of Beneficial Occupancy to the Agency and then the Agency can occupy and begin use of the facility and equipment. It is important on taking beneficial occupancy that you ensure the construction manager/resident engineer prepares a punch list of open items for the contractor to complete.
- **Guaranties and Warranties** – With beneficial occupancy confirm that the contractor has initiated the guaranties and warranties associated with the facility and equipment.
- **Record or As-built Drawings** – The Project Manager confirms that the contractor has submitted the record drawings that show the as-built condition of the constructed facility and installed equipment.

- **Final Inspection** – Lead a final walk through inspection of the facility to confirm that the contractor has completed the open punch list items and all work is completed correctly and satisfactorily.
- **Resolve Outstanding Change/Claim Disputes** – The Project Manager should make every effort to resolve any outstanding contract disputes so that they do not drag on past contract and project completion.
- **Final Payment** – With the above activities satisfactorily completed, the Project Manager will approve the final payment to the contractor and the Agency can close the contract.
- **Commissioning** – Assure that all other commissioning activities have been completed in a satisfactory manner

PART 3 REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS

Contractors shall carefully read the information contained in the following criteria and submit a complete statement of Qualifications responding to all questions in Section 2. Incomplete Qualifications will be considered non-responsive and are subject to rejection. (Maximum of two (2) printed pages per question)

3.1 **Criterion One: Contractor’s Statement of Qualifications and Availability to Undertake the Project**

- 3.1.1 Provide a statement of interest for the Project including a narrative describing the Contractor’s unique qualifications as they pertain to this particular Project.
- 3.1.2 Provide a statement on the availability and commitment of the Contractor and its principal(s) and assigned professionals, including all consultants to undertake the Project.
- 3.1.3 Provide a brief history of the contractor’s firm and each consultant proposed for the Project. If more than one office is listed indicate the office that will manage the project. If the firm has changed name or ownership within the last three (3) years, please indicate the former name.
- 3.1.4 Provide an Organizational Chart for the team proposed for the project along with each individual’s resume.

3.2 **Criterion Two: Contractor’s Ability to Provide Services**

- 3.2.1 Provide the following information for the Contractor:
 - Legal name of the company as registered with the Secretary State of Texas
 - Address of the office that will be providing services
 - Number of years in business
 - Type of operation (Individual, Partnership, Corporation, Joint Venture, etc.)
 - Number of employees by skill group
 - Annual revenue totals for the past three (3) years

- Current W9

- 3.2.2 Identify if the contractor's firm or any of its consultant team is currently for sale or involved in any transaction to expand or to become acquired by another business entity. If yes, please explain the impact both in organizational and directional terms.
- 3.2.3 Provide any details of all past or pending litigation or claims filed against the Contractor's firm or any of its consultant team within the past three (3) years that would affect Contractor's performance under a contract with the CVCOG.
- 3.2.4 Identify if the Contractor is currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If yes, specify date(s), details, circumstances, and prospects for resolution.
- 3.2.5 Declare if any relationship exists by relative, business associate, capital funding agreement, or any other such kinship, between Contractor's firm or any of its consultants and any CVCOG employee, officer, or Board Member. If so, please explain.
- 3.2.6 Provide a claims history under professional malpractice insurance for the past three (3) years for the Contractor's firm and any team members proposed to provide professional architectural or engineering services.

3.3 Criterion Three: Project Team's Ability to Provide Design and Construction Administration Services

- 3.3.1 List a maximum of three (3) projects for which you have provided services that are most related to this project. List the projects in order of priority, with the most relevant project listed first. For all consultants that are named in the response, please indicate the projects they also worked on. Provide the following information for each project listed:
 - Project name, location, contract delivery method, and description
 - Color images (photographic or machine reproductions)
 - Final Construction Cost, including Change Orders
 - Final project size
 - Type of construction (new, renovation, or expansion)
 - Actual start and finish dates for design
 - Actual Notice to Proceed and Substantial Completion dates for construction
 - Description of professional services Contractor provided for the project
Name of Project Manager (individual responsible to the Owner for the overall success of the project)
 - Name of Project Architect/Engineer (individual responsible for coordinating the day to day work)
 - Name of Project Designer (individual responsible for design concepts)
 - Consultants
 - References (for each project listed above, identify the following):
 - The Owner's name and representative who served as the day-to-day liaison during the design and construction phases of the project, including telephone number

3.4 **Criterion Four: Respondent's Knowledge of Best Practices**

- 3.4.1 Describe the Contractor's design philosophy, design methodology, and its process for integrating institutional standards into design.
- 3.4.2 Describe the Contractor's quality assurance program explaining the method used and how the firm maintains quality control during the development of Construction Documents and quality assurance during the Construction phase of a project. Provide specific examples of how these techniques or procedures were used for any combination of three (3) projects listed in response to Criteria 2.3.1.
- 3.4.3 Describe your project team's demonstrated technical competence and management qualifications with institutional projects, particularly those for Government Offices.
- 3.4.4 Describe your cost estimating methods for the design and construction phases. How do you develop cost estimates and how often are they updated? For the three (3) projects listed in response to Criteria 2.3.1, provide examples of how these techniques were used and what degree of accuracy was achieved.
- 3.4.5 Describe the way in which your firm develops and maintains work schedules to coordinate with the Owner's project schedule. For the projects listed in response to Criteria 2.3.1, provide examples of how these techniques were used.
- 3.4.6 Describe the types of records, reports, monitoring systems, and information management systems, which your firm used in the management of the projects listed above. Describe how you used these systems for the three (3) projects listed in response to Criteria 2.3.1.
- 3.4.7 Describe how you plan to ensure continuity of project objectives starting with design solution, moving through construction documents, and finishing with a constructed project that meets the Owner's requirements.
- 3.4.8 Describe the project team's approach to assuring timely completion of this project, including methods you will use for schedule recovery if necessary.
- 3.4.9 Describe how you track Owner input and review comments on your design document submittals to confirm that they have been addressed.

3.5 **Criterion Five: Respondent's Knowledge of Best Practices Regarding This Project**

- 3.5.1 Describe your understanding of the administrative challenges and opportunities associated with providing Design and Construction Administration services for CVCOG on this project, and your strategy for resolving these issues.
- 3.5.2 What do you perceive are the critical issues for this project?
- 3.5.3 Understanding schedule limitations provide an analysis of the Owner's project

planning schedule and describe how you plan to develop and communicate design, scope, and budget options in a form that will quickly facilitate the Owner's decision making.

- 3.5.4 For the three (3) projects listed in response to Criteria 2.3.1, describe any conflicts with the Owner, Consultants, Contractor, or subcontractors, and describe the methods your firm used to resolve those conflicts.

PART 4 RFQ REQUIREMENTS

4.1 Proposal Preparation:

At a minimum, each proposal response must include the following elements:

1. All Attachment forms
2. Current W9 -- signed and dated
3. Bid information answering questions from section three
4. All responses must abide by the following proposal requirements:

4.2 Taxes:

The prices herein must not include any sales taxes imposed by any State Government. Such tax, if included, must be deducted by the contractor when submitting invoice for payment. An Exemption Certificate is available upon request.

- 4.3 **Type of Contract:** This is an indefinite delivery, indefinite quantity (IDIQ) contract.

4.4 Buy America:

Contractors are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this award.

4.5 Davis-Bacon Act:

The Davis-Bacon and Related Acts apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act directs the Department of Labor to determine such locally prevailing wage rates. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts. The Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts. 1, 3, and 5 are hereby incorporated by reference in this contract. FMI: <https://www.dol.gov/whd/govcontracts/dbra.htm>

Contractor must allow CVCOG Procurement department access to workers when estimated amount of work amount exceeds \$2000. Procurement officers must have paperwork filled out for governmental audit by workers. If workers are not bilingual, contractor should be able to provide translation regarding paperwork onsite of work. Contractors are required to submit with invoices certified payroll form WH347.

4.6 **Disadvantaged Business Enterprise Vendors (DBE):**

It is the policy of the CVCOG and each of its component institutions, to promote and encourage contracting and subcontracting opportunities for Disadvantaged Business Enterprises (DBE) in contracts. Accordingly, specific plans and representations by Contractors that appear to facilitate the Fed's commitment to supporting DBE enterprises will be favorably considered in the selection process. Failure to submit specific plans and representations regarding DBE utilization, or failure to address the subject at all, will be interpreted by the Selection Committee as an intention not to support the program.

Concho Valley Transit District (CVTD) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26 (<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise>). CVCOG has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, CVCOG has signed an assurance that it will comply with 49 CFR Part 26.

Per the federal government, a DBE is:

- A business that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- A business whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
 - Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.
 - (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
 - (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

- (iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
- (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

4.6.1 **Statement of Probability:** The CVCOG has determined that subcontracting opportunities are probable in connection with this procurement solicitation. Therefore, indication must be made in your response regarding use of potential DBE vendors. DBE information may be downloaded from the Texas Department of Transportation website at the following URL link: <https://www.txdot.gov/inside-txdot/division/civil-rights/tucp.html>. If you have any questions regarding the site, please contact Allye Potter at allye.potter@cvcog.org.

4.6.2 **Subcontractors: (a) Definition.** "Construction, alteration or repair," as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation (1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site; (2) Painting and decorating; (3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work; (4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the Davis-Bacon Act of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition; and (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in the Davis-Bacon Act, and the physical place or places where the building or work will remain (in the "site of the work" definition). **(b)** The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled-(1) Davis-Bacon Act; (2) Contract Work Hours and Safety Standards Act-Overtime Compensation (if the clause is included in this contract); (3) Apprentices and Trainees; (4) Payrolls and Basic Records; (5) Compliance with Copeland Act Requirements; (6) Withholding of Funds; (7) Subcontracts (Labor Standards); (8) Contract Termination-Debarment; (9) Disputes Concerning Labor

Standards; (10) Compliance with Davis-Bacon and Related Act Regulations; and (11) Certification of Eligibility. (c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b). (d)(l) Within 14 days after award of the contract, the Contractor shall deliver to the Procurement Officer or Executive Director a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause has been included in the subcontract. (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Procurement Officer or Executive Director an updated completed SF 1413 for such additional subcontract. (e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

- 4.6.3 **Employment of Criminals:** Given that CVCOG works with the elderly, children, etc., CVCOG must always protect its patrons and staff. Per the Texas Education Agency, Contractor represents and warrants that Contractor has not and Contractor's employees assigned to any potential projects have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised CVCOG affiliated facility as to the facts and circumstances surrounding the conviction **i.e. contractor must apprise CVCOG of any and all convicted felons working prior to working on any CVCOG facility.** CVCOG will alert contractor if a convicted felon is to be excluded from CVCOG projects.
- 4.6.4 **Disputes Concerning Labor Standards:** The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives. <https://www.law.cornell.edu/cfr/text/29/5.5>
- 4.7 **Proposal Rejection:** The CVTD department reserves the right to accept or reject any or all Proposals; to waive minor technicalities and informalities; to only accept items as specified in the solicitation package. If either a unit price or extended price is obviously in error or the other is obviously correct, the incorrect price will be disregarded. Conditional proposal and/or proposals with incomplete documents or insufficient Federal certifications will be considered nonresponsive and will be rejected.
- 4.8 **Single Proposal Response:** If only one Proposal is received in response to this solicitation, a detailed cost Proposal may be requested of the single Contractor.
- 4.9 **Required Forms & Information:**
The following instructions explain how prospective Contractors may obtain additional information or clarifications for any part of this solicitation package. All Requests for Clarifications (RFC) must be submitted following these instructions and on the forms provided.

All forms should be submitted electronically in the original Word format or searchable PDF format.

If any prospective Contractor is in doubt as to the true meaning of any part of this RFQ, or if additional information is required, the Contractor may submit a written **Request for Clarification (RFC)**. Contractors should fill out and e-mail an RFC form for clarification or interpretation of any aspect, or a change to any requirement of the RFQ or any Addenda to the RFQ. A hard copy is attached in the Attachment section.

Each item or issue should be addressed separately and sequentially numbered by the Contractor, section heading and page number to which it applies. All items must include enough justification or technical information to support the question.

Such written requests shall be made to the CVCOG department's Liaison and must be transmitted by e-mail. The Contractor making the request shall be responsible for its proper delivery to the CVCOG department using the Request for Clarification form in Attachment G. All RFCs should be submitted by **05/21/2021**.

As soon as practical, the CVCOG department will send out an Addendum to all prospective Contractors answering all Request for Clarification (RFC) based on the date above. Only written responses provided as Addenda shall be official and all other forms of communication with any employee or agent of the CVCOG department shall not be binding. Addenda shall also be posted on the CVTD (www.cvtd.org) and CVCOG (www.cvcog.org) websites.

4.10 **Evaluation of Qualifications:**

The evaluation of the Qualifications shall be based on the requirements described in this RFQ. All properly submitted Qualifications will be reviewed, evaluated, and ranked by a Selection Committee appointed by the Contracting Manager. The top three (3) or fewer ranked Respondents may be selected by the Owner for further consideration by participating in an interview where Qualifications will be presented and examined in further detail and where questions will be posed by the Selection Committee and answered by the responding Contractor.

4.10.1 Qualifications submittals should not include any information regarding Respondent's proposed fees, pricing, or other compensation considerations as these will not be a factor in the selection of the most qualified Respondent.

4.10.2 **Owner's Reservation of Rights:**

The Owner may evaluate the Qualifications based on the anticipated completion of all or any portion of the Project. The Owner reserves the right to divide the Project into multiple parts, to reject any and all Qualifications and re-solicit for new Qualifications, or to reject any and all submissions and temporarily or permanently abandon the Project. Owner makes no representations, written or oral, that it will enter into any form of agreement with any Respondent to this RFQ for any project and no such representation is intended or should be construed by the issuance of this RFQ.

4.10.3 **Acceptance of Evaluation Methodology:**

By submitting its Qualifications in response to this RFQ, Respondent accepts the evaluation process and acknowledges and accepts that determination of the “most qualified” firm(s) will require subjective judgments by the Owner. Determinations by the Selection Committee will be subject to routine administrative review by the Owner’s executive officers but, once a selection is announced, it will not be subject to further review.

4.10.4 Evaluation Criteria:

- Overall quality of the Statement of Qualifications per responses to questions from section three – 15%
- The qualifications and experience of the professional personnel to be assigned to the project, including reference checks – 20%
- The consultant's capability to meet time and the availability of personnel to respond and provide services in a timely manner– 10 %
- Present or projected workload that would affect completion of the project – 10%
- Related experience on similar projects – 30%
- Small businesses owned and controlled by socially and economically disadvantaged individuals and which have been certified as a Disadvantaged Business Enterprises (DBE) from through a state Uniform Certification Program– 15 %

4.10.5 Evaluation Process:

Upon receipt of responses, selection committee members will evaluate all responsive proposals and assign scores based on the stated evaluation criteria provided. Highest ranking firms may be asked to attend an interview or CVTD may opt to open direct negotiations with the firm that presents the most qualified, highest scoring proposal. If interviews are conducted, finalists are encouraged to bring renderings/photos of related examples of work and any other pertinent past project information. Contract negotiations will commence with the highest-ranked architectural firm. The contract will be awarded upon reaching an appropriate price for this work. If an appropriate agreement cannot be reached with the highest-ranked firm, the second-ranked firm will be approached, and so on. Unsuccessful firms will be notified as soon as possible.

This solicitation is being offered in accordance with federal and state statutes governing procurement of professional services. Accordingly, CVTD reserves the right to negotiate an agreement based on fair and reasonable compensation for the scope of work and services proposed, as well as the right to reject any and all responses deemed unqualified, unsatisfactory or inappropriate.

The project involves planning and construction administration, and no future work is implied or guaranteed. CVTD reserves the right to increase the scope of work or additional projects with the selected firm as long as the increase or addition is within the firm’s ability. Payment and contract terms will be negotiated with the selected firm.

In no event shall any official, officer, employee or agent of CVTD/CVCOG be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, not for any statement, representation or warranty made therein or in any connection with the agreement.

4.11 **Offer & Award:**

Once the CVTD has decided to make an Award on this solicitation, the CVCOG Procurement Department will send the successful Contractor(s) an email award notification. Negotiations of pricing and a contract will be executed with the awarded Contractor, and upon execution of the signed contract by the Executive Director, a copy will be emailed to the awarded Contractor(s).

PART 5 GENERAL CONTRACTUAL PROVISIONS

5.0 **Conflict of Interest:**

The contractor certifies that (1) no relationship, whether by blood, marriage, business association, capital funding Contract or by any other such kinship or connection exists between the CVCOG and/or CVTD of any proposer that is a sole proprietorship, the officers or directors of any proposer that is a corporation, the partners of any proposer that is a partnership, the joint ventures of any proposer that is a joint venture or the members or managers of any proposer that is a limited liability company, on one hand, and an employee of any component of CVCOG/CVTD department, on the other hand, other than the relationships which have previously been disclosed to CVCOG department in writing and (2) proposer has not been an employee of any component institution of the CVCOG department within the immediate twelve (12) months prior to the submittal deadline. All disclosures by proposer in connection with this affirmation will be subject to administrative review and approval before CVCOG department enters into a Contract with the proposer. Any violation of this conflict of interest policy shall result in immediate cancellation of any resulting Contract in addition to a potential debarment of the contractor from doing business with the State of Texas and/or US Transit Authority.

An employee may not be in any dual employment positions that would result in a conflict of interest in relation to his/her position at CVCOG/CVTD department. If such circumstance arises, the employee shall remove himself/herself from the process and disclose the relationship to his/her direct supervisor and to the Executive Director of CVCOG.

5.1 **Governing Law & Forum:**

The Award or any Contract executed as a result of this Solicitation is made under and shall be governed and construed in accordance with the laws of the State of Texas. The place of this Contract, its situs and forum, shall be Texas, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined. The exclusive forum and venue for disputes arising out of this RFQ and any resulting Contracts shall be the Texas General Court of Justice in Tom Green County.

5.2 **Indemnification:**

The Contractor agrees to and shall indemnify and hold harmless CVCOG department, CVCOG, officers, agents, employees, and personnel, against any and all liability, claims, suits, losses, costs and legal fees caused by, arising out of, or resulting from any negligent act or omission of the contractor in the performance and/or failure to perform within the Contract including the negligent acts or omission of any subcontractor or any direct or indirect employees of the contractor or subcontractors. The indemnification obligations set forth in the Contract shall survive termination or expiration of the Contract.

5.3 **Inspection:**

All goods and services are subject to inspection and approval by the CVCOG/CVTD department at all reasonable times. Any goods or services rejected by the CVCOG department shall be promptly repaired or replaced at Proposer's expense. Any and all costs incurred by the CVCOG department in connection with the return of goods or rejection of services shall be at the Proposer's risk and expense.

5.4 **Insurance:**

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of this Contract. All such insurance shall meet all laws and requirements of the State of Texas and CVCOG department. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business.

The Contractor shall always comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing Texas laws or this Contract. The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract.

The following minimum insurance standards shall apply to all contractors performing, selling, or distributing products and services to **CVCOG department:**

Contractor agrees that contractor and contractor's employees and agents have no employer-employee relationship with CVCOG. CVCOG department shall not be responsible for the Federal Insurance Contribution Act (FICA) payments, federal or state unemployment taxes, income tax withholding, Workers Compensation Insurance payments, or any other insurance payments, nor will CVCOG department furnish any medical or retirement benefits or any paid vacation or sick leave. Contractor is responsible for conduct of business operation, including employee salaries, travel, etc.

The contractor agrees to furnish insurance certificates reflecting the following coverage:

Type of Coverage Limits of Liability

- **Commercial General Liability**
 - \$1,000,000 Each Occurrence
 - \$1,000,000 Personal/Advertising Injury
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
 - \$100,000 Damage to Rented Premises (Each Occurrence)
 - \$5,000 Medical Expense (Any One Person)
- **Commercial Automobile Liability** (Owned/Leased/Hired and Non-Owned Vehicles)
 - \$1,000,000 Bodily Injury/Property Damage (Each Accident)
- **Workers' Compensation and Employers' Liability ***

Coverage A (Workers' Compensation) Statutory
Coverage B (Employers' Liability)
\$1,000,000 Each Accident
\$1,000,000 Each Employee
\$1,000,000 Disease (Policy Limit)

***If no workers comp insurance is carried by the construction contractor, CVCOG and/or CVCOG cannot and will not be held responsible for any and all injuries incurred by employees of contractor while working at any CVCOG and/or CVCOG facilities.**

5.5 **Invoices:**

Invoices for goods must be submitted on date of complete shipment and installation. Invoices for services must be submitted within 30 days after completion of services. Payment will be delayed if the invoice fails to reference the ordering department, unit prices, quantities, totals, and a full description of the order that matches the contract information. The CVCOG department will provide payment 30 days after satisfactory delivery, acceptance, and receipt of invoice. Please route invoices to allye.potter@cvcog.org

5.6 **Modifications to Contract:**

WRITTEN CHANGE ORDERS

Oral change orders are not permitted. No change in any Contract executed as a result of this Solicitation shall be made unless the Contracting Officer for CVCOG department gives prior written approval. The Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification changes not properly ordered by written modification to the Contract and signed by the Contracting Officer.

CHANGE ORDER PROCEDURE

As soon as reasonably possible but no later than 30 (thirty) calendar days after receipt of the written change order to modify the Contract, the Contractor shall submit to the Contracting Officer a detailed price and schedule proposal for the Work to be performed. This proposal shall be accepted or modified by negotiations between the Contractor and the Contracting Officer for the respective CVCOG department. At that time both parties shall execute a detailed modification in writing. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with "Dispute Resolution" (Section 3.11). Regardless of any disputes, the Contractor shall proceed with the Work ordered.

5.7 **Parties & Changes in Parties:**

PARTIES

The parties to any Contract executed as a result of this Solicitation shall be the CVCOG department and the Contractor as set out in the Successful Proposal.

If information such as remit to address location and/or business status changes during the contact, a new W9 or W8Ben (if international) will need to be submitted to the purchasing liaison. If key personnel for the contractor leave employment, a new contact person will be identified prior to the absence of the current contact and provided to CVCOG within reasonable amount of time.

SUCCESSION

Any Contract executed as a result of this Solicitation shall be binding on the parties to that Contract, their successors, and assigns.

SPECIFICATIONS AND OMISSIONS

Notwithstanding the provision of drawings, technical specifications, or other data by the CVCOG department during Contract execution and pre-production meetings, the Contractor shall have the responsibility of supplying all parts and details required to make the equipment complete and ready for service even though such details may not be specifically mentioned in the drawings and technical specifications.

5.8 **Terms and Conditions**

Contractor agrees to the terms and conditions listed in the attached purchasing agreement regarding state and/or federal regulations regarding the execution of a contract.

5.9 **Termination**

Upon award, the contract may be terminated, without penalty, by CVCOG department or the contractor with or without cause by giving at least thirty (30) days written notice of such termination.

This contract may be terminated by either the contractor or by CVCOG department upon thirty (30) days written notice to the other, if the other party fails to perform or comply with any of the material terms, covenants, contracts or conditions hereof, and such failure is not cured during such thirty (30) day period.

CVCOG department may terminate this contract immediately without further notice if the contractor (i) petitions for reorganization under the Bankruptcy Code or is adjudged bankrupt; (ii) becomes insolvent or a receiver is appointed due to the insolvency; or (iii) makes a general assignments or sale of its assets or business for the benefit of creditors.

In no event shall such termination by CVCOG as provided for under this section give rise to any liability on the part of CVCOG department including, but not limited to, claims of contractor for compensation for anticipated profits, unabsorbed overhead, or interest on borrowing. CVCOG department's sole obligation hereunder is to pay contractor for products or services received prior to the date of termination.

5.11 **Dispute Resolution:**

1. Disputes: Disputes arising in the performance of any Contract executed as a result of this Solicitation, which are not resolved by agreement of the parties, shall be decided in writing by the CVCOG's Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to CVCOG Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of CVCOG Executive Director shall be binding upon the Contractor and the Contractor shall adhere to the decision.

Disputes should be addressed as follows:

Concho Valley Council of Governments
Attn: John Austin Stokes, Executive Director
2801 W. Loop 306, Suite A
San Angelo, TX 76904

OR

Concho Valley Council of Governments
Attn: John Austin Stokes, Executive Director
P.O. Box 60050
San Angelo, TX 76906

2. **Performance During Dispute:** Unless otherwise directed by the respective Contracting Officer, the Contractor shall continue performance under any Contract executed as a result of this Solicitation while matters in dispute are being resolved.
3. **Claims for Damages:** Should either party to any Contract executed as a result of this Solicitation suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
4. **Remedies:** Unless any Contract executed as the result of this Solicitation provides otherwise, all claims, counterclaims, disputes and other matters in question between the CVCOG department and the Contractor arising out of or relating to any Contract executed as the result of this Solicitation or its breach will be decided by arbitration as the Award/or any Contract executed as a result of this Solicitation is made under and shall be governed and construed in accordance with the laws of the State of Texas.
5. **Rights and Remedies:** The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the CVCOG department or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

5.12 **Contract Communications:**

Communications in connection with any Contract executed as a result of this Solicitation shall be in writing and shall be delivered via email to allye.potter@cvcog.org.

PART 6

ATTACHMENTS

I. Request for Clarifications Form (RFC)

Proposer: _____

Each Proposer should number all of its RFC forms sequentially starting at 1. Please email the forms to:

allye.potter@cvcog.org

RFC Number:	Proposer Name:		
Section Title	RFQ Section No.	RFQ Subsection No.	RFQ Paragraph No.
List of Attachments	1 2 3 4		
Explanation/Justification for RFC			

CVCOG department USE ONLY

Date of Reply via addendum _____

More information required? _____

Addendum # _____

This form is for informational purposes only and does not modify the Proposal. Proposal modifications will only be made by issuing an addendum, not through this form. Proposers shall complete all the information as indicated and attach all supporting documentation listed above. Requests shall be numbered sequentially by the Proposer to uniquely identify requests.

**CERTIFICATION OF PRIMARY PARTICIPANT REGARDING
DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

The Primary Participant, _____ (major third party bidder), certifies to the best of its knowledge and belief, that is and its principals:

- Are not presently debarred, suspended, proposed for Debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- Are not presently indicated for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses enumerated in the second bullet point of this certification; and
- Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or Local) terminated for cause or default.

*If the primary participant is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.

The primary participant, _____, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 *et seq.* are applicable hereto.

Signature and Title of Authorized Official

Date

****If primary participant attaches an explanation for no signature above, please have the following signed:**

The undersigned chief legal counsel for the _____ hereby certifies that the _____ has authority under state and local law to comply with the subject assurances and the certification above has been legally made.

Signature of Applicant's Attorney

Date

Failure to submit this form in a property executed manner will result in the bid/proposal being found non-responsive and rejected.

Disadvantaged Business Enterprise (DBE) Certification

Policy: It is the policy of the U.S. Department of Transportation and the Texas Department of Transportation that DBE's as defined in 49 CFR Part 23 as amended, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with the Federal and/or state funds under the agreement which results from the Purchaser's acceptance of the proposer's offer. Consequently, the DBE requirements of 49 CFR Part 23, as amended, apply to that agreement.

DBE Obligation: The bidder/contractor agrees to ensure that DBE's as defined in 49 CFR Part 23, as amended, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under the agreement which results from the Purchaser's acceptance of the proposer's offer. In this regard, all bidders/contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23, as amended, to ensure that DBE's have the maximum opportunity to compete for and perform contracts. Bidders/contractors shall not discriminate on the basis of race, color, national origin, or sex in award and performance of Department of Transportation assisted contracts.

Signature: _____

Date: _____

Title: _____

Firm: _____

Failure to submit this form in a properly executed manner will result in the bid/proposal being found non-responsive and rejected.

**CVCOG Certification Regarding Lobbying
(per 49 CFR Part 20)**

**Certification for Contracts, Grants, Loans and Cooperative Agreements
to be submitted with each bid or offer exceeding \$100,000**

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person or influencing or attempting to influence an officer or employee of an agency, a Member of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions [as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352 (c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor’s Authorized Official

_____ Name and Title of Contractor’s Authorized Official

_____ Date

PROPOSER INFORMATION AND SIGNATURE

Proposer certifies that the individual signing this document, and documents made a part of this RFQ, is authorized to sign such documents on behalf of the proposer and to bind proposer under any Contract that may result from the submission of proposer’s proposal.

Contractor Checklist:

- Cover Letter ____
- (If applicable) HUB and/or Disadvantaged Business Enterprise certification ____
- Current W9 ____
- Certification of Primary Participant Regarding Debarment ____
- Response Form ____
- Signed proposer information and signature exhibit page(s) ____
- (If applicable) HUB Subcontracting Plan ____
- All forms on attachments list ____

Proposer/Contractor Name: _____

Name of Contact/Title: _____

Street address of contractor: _____

City/State/Zip: _____

Telephone number: _____

Cell Phone: _____

Email: _____

Fax: _____

Is this contractor a Certified Historically Underutilized Business in Texas? ____ yes ____ no

Is this contractor a Certified Disadvantaged Business Enterprise? ____ yes ____ no

**THIS EXHIBIT MUST BE COMPLETED, SIGNED AND RETURNED WITH CONTRACTOR’S PROPOSAL.
FAILURE TO SIGN AND RETURN THIS SHEET WILL RESULT IN REJECTION OF YOUR PROPOSAL.**

Buy America Certificate

Certification required for procurement of steel, iron, or manufactured products (required for contracts over \$100,000).

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA REQUIREMENTS

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Company Name: _____

or

CERTIFICATE OF NON-COMPLIANCE WITH BUY AMERICA REQUIREMENTS

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Company Name: _____





Federal Clauses – Procurement Types Summary:

All FTA-Assisted Third-Party Contracts and Subcontracts

1. No Federal Government Obligations to Third Parties
 2. Access to Third Party Contract Records
 3. Changes to Federal Requirements
 4. Civil Rights (EEO, Title VI &ADA)
 5. Incorporation of FTA Terms
 6. Energy Conservation
 7. Veterans Preference
 8. False or Fraudulent Statements or Claims
 9. Disadvantaged Business Enterprises (DBE)
 10. Fly America
 11. ADA Access
- Award Exceeding \$10,000**
12. Terminating the Contract (award exceeding \$10,000)
- Award Exceeding \$25,000**
13. Debarment and Suspension
- Award Exceeding \$50,000**
14. Contracting with the Enemy
- Awards Exceeding \$100,000**
15. Resolution of Disputes, Breaches, or Other Litigation
 16. Lobbying Restrictions.
- Award Exceeding \$150,000**
17. Environmental Protection (Clean Air and Water Pollution Control)



ALL FTA-ASSISTED THIRD-PARTY CONTRACTS AND SUBCONTRACTS

1. No Federal Government Commitment or Liability to Third Parties

Except as the Federal Government expressly consents in writing, the Recipient agrees that:

- a. The Federal Government does not and shall not have any commitment or liability related to the Underlying Agreement, to any Third-Party Participant at any tier, or to any other person or entity that is not a party (FTA or the Recipient) to the Underlying Agreement; and
- b. Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third-Party Agreement at any tier that may affect the Underlying Agreement, the Federal Government does not and shall not have any commitment or liability to any Third-Party Participant or other entity or person that is not a party (FTA or the Recipient) to the Underlying Agreement.

2. Access to Third-Party Contract Records

The Recipient agrees to require, and assures that each of its Subrecipients will require, its Third-Party Contractors at each tier to provide:

- a. The U.S. Secretary of Transportation and the Comptroller General of the United States, the state, or their duly authorized representatives, access to all Third-Party Contract records (at any tier) as required under 49 U.S.C. § 5325(g); and
- b. Sufficient access to all Third-Party Contract records (at any tier) as needed for compliance with applicable federal laws, regulations, and requirements or to assure.

3. Changes to Federal Requirements

The Recipient agrees to include notice in each Third-Party Agreement that:

- a. Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and
- b. Applicable changes to those federal requirements will apply to each Third-Party Agreement and parties thereto at any tier.

4. Civil Rights

The following Federal Civil Rights laws and regulations apply to all contracts.

- a. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to: a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity. b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order



- No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
- b. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
 - c. Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
 - d. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

5. Incorporation of Federal Transit Administration (FTA) Terms

The provisions within include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

6. Energy Conservation

The Recipient agrees to, and assures that its Subrecipients will, comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

7. Veterans Preference

As provided in 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:



- a. Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a Third-Party Contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and
- b. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

8. False or Fraudulent Statements or Claims

- a. Civil Fraud. The Recipient acknowledges and agrees that:
 - 1. Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31.
 - 2. By executing the Underlying Agreement, the Recipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Recipient provides to the Federal Government.
 - 3. The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient presents, submits, or makes available any false, fictitious, or fraudulent information.
- b. Criminal Fraud. The Recipient acknowledges that 49 U.S.C. § 5323(I)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Recipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

9. Disadvantaged Business Enterprises

The recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. §26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

10. Fly America

The recipient agrees to comply with the air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 – 301-10.143.

11. ADA Access

The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:

- a. Federal laws, including:
 1. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
 2. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
 - i. For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
 - ii. For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of "employer;"
 3. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 4. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 5. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- b. Federal regulations and guidance, including:
 1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37;
 2. U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal



- Financial Assistance,” 49 C.F.R. part 27;
- 3. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38;
- 4. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39;
- 5. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35;
- 6. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36;
- 7. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630;
- 8. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, subpart F;
- 9. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194;
- 10. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609;
- 11. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
- 12. Other applicable federal civil rights and nondiscrimination regulations and guidance.

Awards Exceeding \$10,000

12. Termination

All contracts in excess of \$10,000 must address termination for cause by the non-federal entity including the manner by which it will be effected and the basis for settlement.

Awards Exceeding \$25,000

13. Debarment and Suspension

The Recipient agrees to the following:

- a. It will comply with the following requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200.



- b. It will not enter into any “covered transaction” (as that phrase is defined at 2 C.F.R. §§ 180.220 and 1200.220) with any Third-Party Participant that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by—
 - 1. U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200;
 - 2. U.S. OMB regulatory guidance, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180; and
 - 3. Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third-Party Participants.
- c. It will review the U.S. GSA “System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by U.S. DOT regulations, 2 C.F.R. part 1200.
- d. It will ensure that its Third-Party Agreements contain provisions necessary to flow down these suspension and debarment provisions to all lower tier covered transactions.
- e. (5) If the Recipient suspends, debars, or takes any similar action against a Third-Party Participant or individual, the Recipient will provide immediate written notice to the:
 - 1. FTA Regional Counsel for the Region in which the Recipient is located or implements the Underlying Agreement;
 - 2. FTA Headquarters Manager that administers the Grant or Cooperative Agreement; or
 - 3. FTA Chief Counsel.

Awards Exceeding \$50,000

14. Never Contract with the Enemy

The Recipient agrees to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.



Awards Exceeding \$100,000

15. Resolution of Disputes, Breaches, or Other Litigation

a. FTA Interest

FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

b. Notification to FTA; Flow Down Requirement

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its sub-agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

1. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
2. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
3. Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change.



This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

c. Federal Interest in Recovery

The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.

d. Enforcement

The Recipient must pursue its legal rights and remedies available under any Third-Party Agreement or any federal, state, or local law or regulation.

e. Agency Process

***Vendors may view the dispute resolution process here:**

16. Lobbying Restrictions.

The Recipient agrees that neither it nor any Third-Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, according to the following:

a. Laws, Regulations, Requirements, and Guidance. This includes:

1. The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended;
2. U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended; and
3. Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature; and

b. Exception. If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Recipient's or Subrecipient's proper official channels.

c. Political Activity. The Recipient agrees to comply with:

1. The Hatch Act, 5 U.S.C. chapter 15, which limits the political activities of state and local government agencies supported in whole or in part with federal assistance, including the political activities of state and local government officers and employees whose principal governmental employment activities are supported in whole or in part with federal assistance;
2. U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. part 151; and



- 3. 49 U.S.C. § 5323(l)(2) and 23 U.S.C. § 142(g), which limits the applicability of the Hatch Act, as follows:
 - I. The Hatch Act does not apply to nonsupervisory employees of a public transportation system, or any other agency or entity performing related functions, based upon the Award of federal assistance under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2); but
 - II. Notwithstanding the preceding section 4(e)(3)(ii) of this Master Agreement, the Hatch Act does apply to a nonsupervisory employee if imposed for a reason other than the Award of federal assistance to its employer under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2).

d. Lobbying and Disclosure Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Company	Printed Name of Person Completing Form
Date	Signature



Awards Exceeding \$150,000

17. Environmental Protection (Clean Air and Clean Water)

The Recipient agrees to comply with the regulations within the Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1388), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 – 1388). Violations must be reported to the 64 Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).



State of Texas - Procurement Types Summary:

All Texas-Assisted Third-Party Contracts and Subcontracts

1. Debarment
2. Family Code Child Support Obligation Certification
3. Debts and Delinquencies Affirmations
4. Disaster Recovery Plan
5. Disclosure of Prior State Employment
6. Entities that Boycott Israel
7. Federal Executive Order 13224 Excluded Parties
8. False Statements
9. Financial Participation Prohibited Affirmation
10. Foreign Terrorist Organizations
11. Disaster Relief Contract Violation
12. Public Information Act
13. Signature Authority
14. State Auditor's Right to Audit
15. Suspension and Debarment
16. Assignment
17. Contracting Information Responsibilities
18. Human Trafficking Prohibition

State of Texas Procurement Contract Clauses

1. 34 TAC §20.585 Debarment

The Recipient agrees that The State of Texas, in order to protect the interests of the state may:

- a. Conduct an investigation upon a complaint regarding a contractor's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment;
- b. Cancel one or more of the contractor's active or pending contracts upon a complaint regarding the contractor's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment;
- c. Assess actual damages and costs incurred due to contractor's failure to perform as specified in the contract;
- d. Debar a contractor for a specified period of time; and
- e. Take any other action authorized by law.

2. §231.006 Family Code Child Support Obligation Certification

Under Section 231.006(d) of the Texas Family Code, the Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified



GRANT and acknowledges that this Agreement may be terminated and payment or grant funds may be withheld if this certification is inaccurate.

3. §2252.903 Gov't Code Debts and Delinquencies Affirmations

Sub-recipient agrees that any payments due it under the Agreement shall be applied toward any debt or delinquency that is owed to the State of Texas.

4. §444.190 Gov't Code Disaster Recovery Plan

In accordance with 13 TAC (Texas Administrative Code) §6.94(a)(9), Sub-recipient shall provide descriptions of its business continuity and disaster recovery plans

5. §2254.033 Gov't Code Disclosure of Prior State Employment

In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, RESPONDENT certifies that it does not employ an individual who has been employed by TxDOT or another agency at any time during the two years preceding the submission of the Response or, in the alternative, RESPONDENT has disclosed in its Response the following:

- a. the nature of the previous employment with TxDOT or the other agency;
- b. the date the employment was terminated; and
- c. the annual rate of compensation for the employment at the time of its termination.

6. §2271.001 Gov't Code Entities that Boycott Israel

Pursuant to Section 2271.001 of the Texas Government Code, Sub-recipient certifies that either:

- a. it meets an exception criterion under Section 2271.002, or
- b. it does not boycott Israel and will not boycott Israel during the term of this Agreement. Sub-recipient shall in a writing to TxDOT state any fact(s) that make it exempt from the boycott certification.

7. Federal Executive Order 13224 Excluded Parties

Sub-recipient certifies that it is not listed on the prohibited vendors list authorized by Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.

8. §2155.077(a)(2) Gov't Code False Statements

Sub-recipient represents and warrants that all statements and information prepared and submitted in this document are current, complete, true and accurate. Submitting a false statement or material misrepresentation made during the performance of a contract is a material breach of contract and may void this agreement.

9. §2155.004 Gov't Code Financial Participation Prohibited Affirmation

Under Section 2155.004(b) of the Texas Government Code, Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified



agreement/GRANT and acknowledges that this agreement may be terminated, and payment withheld if this certification is inaccurate.

10. §2252.152 Gov't Code Foreign Terrorist Organizations

Sub-recipient represents and warrants that is not engaged in business with Iran, Sudan, or a foreign terrorist organization as prohibited by Section 2252.152 of the Texas Government Code.

11. §2155.006 and 2261.053 Gov't Code Prior Disaster Relief Contract Violation

Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified agreement/GRANT and acknowledges that this agreement may be terminated and payment withheld if this certification is inaccurate.

12. Chapter 552, Gov't Code and §2252.907 Gov't Code Public Information Act

Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, the Sub-recipient is required to make any information created or exchanged with the State pursuant to the Agreement and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

13. §2252.0012 Gov't Code Signature Authority

The Sub-recipient represents and warrants that the individual executing this Agreement is authorized to sign this Agreement on behalf of the Sub-recipient and to bind the Sub-recipient.

14. §2262.154 Gov't Code State Auditor's Right to Audit

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

15. §2155.077 Gov't Code Suspension and Debarment

Sub-recipient certifies that it and its principals are not suspended or debarred from doing business with the State of Texas or federal government as listed on the State of Texas Debarred Vendor List as maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.



16. §2262.056 (b) Gov't Code Assignment

Sub-recipient shall not assign its rights under the Agreement or delegate the performance of its duties under the Agreement without prior written approval from the TxDOT. Any attempted assignment in violation of this provision is void and without effect.

17. §552.372 Gov't Code Contracting Information Responsibilities

In accordance with Section 552.372 of the Texas Government Code, Sub-recipient agrees to:

- a. preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to TxDOT for the duration of the Agreement,
- b. promptly provide to TxDOT any contracting information related to the Agreement that is in the custody or possession of the Sub-recipient on request of TxDOT, and
- c. on termination or expiration of the contract, either provide at no cost to TxDOT all contracting information related to the Agreement that is in the custody or possession of the Sub-recipient or preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to TxDOT. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Agreement and the Sub-recipient agrees that the Agreement can be terminated if the Sub-recipient knowingly or intentionally fails to comply with a requirement of that subchapter.

18. §2155.0061 Gov't Code Human Trafficking Prohibition

Under Section 2155.0061 of the Texas Government Code, the Sub-recipient certifies that the individual or business entity named in the Agreement is not ineligible to receive the specified Agreement/GRANT and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.



Certification to Purchaser

- a. The undersigned vendor certifies that the manufactured good(s) furnished will meet or exceed the specifications, and/or that services rendered will comply with the terms of the solicitation or contract.
- b. The undersigned vendor certifies that it has read all of the bid, proposal, or contract documents and agrees to abide by the terms, certifications, and conditions thereof.

Name of Company:		Address:	
		Printed Name of Person Completing Form	
Telephone:		Signature:	
Date:		SS# or Tax ID #	
Description of Commodity or Service			
Disadvantaged Business Enterprise Information			
Type of Organization (check the application type of organization)			
Sole Proprietorship	General Proprietorship	Corporation	
Limited Partnership	Limited Proprietorship		
Is your firm a DBE?			
<input type="checkbox"/> Yes <input type="checkbox"/> No			
If yes, what type?			



Federal Professional Services / A&E Related Clause

1. Seismic Safety (A&E for new buildings & additions)
2. Patent Rights (R&D)
3. Rights in Data and Copyrights (R&D)
4. The Brooks Act

1. Seismic Safety

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

2. Patent Rights (R&D)

The Recipient agrees that:

- a. Depending on the nature of the Underlying Agreement, the Federal Government may acquire patent rights when the Recipient or Third-Party Participant produces a patented or patentable invention, improvement, or discovery;
- b. The Federal Government's rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Underlying Agreement; or
- c. When a patent is issued or patented information becomes available as described in the preceding section 17(a)(2) of this Master Agreement, the Recipient will notify FTA immediately and provide a detailed report satisfactory to FTA.

3. Rights in Data and Copyrights

- a. Definition of "Subject Data." As used in this section, "subject data" means recorded information, whether or not copyrighted, that is delivered or specified to be delivered as required by the Underlying Agreement. Examples of subject data include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Underlying Agreement.
- b. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Underlying Agreement:
 - I. Prohibitions. The Recipient may not publish or reproduce any subject data, in whole, in part, or in any manner or form, or permit others to do so.
 - II. Exceptions. The prohibitions do not apply to publications or reproductions for the Recipient's own internal use, an institution of higher learning, the portion of subject

data that the Federal Government has previously released or approved for release to the public, or the portion of data that has the Federal Government's prior written consent for release.

- b. Federal Rights in Data and Copyrights. The Recipient agrees that:
- I. General. It must provide a license to its subject data to the Federal Government that is royalty-free, non-exclusive, and irrevocable. The Federal Government's license must permit the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for Federal Government purposes; and
 - II. U.S. DOT Public Access Plan – Copyright License. The Recipient grants to U.S. DOT a worldwide, non-exclusive, non-transferable, paid-up, royalty free copyright license, including all rights under copyright, to any and all Publications and Digital Data Sets as such terms are defined in the U.S. DOT Public Access plan, resulting from scientific research funded either fully or partially by this funding agreement. The Recipient herein acknowledges that the above copyright license grant is first in time to any and all other grants of a copyright license to such Publications and/or Digital Data Sets, and that U.S. DOT shall have priority over any other claim of exclusive copyright to the same.
- c. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, Technical Assistance, and Special Studies Programs. In general, FTA's purpose in providing federal assistance for a research, development, demonstration, deployment, technical assistance, or special studies program is to increase transportation knowledge, rather than limit the benefits of the Award to the Recipient and its Third-Party Participants. Therefore, the Recipient agrees that:
- I. Publicly Available Report. When an Award providing federal assistance for any of the programs described above is completed, it must provide a report of the Underlying Agreement that FTA may publish or make available for publication on the Internet.
 - II. Other Reports. It must provide other reports related to the Award that FTA may request.
 - III. Availability of Subject Data. FTA may make available its copyright license to the subject data, and a copy of the subject data to any FTA Recipient or any Third-Party Participant at any tier, except as the Federal Government determines otherwise in writing.
 - IV. Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA
 - V. Incomplete. If the Award is not completed for any reason whatsoever, all data developed with federal assistance for the Award becomes subject data and must be delivered as the Federal Government may direct.
 - VI. Exception. This section does not apply to an adaptation of any automatic data processing equipment or program that is both for the Recipient's use and acquired with FTA capital program assistance.
- d. License Fees and Royalties. Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income and must be used in compliance with federal applicable requirements.

- e. **Hold Harmless.** Upon request by the Federal Government, the Recipient agrees that if it intentionally violates any proprietary rights, copyrights, or right of privacy, and if its violation under the preceding section occurs from any of the publication, translation, reproduction, delivery, use or disposition of subject data, then it will indemnify, save, and hold harmless the Federal Government against any liability, including costs and expenses of the Federal Government's officers, employees, and agents acting within the scope of their official duties. The Recipient will not be required to indemnify the Federal Government for any liability described in the preceding sentence, if the violation is caused by the wrongful acts of federal officers, employees or agents, or if indemnification is prohibited or limited by applicable state law.
- f. **Restrictions on Access to Patent Rights.** Nothing in this section of this Master Agreement pertaining to rights in data either implies a license to the Federal Government under any patent or may be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- g. **Data Developed Without Federal Assistance or Support.** The Recipient agrees that in certain circumstances it may need to provide to FTA data developed without any federal assistance or support. Nevertheless, this section generally does not apply to data developed without federal assistance, even though that data may have been used in connection with the Award. The Recipient agrees that the Federal Government will not be able to protect data developed without federal assistance from unauthorized disclosure unless that data is clearly marked "Proprietary," or "Confidential."
- h. **Requirements to Release Data.** The Recipient understands and agrees that the Federal Government may be required to release data and information that the Recipient submits to the Federal Government as required under:
 - I. The Freedom of Information Act (FOIA), 5 U.S.C. § 552;
 - II. The U.S. DOT Common Rules;
 - III. The U.S. DOT Public Access Plan, which provides that the Recipient agrees to satisfy the reporting and compliance requirements as set forth in the U.S. DOT Public Access plan, including, but not limited to, the submission and approval of a Data Management Plan, the use of Open Researcher and Contributor ID (ORCID) numbers, the creation and maintenance of a Research Project record in the Transportation Research Board's (TRB) Research in Progress (RiP) database, and the timely and complete submission of all required publications and associated digital data sets as such terms are defined in the DOT Public Access plan. Additional information about how to comply with the requirements can be found at <http://ntl.bts.gov/publicaccess/howtocomply.html>; or
 - IV. Other federal laws, regulations, requirements, and guidance concerning access to records pertaining to the Award, the accompanying Underlying Agreement, and any Amendments thereto.

4. The Brooks Act



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The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required at fair and reasonable prices.

Professional Services / A&E Certification

The undersigned vendor certifies to abide by these clauses and include the following clauses in each subcontract financed in whole or in part with Federal Transit Administration (FTA) funds. Vendors are certifying by reference the entire list FTA's current fiscal year Certifications and Assurances (for fiscal year [2021](#)), and shall download the at: <https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances>

Name of Company	Printed Name of Person Completing Form
Date	Signature



State of Texas Required Clauses

1. Buy Texas Affirmation
2. RP8 E-Verify Program
3. Anti-Trust Affirmation
4. Standard of Care for Architectural and Engineering Contracts
5. Code Indemnification
6. Dispute Resolution Contract for Professional Services of Architect, Engineer, or Surveyor
7. Professional Services Procurement Act

1. §2155.4441 Gov't Code Buy Texas Affirmation

In accordance with Section 2155.4441 of the Texas Government Code, Sub-recipient agrees that during the performance of a contract for services it shall purchase products and material produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

2. Executive Order No. RP8 E-Verify Program

Sub-recipient certifies that for contracts for services, Sub-recipient shall utilize the U.S Department of Homeland Security's E-Verify system during the term of the agreement to determine the eligibility of:

- a. All persons employed by the Sub-recipient to perform duties within Texas; and
- b. All persons, including subcontractors, assigned by the Sub-recipient to perform work pursuant to the Agreement within the United States of America.

3. §2155.005 Texas Government Code Anti-Trust Affirmation

The undersigned affirms under penalty of perjury of the laws of the State of Texas that

1. in connection with this Response, neither I nor any representative of the Respondent have violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
2. in connection with this Response, neither I nor any representative of the Respondent have violated any federal antitrust law; and
3. neither I nor any representative of the Respondent have directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Respondent.



4. §2254.0031 Gov't Code and §271.904(a)-(e) and (g) Tex Local Gov't Code Standard of Care for Architectural and Engineering Contracts

Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Sub-recipient shall perform services

- a. with professional skill and care ordinarily provided by competent engineer or architect practicing under the same or similar circumstances and professional license, and
- b. as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

5. §2254.0031 Gov't Code and §271.904 (a)-(e) and (g) Tex Local Govt Code Indemnification

Sub-recipient shall indemnify and hold harmless the State of Texas and TxDOT, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from any and all liability, actions, claims, demands, or suits and all related damages, costs, attorneys fees, and expense to the extent caused by, arising out of, or resulting from any acts of negligence, intentional torts, willful misconduct, personal injury, or damage to property, and/or otherwise related to Sub-recipient's performance, and/or failures to pay a subcontractor or supplier by the Sub-recipient or its agents, employees, subcontractors, order fulfillers, consultants under contract to sub-recipient, or any other entity over which the contractor exercises control, or suppliers of sub-contractors in the execution or performance of the Agreement. The defense shall be coordinated by Sub-recipient with the Office of the Texas Attorney General when Texas state agencies are named defendants in any lawsuit and Sub-recipient may not agree to any settlement without first obtaining the concurrence from the Office of the Texas Attorney General. Sub-recipient and TxDOT agree to furnish timely written notice to each other of any such claim.

6. §2254.004 Gov't Code Dispute Resolution Contract for Professional Services of Architect, Engineer, or Surveyor

The Recipient will comply with Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth below in subsections (a)-(d) shall be used by the parties to attempt to resolve all disputes arising under the agreement. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d).

- a. Notwithstanding Texas Government Code Chapter 2260.002 (3) and Chapter 114.12 and any other statute or applicable law, if the Sub-recipient's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Sub-recipient may make a claim against Agency for breach of contract and the Agency may assert a counterclaim against Sub-recipient as is contemplated by Texas Government Code Chapter 2260, Subchapter B. In such event, Sub-recipient must provide written notice to Agency of a claim for breach of the agreement not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity:

- i. the nature of the alleged breach;
 - ii. the amount the Sub-recipient seeks as damages; and
 - iii. the legal theory of recovery.
- b. The chief administrative officer, or if designated in the Agreement another officer of TxDOT, shall examine the claim and any counterclaim and negotiate with Sub-recipient in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.
- c. If the negotiation under paragraph. Above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this Agreement as to the parts of the claim that are not resolved.
- d. If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with TxDOT, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is Sub-provider's sole and exclusive process for seeking a remedy or an alleged breach of contract by TxDOT if the parties are unable to resolve their dispute as described in this section.
- e. Nothing in this Agreement shall be construed as a waiver of the state's or TxDOT's sovereign immunity. This Agreement 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 Agreement 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 Agreement or by its conduct or by the conduct of any representatives of TxDOT, prior to or subsequent to entering into this Agreement.
- f. Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Sub-recipient:
 - I. filing suit pursuant to Chapter 114 of the Civil Practice and Remedies Code; or
 - II. initiating a contested case hearing pursuant to subchapter C of Chapter 2260 of the Texas Government Code.

7. §2254.004 Gov't Code Professional Services Procurement Act

In procuring architectural or engineering services, a government entity shall:



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- a. First select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and 2) then attempt to negotiate with that provider a contract
- b. At a fair and reasonable price.

Professional Services / A&E Certification

The undersigned vendor certifies to abide by these clauses and include the following clauses in each subcontract financed in whole or in part with State of Texas funds.

Name of Company	Printed Name of Person Completing Form
Date	Signature

Concho Valley Transit District Purchasing Terms and Conditions

(a) **Inspection/Acceptance.** The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Concho Valley Council of Governments reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Concho Valley Council of Governments and/or Concho Valley Transit District may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. The Concho Valley Council of Governments and/or Concho Valley Transit District must exercise its post-acceptance rights -- (1) Within a reasonable time after the defect was discovered or should have been discovered; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) **Assignment.** The Contractor or its assignee's rights to be paid amounts due as a result of performance of this contract, may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C.3727).

(c) **Changes.** Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) **Disputes.** This contract is not subject to the Contract Disputes Act of 1978. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) **Definitions.** The clause at FAR 2.1, Definitions, is incorporated herein by reference. The term Government shall mean Concho Valley Council of Governments (CVTD) unless otherwise specified.

(f) **Excusable delays.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Purchasing & Asset Manager in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Purchasing & Asset Manager of the cessation of such occurrence.

(g) **Invoice.** The Contractor shall submit an original invoice (or electronic invoice, if authorized,) to the address designated in the agreement to receive invoices. An invoice must include -- (1) Name and address of the Contractor; (2) Invoice date; (3) Agreement number, contract line item number and, if applicable, the order number; (4) Description, quantity, unit of measure, unit price and extended price of the items delivered; (5) Shipping number and date of shipment including the bill of lading number and

weight of shipment if shipped on Government bill of lading; (6) Terms of any prompt payment discount offered; (7) Name and address of official to whom payment is to be sent; and (8) Name, title, and phone number of person to be notified in event of defective invoice. Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C.3903). Contractors are encouraged to assign an identification number to each invoice.

(h) **Patent indemnity.** The Contractor shall indemnify CVCOG, CVTD and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) **Payment.** Payment shall be made for items accepted by the Concho Valley Council of Governments that have been delivered to the delivery destinations set forth in this agreement. The Concho Valley Council of Governments will make payment in accordance with the Prompt Payment Act (31 U.S.C.3903). In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(j) **Risk of loss.** Unless the agreement specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Concho Valley Council of Governments upon: (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or (2) Delivery of the supplies to the Concho Valley Council of Governments at the destination specified in the contract, if transportation is f.o.b. destination.

(k) **Taxes.** The contract price includes all applicable Federal, State, and local taxes and duties. However, a tax exemption form and/or W-9 shall be provided upon request.

(l) **Termination for the Government's convenience.** Concho Valley Council of Governments reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Concho Valley Council of Governments using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Concho Valley Council of Governments and/or Concho Valley Transit District or FTA any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) **Termination for cause.** Concho Valley Council of Governments may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply

with any contract terms and conditions, or fails to provide the Concho Valley Council of Governments, upon request, with adequate assurances of future performance. In the event of termination for cause, the Concho Valley Council of Governments or Concho Valley Transit District shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Concho Valley Council of Governments and/or Concho Valley Transit District for any and all rights and remedies provided by law. If it is determined that the Concho Valley Council of Governments improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) **Title.** Unless specified elsewhere in this agreement, title to items furnished under this contract shall pass to the Concho Valley Transit District upon acceptance, regardless of when or where the Concho Valley Transit District takes physical possession.

(o) **Warranty.** The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) **Limitation of liability.** Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Concho Valley Council of Governments for consequential damages resulting from any defect or deficiencies in accepted items.

(q) **Other compliances.** The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this agreement.

(r) **Compliance with laws unique to Government contracts.** The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C.327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) **Order of precedence.** Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) The schedule of supplies/services. (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause. (3) Reserved. (4) Addenda to this solicitation or contract, including any license agreements for computer software. (5) Solicitation provisions if this is a solicitation. (6) Other paragraphs of this clause. (7) The Work Order. (8) Other documents, exhibits, and attachments. (9) The specification.

OPTION FOR INCREASED QUANTITY – SEPARATELY PRICE LINE ITEM.

The Concho Valley Transit District may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Purchasing & Asset Manager may exercise the option by written notice to the Contractor within 90 days. Delivery of

added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

PRIVACY OR SECURITY SAFEGUARDS.

(a) The Contractor shall not publish or disclose in any manner, without the Purchasing & Asset Manager’s written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Concho Valley Council of Governments.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Concho Valley Council of Governments data, the Contractor shall afford the Concho Valley Council of Governments access to the Contractor’s facilities, installations, technical capabilities, operations, documentation, records, and databases.

(c) If new or unanticipated threats or hazards are discovered by either the Concho Valley Council of Governments or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party

GRATUITIES.

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative— (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Concho Valley Council of Governments; and (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Concho Valley Council of Governments is entitled— (1) To pursue the same remedies as in a breach of the contract; and (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This paragraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Concho Valley Council of Governments provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

SYSTEM FOR AWARD MANAGEMENT.

(a) Definitions. As used in this provision— “Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities. “Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no 8 6608-18-B-0047

Clauses affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional System for Award Management records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at subpart 32.11) for the same concern. "Registered in the System for Award Management (SAM) database" means that— (1) The offeror has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006) into the SAM database; (2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in the SAM database; (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and (4) The Government has marked the record "Active".

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation. (2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Purchasing & Asset Manager to verify that the offeror is registered in the SAM database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. (1) An offeror may obtain a DUNS number— (i) Via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or (ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office. (2) The offeror should be prepared to provide the following information: (i) Company legal business. (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized. (iii) Company Physical Street Address, City, State, and ZIP Code. (iv) Company Mailing Address, City, State and ZIP Code (if separate from physical). (v) Company Telephone Number. (vi) Date the company was started. (vii) Number of employees at your location. (viii) Chief executive officer/key manager. (ix) Line of business (industry). (x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the SAM database in the time prescribed by the Purchasing & Asset Manager, the Purchasing & Asset Manager will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) Offerors may obtain information on registration at <https://www.acquisition.gov> .

APPROVAL OF CONTRACT.

This contract is subject to the written approval of Concho Valley Transit District Executive Director and shall not be binding until so approved via an established Work Order.

TYPE OF CONTRACT.

The Concho Valley Council of Governments and the Concho Valley Transit District contemplates award of a Cost Reimbursement contract resulting from this solicitation with costs not to exceed the cost quoted by the contractor.

BRAND NAME OR EQUAL.

(a) If an item in this solicitation is identified as “brand name or equal,” the purchase description reflects the characteristics and level of quality that will satisfy CVTD’s needs. The salient physical, functional, or performance characteristics that “equal” products must meet are specified in the solicitation.

(b) To be considered for award, offers of “equal” products, including “equal” products of the brand name manufacturer, must— (1) Meet the salient physical, functional, or performance characteristic specified in this solicitation; (2) Clearly identify the item by— (i) Brand name, if any; and (ii) Make or model number; (3) Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Procurement Office; and Clauses (4) Clearly describe any modification the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modification.

(c) The Procurement Office will evaluate “equal” products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Procurement Office. The Procurement Office is not responsible for locating or obtaining any information not identified in the offer. (d) Unless the offeror clearly indicates in its offer that the product being offered is an “equal” product, the offeror shall provide the brand name product referenced in the solicitation.

MATERIAL AND WORKMANSHIP.

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Purchasing & Asset Manager, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Purchasing & Asset Manager’s approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Purchasing & Asset Manager the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the

machinery and mechanical and other equipment. When required by this contract or by the Purchasing & Asset Manager, the Contractor shall also obtain the Purchasing & Asset Manager's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Purchasing & Asset Manager may require, in writing, that the Contractor remove from the work any employee the Purchasing & Asset Manager deems incompetent, careless, or otherwise objectionable.

AVAILABILITY OF FUNDS

The Concho Valley Council of Government's (CVCOG) obligation under this contract is contingent upon the availability of funds from which payment for contract purposes can be made. No legal liability on the part of the CVCOG for any payment may arise until funds are made available to the CVCOG for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Purchasing & Asset Manager via establishment of Work Order.

Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

(a) Definition. "Commercially available off-the-shelf (COTS)" item, as used in this clause— (1) Means any item of supply (including construction material) that is— (i) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101); (ii) Sold in substantial quantities in the commercial marketplace; and (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

(b) The Government suspends or debars Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of \$35,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$35,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Purchasing & Asset Manager, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment. The notice must include the following: (1) The name of the subcontractor. (2) The Contractor's knowledge of

the reasons for the subcontractor being listed with an exclusion in SAM. (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM. (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that— (1) Exceeds \$35,000 in value; and (2) Is not a subcontract for commercially available off-the-shelf items.

Prohibition on Contracting with Inverted Domestic Corporations.

(a) Definitions. As used in this clause— “Inverted domestic corporation” means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c). “Subsidiary” means an entity in which more than 50 percent of the entity is owned— (1) Directly by a parent corporation; or (2) Through another subsidiary of a parent corporation.

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(c) Exceptions to this prohibition are located at 9.108-2.

(d) In the event the Contractor becomes either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation during contract performance, the Contractor shall give written notice to the Purchasing & Asset Manager within five business days from the date of the inversion event.

Desired and Required Time of Delivery.

- (a) If the offeror is unable to meet the desired delivery schedule, it may, without prejudicing evaluation of its offer, propose a delivery schedule. However, the offeror's proposed delivery schedule must not extend the delivery period beyond the time for delivery in the Government's required delivery schedule as follows:
- a. Within **45** days after date of Contract
 - b. All 45 days ARO Offers that propose delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable required delivery period specified above, will be considered nonresponsive and rejected. If the offeror proposes no other delivery schedule, the desired delivery schedule above will apply

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day the award is dated. Therefore, the offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Purchasing & Asset Manager through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding (1) five calendar days for delivery of the award through the ordinary mails, or (2) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term "working day" excludes weekends and U.S. Federal holidays.) If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered nonresponsive and rejected.

State and Local Taxes.

Notwithstanding the terms of the Federal, State, and Local Taxes clause, the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

Payments.

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if—

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

Discounts for Prompt Payment.

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency

annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day

Prompt Payment.

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.) (a) Invoice payments— (1) Due date. (i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement. (ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements. (2) Certain food products and other payments. (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are—

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day

after product delivery, unless another date is specified in the contract. (D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation. (ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract. (3)

Contractor's invoice.

The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

- (i) Name and address of the Contractor.
- (ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)
- (iii) Contract number or other authorization for supplies delivered or services performed (including order number and line item number).
- (iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
- (v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.
- (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
- (vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.
- (viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (ix) Electronic funds transfer (EFT) banking information. (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract. (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of

Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures. (C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

- (x) Any other information or documentation required by the contract (e.g., evidence of shipment).

Interest penalty.

The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

- (i) The designated billing office received a proper invoice.
- (ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.
- (iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.
- (iv) **Computing penalty amount.** The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR Part 1315. (i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance is deemed to occur constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivers the supplies or performs the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities. (ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes and any interest that may be payable in accordance with the clauses.
- (v) **Discounts for prompt payment.** The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for

prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR Part 1315. (7) Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR Part 1315 in addition to the interest penalty amount only if— (A) The Government owes an interest penalty of \$1 or more; (B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and (C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid. (ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall—

- a. Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;
 - b. Attach a copy of the invoice on which the unpaid late payment interest is due; and
 - c. State that payment of the principal has been received, including the date of receipt. (B) If there is no postmark or the postmark is illegible— (1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or (2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made. (iii) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).
- (vi) **Contract financing payment.** If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.
- (vii) **Fast payment procedure due dates.** If this contract contains the clause, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.
- (viii) **Overpayments.** If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—
- a. Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the— (i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment); (ii) Affected contract number and delivery order number if applicable; (iii) Affected line item or subline item, if applicable; and (iv) Contractor point of contact.
 - b. Provide a copy of the remittance and supporting documentation to the Purchasing & Asset Manager.

Disputes.

(a) This contract is not subject to 41 U.S.C chapter 71, Contract Disputes.

(b) Except as provided, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Purchasing & Asset Manager for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Purchasing & Asset Manager. (2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000. (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim. (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor." (3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Purchasing & Asset Manager must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Purchasing & Asset Manager must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Purchasing & Asset Manager's decision shall be final unless the Contractor appeals or files a suit as provided in accordance with governing law.

(g) If the claim by the Contractor is submitted to the Purchasing & Asset Manager or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Purchasing & Asset Manager, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Purchasing & Asset Manager receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR, interest shall be paid from the date that the Purchasing & Asset Manager initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Purchasing & Asset Manager receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Purchasing & Asset Manager.

Changes—Fixed-Price.

(a) The Purchasing & Asset Manager may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following: (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications. (2) Method of shipment or packing. (3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Purchasing & Asset Manager shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Purchasing & Asset Manager decides that the facts justify it, the Purchasing & Asset Manager may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Purchasing & Asset Manager shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

Responsibility for Supplies.

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon—

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) of this clause shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this clause shall apply.

(d) Under paragraph (b) of this clause, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

Warranty of Supplies of a Noncomplex Nature.

(a) Definitions. As used in this clause— “Acceptance” means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract. “Supplies” means the end items furnished by the Contractor and related services required under this contract. The word does not include “data.”

(b) Contractor’s obligations.

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for 365 calendar days— (i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and (ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. However, the Contractor’s liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this contract and the Contractor’s plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in

paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and “fitness for a particular purpose” are excluded from any obligation contained in this contract. (c) Remedies available to the Government. (1) The Purchasing & Asset Manager shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within 15 business days after discovery of the defect. (2) Within a reasonable time after the notice, the Purchasing & Asset Manager may either— (i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or (ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances. (3)(i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Purchasing & Asset Manager—

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of re-inspection; provided, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots. (ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Purchasing & Asset Manager may exercise one or more of the following options: (A) Require an equitable adjustment in the contract price for any group of supplies. (B) Screen the supplies grouped for warranty action under this clause at the Contractor’s expense and return all nonconforming supplies to the Contractor for correction or replacement. (C) Require the Contractor to screen the supplies at locations designated by the Government within the contiguous United States and to correct or replace all nonconforming supplies. (D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.

(4)(i) The Purchasing & Asset Manager may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor— (A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or (B) Fails

either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Purchasing & Asset Manager may authorize in writing) after receipt of notice from the Purchasing & Asset Manager specifying such failure. (ii) Instead of correction or replacement by the Government, the Purchasing & Asset Manager may require an equitable adjustment of the contract price. In addition, if the Contractor fails to furnish timely disposition instructions, the Purchasing & Asset Manager may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

F.o.b. Destination.

(a) The term "f.o.b. destination," as used in this clause, means— (1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and (2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the contractor uses rail carrier or freight forwarded for less than carload shipments, the contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or (ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

Termination for Convenience of the Government (Fixed-Price) (Short Form).

The Purchasing & Asset Manager, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the rights, duties, and obligations of the parties, including compensation to the Contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract.

Default (Fixed-Price Supply and Service).

(a)(1) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to— (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension; (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or (iii) Perform any of the other provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Purchasing & Asset Manager) after receipt of the notice from the Purchasing & Asset Manager specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Purchasing & Asset Manager considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Purchasing & Asset Manager, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to “manufacturing materials” in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Purchasing & Asset Manager, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Purchasing & Asset Manager shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Purchasing & Asset Manager determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government. (h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

Excusable Delays.

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. “Default” includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless— (1) The subcontracted supplies or services were obtainable from other sources; (2) The Purchasing & Asset Manager ordered the Contractor in writing to purchase these supplies or services

from the other source; and (3) The Contractor failed to comply reasonably with this order. (c) Upon request of the Contractor, the Purchasing & Asset Manager shall ascertain the facts and extent of the failure. If the Purchasing & Asset Manager determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

Instructions to Offerors—Commercial Items for Formal Procurement.

(a) North American Industry Classification System (NAICS) code and small business size standard. The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) Submission of offers. Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show— (1) The solicitation number; (2) The time specified in the solicitation for receipt of offers; (3) The name, address, and telephone number of the offeror; (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary; (5) Terms of any express warranty; (6) Price and any discount terms; (7) “Remit to” address, if different than mailing address; (8) Reserved; (9) Acknowledgment of Solicitation Amendments; (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) Period for acceptance of offers. The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) Product samples. When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender’s request and expense, unless they are destroyed during preaward testing.

(e) Multiple offers. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions, including alternative line items (provided that the alternative line items are consistent with established requirements), or alternative commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) *Late submissions, modifications, revisions, and withdrawals of offers.* (1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due. (2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Purchasing & Asset Manager determines that accepting the late offer would not unduly delay the acquisition; and— (A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or (B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government’s control prior to the time set for receipt of offers; or (C) If this solicitation is a request for proposals, it was the only proposal received. (ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted. (3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel. (4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. (5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) *Contract award.* The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror’s initial offer should contain the offeror’s best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Purchasing & Asset Manager to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards.* The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an

award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) Reserved:

(j) *Unique entity identifier.* (Applies to all offers exceeding \$3,500, and offers of \$3,500 or less if the solicitation requires the Contractor to be registered in the System for Award Management (SAM) database.) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "Unique Entity Identifier" followed by the unique entity identifier that identifies the Offeror's name and address. The Offeror also shall enter its Electronic Funds Transfer (EFT) indicator, if applicable. The EFT indicator is a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the Offeror to establish additional SAM records for identifying alternative EFT accounts for the same entity. If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for unique entity identifier establishment directly to obtain one. The Offeror should indicate that it is an offeror for a Government contract when contacting the entity designated at www.sam.gov for establishing the unique entity identifier.

(k) *System for Award Management.* Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the SAM database accessed through <https://www.acquisition.gov>.

**THE FOLLOWING ARE REQUIRED CLAUSES BY THE FEDERAL TRANSIT ADMINISTRATION 4220.1F 1.
ACCESS TO RECORDS**

Applicability to Contracts

The record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

Access to Records and Reports

a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of

termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required. d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

CIVIL RIGHTS LAWS AND REGULATIONS

Applicability to Contracts

The following Federal Civil Rights laws and regulations apply to all contracts. 1. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:

a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

2. *Nondiscrimination on the Basis of Sex*. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

3. *Nondiscrimination on the Basis of Age*. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4. *Federal Protections for Individuals with Disabilities*. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other

provisions, many of which are subject to regulations issued by other Federal agencies. Civil Rights and Equal Opportunity The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. *Nondiscrimination.* In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. *Race, Color, Religion, National Origin, Sex.* In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. *Age.* In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 31 6608-18-B-0047 Clauses U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. *Disabilities.* In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of

disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Background and Applicability. The Disadvantaged Business Enterprise (DBE) program applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year. All FTA recipients above this threshold must submit a DBE program and overall triennial goal for DBE participation. The overall goal reflects the anticipated amount of DBE participation on DOT-assisted contracts. As part of its DBE program, FTA recipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 C.F.R. § 26.49. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, are eligible to bid. FTA recipients must meet the maximum feasible portion of their overall goal using race-neutral methods. Where appropriate, however, recipients are responsible for establishing DBE contract goals on individual DOT-assisted contracts. FTA recipients may use contract goals only on those DOT-assisted contracts that have subcontracting responsibilities. See 49 C.F.R. § 26.51(e). Furthermore, while FTA recipients are not required to set a contract goal on every DOT-assisted contract, they are responsible for achieving their overall program goals by administering their DBE program in good faith. FTA recipients and third party contractors can obtain information about the DBE program located on the FTA and DOT websites.

<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/disadvantaged-businessenterprise>

Clause Language. For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts: 32 6608-18-B-0047 Clauses The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b). Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled

to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1). It is the policy of the AGENCY and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the AGENCY to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE’s can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE’s;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The AGENCY shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the AGENCY may consider during its review of the Bidder/Offeror’s submission package, the Bidder/Offeror’s documented history of noncompliance with DBE requirements on previous contracts with the AGENCY. The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the AGENCY deems appropriate. DBE Participation For the purpose of this Contract, the AGENCY will accept only DBE’s who are: 1. Certified, at the time of bid opening or proposal evaluation, by the [certifying agency or the Unified Certification Program (UCP)]; or 2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or 3. Certified by another agency approved by the AGENCY.

ENERGY CONSERVATION

Applicability to Contracts. The Energy Policy and Conservation requirements are applicable to all contracts. The Recipient agrees to, and assures that its sub-recipients, if any, will comply with the

mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C. Energy Conservation The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

GOVERNMENT WIDE DEBARMENT AND SUSPENSION

Background and Applicability. A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract. It is Concho Valley Council of Governments Policy that all contractors doing business with any programs be searched in the SAM database prior to any payments being remitted. Debarment, Suspension, Ineligibility and Voluntary Exclusion The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in ay federally assisted Award.

By signing and submitting its bid or proposal or executing performance, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts. The No Obligation clause applies to all third party contracts that are federally funded.

No Federal Government Obligation to Third Parties.

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

RECYCED PRODUCTS

Applicability to Contracts. The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 et seq.), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000. Recovered Materials The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

SAFE OPERATION OF MOTOR VEHICLES

Applicability to Contracts. The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third party agreements supported with Federal assistance.

Safe Operation of Motor Vehicles

Seat Belt Use: The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY. Distracted Driving The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

SUBSTANCE ABUSE REQUIREMENTS

Applicability to Contracts. Third party contractors who perform safety-sensitive functions must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, sub-recipients, operators, or contractors:

1. Operating a revenue service vehicle, including when not in revenue service;
 2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
 3. Controlling dispatch or movement of a revenue service vehicle;
 4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;
 5. Carrying a firearm for security purposes.
- Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

SUBSTANCE ABUSE TESTING

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Texas, or AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

TERMINATION

Applicability to Contracts: All contracts in excess of \$10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

Termination for Convenience (General Provision)

The AGENCY may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the AGENCY's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to AGENCY to be paid the Contractor. If the Contractor has any property in its possession belonging to AGENCY, the Contractor will account for the same, and dispose of it in the manner AGENCY directs.

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the AGENCY may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the AGENCY that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the AGENCY, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

The AGENCY, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to AGENCY's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from AGENCY setting forth the nature of said breach or default, AGENCY shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude AGENCY from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that AGENCY elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by AGENCY shall not limit AGENCY's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Convenience (Professional or Transit Service Contracts)

The AGENCY, by written notice, may terminate this contract, in whole or in part, when it is in the AGENCY's interest. If this contract is terminated, the AGENCY shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the AGENCY.

Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the Contractor has possession of AGENCY goods, the Contractor shall, upon direction of the AGENCY, protect and preserve the goods until surrendered to the AGENCY or its agent. The Contractor and AGENCY shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the

Dispute clause. 39 6608-18-B-0047 Clauses If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the AGENCY.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

Applicability to Contracts. The Program Fraud clause applies to all third party contracts that are federally funded.

Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.